UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN DIVISION

ANTHONY C. VESELLA SR. and JOANN VESSELLA, Plaintiffs, v. ZIMMER US, INC., ZIMMER, INC., ZIMMER HOLDINGS, INC., and ZIMMER ORTHOPAEDIC SURGICAL PRODUCTS, INC., Defendants.	Case No.: **COMPLAINT** **JURY TRIAL DEMANDED**

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Anthony C. Vessella Sr. and Joann Vessella ("Plaintiffs"), tenders the following as their Complaint and Jury Demand against Zimmer US, Inc., Zimmer, Inc., Zimmer Holdings, Inc., and Zimmer Orthopaedic Surgical Products, Inc. (hereinafter collectively referred to as "Zimmer" or "Defendants"), for compensatory damages and such other and further relief as this Court may deem just, proper and equitable arising from the injuries of Plaintiffs, as follows:

PARTIES

1. At all relevant times hereto, Plaintiffs Anthony C. Vessella Sr. and Joann Vessella are residents of Berlin (Camden County), New Jersey.

2. Defendant Zimmer US, Inc. is a corporation organized and existing under the laws of Delaware, and has its principal place of business located in Warsaw, Indiana at 345 East Main Street, Warsaw, Indiana 46581.

3. Defendant Zimmer, Inc. is a corporation organized and existing under the laws of Delaware, and has its principal place of business located at 345 East Main Street, Warsaw, Indiana 46581.

4. Defendant, Zimmer Holdings, Inc., is a corporation organized and existing under the laws of Delaware, and has its principal place of business located at 345 East Main Street, Warsaw, Indiana 46581.

5. Defendant Zimmer Orthopaedic Surgical Products, Inc. is a corporation organized and existing under the laws of Ohio, and has its principal place of business in Dover, Ohio at 200 West Ohio Avenue, Dover, Ohio 44622.

6. The Zimmer branded Persona knee component was designed, manufactured and distributed by Defendants Zimmer US, Inc., Zimmer, Inc., Zimmer Holdings, Inc., and Zimmer Orthopaedic Surgical Products, Inc. (collectively referred to as "Defendants" or "Zimmer Defendants" herein).

7. At all times material hereto, the Zimmer Defendants developed, designed, tested, manufactured, distributed, marketed, and sold the Zimmer Persona Device that is the subject of this litigation.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 United States Code § 1332 as to the claims of Plaintiffs because Defendants are incorporated and have their principal place of business in states other than the state in which the Plaintiffs reside.

9. The amount in controversy alleged by each of the respective individual Plaintiffs will exceed seventy-five thousand dollars ($75,000.00), exclusive of interest and costs.

10. This suit is brought under the New Jersey Products Liability Act, N.J.S.A 2A:58C-1, et seq. ("Products Liability Act"), the New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9, et seq., ("Punitive Damages Act"), the common law of the State of New Jersey to recover damages and other relief, including the costs of suit and reasonable attorneys' and expert fees, for the injuries the Plaintiff has sustained as a result of the Defendants' negligent and wrongful conduct in connection with the design, development, manufacture, testing, packaging,

promoting, marketing, distributing, labeling, and/or sale of the Zimmer Persona device.

11. This Court has personal jurisdiction over the Defendants because they have done business in the State of New Jersey, have committed a tort in whole or in part in the State of New Jersey, have substantial and continuing contact with the State of New Jersey, and derive substantial revenue from goods used and consumed within the State of New Jersey. The Defendants actively sell, market, and promote the Zimmer Persona device to physicians and consumers in New Jersey, on a regular and consistent basis.

COMMON ALLEGATIONS APPLICABLE TO ALL COUNTS

THE ZIMMER PERSONA DEVICE GENERALLY

12. The Zimmer Persona knee replacement device was approved in 2012 through the FDA's 510(k) process. The 510(k) process allows products to reach the market with limited to no testing, as long as the device is similar to something already approved and on the market. Indeed, the application was filed with the U.S. Food and Drug Administration on June 15, 2012 under 510(k) application number K121771, and the device was approved on November 15, 2012. Therein, Zimmer claims predicate device similarity to the Zimmer NexGen knee system and the DePuy Attune Knee System. However, the Persona device that was approved in November 2012 involved a porous, uncemented tibial plate.

13. Approval of a device in this manner saves manufacturers a great deal of money, as it requires a company to only show substantial similarity to a previous approved device—and therefore does not require clinical testing on humans. Because of this, and because the Persona device is relatively new, there is no long-term data regarding the device.

14. The Persona knee system was distributed from November 2012 through January 2015 by Zimmer Inc., and was marketed by the Zimmer Defendants as "the Personalized Knee System" in their promotional materials.

15. According to Zimmer's advertising materials, the Zimmer Persona Knee was "designed to minimize the compromises experienced with yesterday's standard knee systems." The system allows surgeons to personalize the implant to the unique needs of the patient, with a goal of coming as close as possible to the way a real human joint works, offering "unparalleled levels of personalization, empowering surgeons to restore the unique identity of every knee."

16. Thus, the Zimmer Persona knee device was advertised and marketed as better than any device on the market at the time at mimicking the natural movement of the human knee. The goal was to provide younger, more active people an option when they needed knee replacement. Physicians, such as Plaintiff's physicians, relied on these statements.

17. Unfortunately, despite being marketed as long lasting, after just three (3) years on the market, the Persona knee system has been linked to numerous failures and complications from patients all over the United States, leading to an FDA recall of the Persona knee system in 2015.

