

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

GINA K. BASS;

Case No.: 09cv2707 ADM/FCN

Plaintiff,

Related To: CV-08-0399, et al.,

v.

**DJO, LLC; DJO, INC., and
I-FLOW CORPORATION,**

**COMPLAINT
DEMAND FOR JURY TRIAL**

Defendants.

NATURE OF THE CASE

1. Plaintiff Gina K. Bass developed chondrolysis in her shoulder after being implanted with a portable pain pump following shoulder surgery. The pain pump was designed and marketed for continuous administration of anesthetic drugs into the shoulder joint, or "intra-articular" space, even though the FDA had rejected this indication. As a result, the plaintiff has suffered the complete or nearly complete loss of cartilage in the shoulder joint, injury that is irreversible, disabling, and extremely painful. This lawsuit asserts claims for negligence, strict product liability for design defect, and strict product liability for failure to warn against defendants.

JURISDICTION, VENUE, AND PARTIES

2. Venue is proper in this district under 28 U.S.C. §1391 because all defendants transact business in this district.

SCANNED

OCT 02 2009

U.S. DISTRICT COURT

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3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332, because the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and because there is complete diversity of citizenship between the plaintiff and defendants.

The Plaintiff

4. Gina K. Bass was at all relevant times a resident and citizen of Arkansas.

5. Gina K. Bass underwent a shoulder surgery in Little Rock, Arkansas. Based on information and belief, a pain pump designed, manufactured, and marketed by I-Flow Corporation and was implanted into her shoulder on October 6, 2006 by her orthopedic surgeon. Following plaintiff's October 6, 2006 surgery, she was administered 270 cc of 0.5% bupivacaine in the pain pump. The pain pumps used following plaintiff's surgery injected pain relief medication directly into her shoulder joint on a continuous basis, for up to 72 hours or more following her surgery. She was diagnosed with chondrolysis on or around October 18, 2007. Plaintiff underwent a partial shoulder replacement, and is likely to need further surgeries to treat her injury.

6. The incident causing the injury, and from which the plaintiff's claims arise, occurred on or shortly after the administration of anesthetics via post-operative pain pumps following her surgery on October 6, 2006. Plaintiff did not learn that the administration of pain medication from a pain pump directly to the shoulder joint could cause chondrolysis until after approximately May of 2008.

The Defendants

7. Defendants DJO, LLC and DJO Inc. (collectively referred to as “DJO defendants”) are Delaware corporations. Their principal place of business is Vista, California. DJO defendants conducted regular and sustained business in Minnesota by distributing products in Minnesota. DJO Incorporated is the ultimate parent corporation of DJO, LLC. DJO Incorporated did not directly distribute pain pumps, but should be liable for any judgment against DJO LLC, because the ultimate parent uses all of DJO LLC’s resources as its own, and holds itself out to the public as if both DJO LLC and DJO Incorporated are one company.

8. Defendant I-Flow Corporation is a Delaware corporation with its principal place of business in California. Defendant conducted regular and sustained business in Minnesota by causing its products to be sold in Minnesota.

9. Venue is proper in this district under 28 U.S.C. §1391 because all defendants transact business in this district.

FACTS COMMON TO ALL CLAIMS

10. At all relevant times, the defendants designed, manufactured, and distributed a product called a “pain pump,” a medical device intended to deliver, via catheter, continuous doses of pain relief medication directly into the shoulder joint space. The pain pumps deliver anesthetic pain medication directly into the operative site for 72 hours or more immediately following shoulder surgery.

11. The pain pumps are designed and intended to be used with commonly used anesthetics such as lidocaine or bupivacaine, with or without epinephrine, in volumes of

250 cc's or more, over two days or more. The continuous injection of such medications at such doses over time directly into the shoulder joint, however, can cause serious and permanent damage to the cartilage of the shoulder joint. The plaintiff had a pain pump inserted post-operatively, and she received dangerous doses of continuously injected medication in her shoulder joint. As a result, she suffered narrowing of the joint space and/or a condition called "chondrolysis," which is the complete or nearly complete loss of cartilage in the shoulder joint, an irreversible, disabling, and extremely painful condition.

12. Plaintiff has already undergone a partial shoulder joint replacement as a result of the narrowing of the joint space and/or chondrolysis caused by the dangerously defective pain pumps. Plaintiff is likely to undergo additional shoulder joint replacement surgeries throughout the rest of her life.

13. None of the defendants warned the plaintiff or her surgeon about the unreasonable risks and dangers of using the pain pump and anesthetic medications in this manner. Each of plaintiff's medical providers used the pain pump in the manner instructed and directed by the defendants.

FIRST CLAIM FOR RELIEF
(Strict Products Liability: Design defect, Failure to Warn)

14. Plaintiff realleges all preceding paragraphs.

15. The pain pump devices, and the anesthetic medications used in them, were unreasonably and dangerously defective beyond the extent contemplated by ordinary

patients with ordinary knowledge regarding the device, in one or more of the following particulars:

- A The labeling failed to instruct or warn the U.S. medical community that the safety of the device and its medications had not been established for use in the shoulder joint space;
- B The labeling failed to disclose to the U.S. medical community that continuous injection of commonly used anesthetics such as lidocaine or bupivacaine, with or without epinephrine, in volumes of at least 250 cc's, for two or more days, into the shoulder joint space, may cause serious and permanent injury to the joint cartilage;
- C The labeling failed to include a precaution against placing the catheter of the pain pump in the shoulder joint space;
- D The labeling failed to provide to the U.S. medical community adequate instructions for the safe use of the device, failing specifically to identify anesthetic medications that could be safely and effectively used in the shoulder joint space;
- E The labeling failed to disclose to the U.S. medical community that the effectiveness of the device was uncertain for use in the shoulder joint space;
- F The labeling failed to disclose to the U.S. medical community that the FDA had considered the defendants' request to put this indication in the pain pump label, and then had rejected this precise indication for the pain pumps' use, to deliver the pain medicine directly into the joint space.

G The products were designed to inject commonly used medications associated with damage to articular cartilage directly into the shoulder joint; and

H When used as designed, the pain pumps delivered, over time, dangerously high doses of medication directly into shoulder tissue.

16. The product defects alleged above were substantial contributing causes of the injuries suffered by the plaintiff. Specifically, the pain pumps caused plaintiff to suffer the permanent loss of cartilage in her shoulder, resulting in severe pain and discomfort of the shoulder, loss of use and function of the shoulder and arm, and requiring multiple surgeries. The use of the pain pumps also rendered the therapeutic benefits of the shoulder surgeries worthless. Plaintiff was forced to undergo a partial shoulder replacement as a result of the defective pain pumps. She may also require future medical care, as she ages, including future shoulder replacements. In addition, she has suffered mental distress and anguish and has suffered permanent impairment of the use and function of her affected upper extremities.

SECOND CLAIM FOR RELIEF
(Negligence)

17. Plaintiff realleges all preceding paragraphs.

18. At all relevant times, each of the defendants knew or reasonably should have known that their pain pumps were unreasonably dangerous and defective when used as directed and as designed. A reasonably careful search and review of the scientific and medical literature, and other information, should have indicated to the defendants that:

- A Commonly used anesthetics likely to be used in their pain pumps, such as lidocaine and marcaine, with or without epinephrine, were harmful to human and animal articular cartilage;
 - B Use of the pain pumps in a joint space had not been approved by the F.D.A., and in fact had been specifically rejected by the F.D.A.;
 - C Continuous injection of 250 cc's or more of such medications, through a catheter, directly into the shoulder joint, for two days or more, had not been adequately tested for safety or effectiveness;
 - D The risk of chondrolysis and other serious post-operative problems associated with using the pain pumps and their medications as designed and instructed outweighed the possible benefits of such use.
19. Based on what they knew or reasonably should have known as described above, defendants were negligent in one or more of the following particulars:
- A In failing to instruct or warn the U.S. medical community that the safety of the device had not been established for use in the shoulder joint space;
 - B In failing to disclose to the U.S. medical community that continuous injection of commonly used anesthetics such as lidocaine or bupivacaine, with or without epinephrine, in volumes of at least 250 cc's, for two or more days, into the shoulder joint space, may cause serious and permanent injury to the joint cartilage;
 - C In failing to include a precaution against placing the catheter of the pain pump in the shoulder joint space;

- D In failing to provide to the U.S. medical community adequate instructions for the safe use of the device, specifically failing to identify anesthetic medications that could be safely and effectively used in the shoulder joint space;
- E In failing to disclose to the U.S. medical community that the effectiveness of the device with these medications was uncertain for use in the shoulder joint space;
- F Manufacturing a product designed to directly inject into the shoulder joint commonly used medications associated with damage to articular cartilage;
- G Manufacturing a product designed to deliver, over time, dangerously high doses of medication directly into shoulder tissue; and
- H Promoting the pain pumps for use in the joint space after the FDA had considered and rejected such an indication.

20. The negligent acts and omissions alleged above were substantial contributing causes of the injuries suffered by the plaintiff. Specifically, the pain pumps caused plaintiff to suffer the permanent loss of cartilage in her shoulder, resulting in severe pain and discomfort of her shoulder, loss of use and function of her shoulder and arm, and requiring multiple surgeries. The use of the pain pumps also rendered the therapeutic benefits of her shoulder surgeries worthless. As a result of the defendants' negligent acts and omissions, plaintiff has undergone a partial shoulder replacement, and will incur additional medical expenses as she ages, including future shoulder

replacements. In addition, plaintiff has suffered mental distress and anguish and has suffered permanent impairment of the use and function of her affected upper extremities.

21. The injuries suffered by plaintiff were the reasonably foreseeable results of defendants' negligence.

THIRD CLAIM FOR RELIEF

(Punitive Damages Against Defendant I-Flow)

22. Defendant I-Flow engaged in a prolonged, wanton and malicious course of conduct, with conscious and deliberate disregard of a serious risk to the health, safety, rights, and interest of plaintiff and many other patients like her, in one or more of the following respects:

- A. Defendant I-Flow knew that the FDA had repeatedly refused to clear an indication for use of I-Flow's pain pumps in the joint space, but I-Flow failed to disclose the repeated FDA rejections to the U.S. medical community;
- B. Defendant I-flow failed to undertake the necessary research, analysis and testing to determine the safety of its pain pumps within the joint space before distributing its pain pumps, knowing that the pumps would be used in this manner, and failed to disclose to the U.S. medical community that the safety of using the pain pumps within a joint space was uncertain, unknown, and unpredictable;

- C. Defendant I-Flow failed to disclose to the U.S. medical community that use of the pain pumps within the joint space was an “off-label” use, which had never been approved or cleared by the FDA;
- D. Defendant I-Flow failed to promptly investigate and report to the FDA once they began receiving reports of dozens of patients who had allegedly suffered injury to their cartilage following use of pain pumps within their shoulder joints, and even failed to consider such cases as complaints relating to the safety of its pain pumps;
- E. Defendant I-Flow failed to disclose to its own sales force that the FDA had repeatedly rejected I-Flow’s proposed indication for use of its pain pumps within the joint space. Nor did I-Flow disclose to its sales force reports it received of several patients who allegedly suffered injury to their cartilage following use of pain pumps within their shoulder joints.
- F. Defendant I-Flow actively promoted the use of its pain pumps within the joint space despite knowing such use had never been cleared by the FDA, and that promotion and marketing of its pain pumps for use within the joint space violated federal law;
- G. Defendant I-Flow failed to warn the U.S. medical community of the known risk of serious and permanent injury to cartilage associated with the use of pain pumps within the joint space in a manner reasonably likely to meaningfully warn the U.S. medical community, for a prolonged period of

time after I-Flow became aware of the existence and seriousness of the risk;
and

- H. Defendant I-Flow put its own profits ahead of a serious risk of harm to the health, safety, and well-being of plaintiff and many other unsuspecting plaintiffs like her.

FOURTH CLAIM FOR RELIEF

(Punitive Damages Against DJO Defendants)

23. DJO Defendants engaged in a prolonged, wanton and malicious course of conduct, with conscious and deliberate disregard of a serious risk to the health, safety, rights, and interest of plaintiff and many other patients like her, in one or more of the following respects:

- A. DJO Defendants knew that the FDA had repeatedly refused to clear an indication for use of pain pumps in the joint space, but DJO failed to disclose the repeated FDA rejections to the U.S. medical community;

- B. DJO Defendants knew that the FDA considered all orthopedic use of pain pumps to be off-label use. DJO sponsored research for the orthopedic use of pain pumps without having an Investigational Device Exemption or a New Drug Application, despite the fact that outside consultants advised DJO in 1999 that such approval was necessary from the FDA to undertake research on pain pumps in orthopedic use.

- C. DJO Defendants failed to undertake the FDA supervised research, analysis and testing to determine the safety of its pain pumps within the joint space before distributing its pain pumps, knowing that the pumps would be used in this manner, and

failed to disclose to the U.S. medical community that the safety of using the pain pumps within a joint space was uncertain, unknown, and unpredictable;

D. DJO Defendants failed to disclose to the U.S. medical community that use of the pain pumps within the joint space was an “off-label” use, which had never been approved or cleared by the FDA;

E. DJO Defendants failed to disclose to their own sales force or customers that the FDA had repeatedly rejected I-Flow’s and McKinley’s proposed indications for use of pain pumps within the joint space. Nor did DJO disclose to its sales force reports it received of several patients who allegedly suffered injury to their cartilage following use of pain pumps within their shoulder joints.

F. DJO Defendants actively promoted the use of its pain pumps within the joint space despite knowing such use had never been cleared by the FDA, and that promotion and marketing of its pain pumps for use within the joint space violated federal law;

G. DJO retained FDA experts in 1999 who told it that there was risk of injury to cartilage from the drugs when they were infused over time into a joint space and that such a use of the pumps would be the most likely to be seen as a violation of FDA regulations.

H. DJO defendants failed to warn the U.S. medical community of the known risk of serious and permanent injury to cartilage associated with the use of pain pumps within the joint space in a manner reasonably likely to meaningfully warn the U.S.

medical community, for a prolonged period of time after DJO became aware of the existence and seriousness of the risk; and

I. DJO defendants put their own profits ahead of a serious risk of harm to the health, safety, and well-being of plaintiff and many other unsuspecting patients.

FIFTH CLAIM FOR RELIEF
(Civil Conspiracy between Defendant I-Flow and DJO Defendants)

24. Defendant I-Flow and DJO defendants entered into an agreement, purpose, and design to promote pain pumps for orthopedic use, including use in the joint space. When the FDA denied I-Flow's request for this indication on three separate occasions, and made McKinley remove its orthopedic indication, both I-Flow and DJO knew they could not lawfully promote the pain pumps for orthopedic use. However, I-Flow and DJO entered an agreement to promote the pain pumps for orthopedic use, in violation of FDA regulations. DJO and I-Flow agreed that if apprehended, they would claim that orthopedic use was included within the general use permitted by the agency—despite the fact that regulatory consultants advised that orthopedic use was not permitted. I-Flow and DJO defendants acted with a common goal of selling pain pumps to orthopedic surgeons, for orthopedic/intra-articular/synovial cavity use and making a profit from those sales, despite the fact that promoting pumps for orthopedic use was contrary to federal law.

25. DJO had specific knowledge that I-Flow's continued sales of pain pumps to orthopedic surgeons was contrary to federal law, and constituted a breach of its duty of care to the orthopedic surgeons who were unknowingly engaging in an off-label use of I-

Flow pain pumps. DJO gave substantial assistance and encouragement to I-Flow, which allowed it to continue its unlawful sales of pain pumps even after DJO ceased being its distributor.

26. Because DJO entered into a civil conspiracy with I-Flow to unlawfully promote pain pumps as alleged above, DJO defendants are jointly liable to those harmed by I-Flow's conduct. Plaintiff alleges joint liability of DJO defendants for all acts alleged herein and committed by defendant I-Flow.

DAMAGES

27. Plaintiff realleges all preceding paragraphs.

28. As a result of her injuries described above, plaintiff has suffered monetary and other damages in amounts to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, each of them, as follows:

1. Economic and non-economic damages in an amount in excess of \$75,000 as provided by law and to be supported by the evidence at trial;
2. For compensatory and other damages according to proof;
3. For disgorgement of profits;
4. For an award of attorneys' fees and costs;
5. For prejudgment interest and the costs of suit; and
6. For such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff requests a trial by jury.

Dated: September 30, 2009

LOCKRIDGE GRINDAL NAUEN P.L.L.P.



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REPLY TO MINNEAPOLIS

September 30, 2009

VIA MESSENGER

Clerk of Court
District of Minnesota
U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Re: Bass v. *DJO, LLC et al.*

Dear Clerk of Court:

Enclosed for filing in the above-referenced matter is a Summons, Complaint, and Civil Cover Sheet. I have also enclosed a check in the amount of \$350 in payment of the filing fees.

Please sign the Summons, file-stamp the copy of the Complaint and return to the messenger for return to my office.

If you have any questions, please feel free to contact me.

Very truly yours,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.


Yvonne M. Flaherty

RECEIVED
09 SEP 30 PM 4:11
CLERK, U.S. DIST. COURT
MINNEAPOLIS, MN

YMF/tsa
Enclosures

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

GINA K. BASS

DEFENDANTS

DJO, LLC, a Delaware Corporation, et al.

(b) County of Residence of First Listed Plaintiff Pulaski, Arkansas
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Yvonne M. Flaherty of Lockridge Grindal Nauen P.L.L.P.
100 Washington Ave. S, Ste 2200, Minneapolis, MN 55401 Tel: +

Attorneys (If Known)
Roger G. Perkins and Sara T. Thomas of Morris Polich & Purdy, LLP, 501 W Broadway, Ste 500, San Diego, CA 92101+

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC Section 1332

Brief description of cause:

Plaintiff's Proximate cause of injuries by defendants' products (Pain Pump & Anesthetic).

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 75,000.00 Excess of

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE John R. Turheim/Jeffrey J. Keyes

DOCKET NUMBER 08-5035 JRT/JJK

DATE

9/30/09

SIGNATURE OF ATTORNEY OF RECORD

SCANNED

OCT 0 2009

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____ U.S. DISTRICT COURT # _____