18. The recall focused on the Persona's porous coated, uncemented Trabecular Metal Tibial Plate, one component of the overall Zimmer Persona Trabecular Knee System. The Tibial Plate is a metal part placed on the top of the patient's shinbone, or tibia, during knee replacement surgery. It is secured to the bone, where it produces a "platform" for the rest of the Persona system implant.

19. The Zimmer Persona's uncemented Trabecular Metal Tibial Plate is part of the Persona total knee implant system.

20. The subject uncemented Trabecular Metal implant consists of two pegs that, when inserted into the bone, will then grow into or become part of the bone. These pegs are supposed to give the implant stability. This is a deviation from prior knee replacement system designs that feature cemented tibial plates.

21. Indeed, if the plate is not seated properly, gaps between the plate and bone can

occur, which appear in medical imaging as "radiolucent lines." These radiolucent lines are dark areas on x-rays indicating gaps between the device and the bone tissue. These indicate a "poor seating" of the plate, showing that it's not staying where intended and is coming loose.

22. Loosening of the Tibial Plate implanted during a total knee replacement or partial knee replacement can be extremely painful. Patients who experience loosening may have trouble walking and usually require additional surgery to remove and replace the loose tibial plate.

23. The Zimmer Persona Knee system was recalled by Zimmer on January 28, 2015. On February 16, 2015 Zimmer issued an "Urgent Medical Device Recall Notice" to distributors, hospitals and surgeons regarding the uncemented Zimmer Persona Trabecular Metal Tibial Baseplates. Zimmer asked customers to review the notification and ensure personnel are aware of the contents. Zimmer additionally requested that all affected products be located and quarantined.

24. On March 3, 2015 Zimmer issued an "Urgent Medical Device Recall Notice" to hospital risk managers and surgeons. Zimmer said that the current complaint rate for radiolucent lines and loosening is higher than Zimmer's expectations and experience based on Zimmer's similar devices. At this time, the complaint rate was 0.61% or 6 complaints per 1,000 devices. Out of the complaints received, 36% identified symptomatic radiolucent lines or were revised for loosening, 28% identified asymptotic radiolucencies, 8% subsided, and 28% were inconclusive.

25. On March 12, 2015 Zimmer voluntarily recalled the Persona Trabecular Metal Tibial plate that is porous coated and uncemented. The recall affected all lots and sizes C-J Left and Right.

26. The FDA then classified the Persona recall as a Class II recall on March 12, 2015. The recall included nearly 11,700 Persona Tibial plates in all sizes and lots which had been sold to hospitals world-wide from November 29, 2012 through January 23, 2015. Surgeons were warned to no longer use the devices.

27. The FDA noted that all sizes and lots of the affected component were being removed from distribution.

PLAINTIFF'S BACKGROUND

28. Plaintiff Anthony C. Vessella Sr. was implanted with a Zimmer Persona trabecular metal tibial base plate device on his left knee, as a part of a Zimmer Persona knee replacement, on July 15, 2014 by Dr. Robert Ponzio.

29. On or about March 26, 2016, Plaintiff underwent a revision surgery of the Persona device with Dr. Alvin Ong.

30. The Zimmer Persona trabecular metal tibial base plate device failed and was subsequently recalled after a Class 2 Recall by the FDA on March 12, 2015 (United States Food and Drug Administration, Recall Z-1266-2015).

31. Plaintiff suffered personal and economic injuries as a result of the implantation of the Zimmer Persona device.

32. Plaintiff suffered personal and economic injuries within the State of New Jersey.

33. Plaintiff has suffered injuries as a result of implantation and revision of the Zimmer Persona device manufactured by Defendants.

34. The Zimmer Defendants, by their actions or inactions, proximately caused Plaintiff's injuries.

35. Plaintiff claims damages as a result of injury to himself, including economic loss, diminished earning capacity, past, present, and future pain and suffering, including, but not limited to, chronic and severe pain and limited locomotion, from the permanent injuries caused by the defective Persona knee device.

36. As a result of the failed medical device, the revised knee implant is not functioning at its full potential due in part to the loss of bone cartilage, surface and tissue from the original defective Persona device.

37. Neither Plaintiff nor his physicians, through the exercise of reasonable diligence, could have detected the defective nature of the Zimmer Persona device any earlier than the evidence of loosening and/or other indication for planned revision of the defective device(s), or as the facts dictate and will be produced in discovery.

38. As a result of the injuries Plaintiff sustained, he is entitled to recover compensatory damages for pain and suffering and emotional distress and for economic loss as well as punitive damages.

COUNT I
PRODUCT LIABILITY ACT — DEFECTIVE DESIGN
(N.J.S.A. 2A:58C-1, *et seq.*)

39. Plaintiffs repeat and incorporate by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows.

40. At all relevant times hereto, the Zimmer Defendants were engaged in the development, testing, manufacturing, marketing and sales of the Zimmer Persona device.

41. The Zimmer Defendants designed, manufactured, marketed, and sold the Zimmer Persona device to medical professionals and their patients, knowing they would be implanted for knee replacements.

42. The Zimmer Persona device was designed, manufactured, marketed and sold by Defendants, reached Plaintiff without substantial change in its condition and was used by Plaintiff and Plaintiff's physicians in a reasonably foreseeable and intended manner.

43. The Zimmer Persona device was "defective" and "unreasonably dangerous" when it entered the stream of commerce and was received by Plaintiff, because it was dangerous to an extent beyond that which would be contemplated by the ordinary consumer.

44. At no time did Plaintiff have reason to believe that Zimmer Persona device was in a condition not suitable for their proper and intended use among patients.

45. The Zimmer Persona Knee was used in the manner for which it was intended, that

is, for artificial knee replacement. This use resulted in injury to Plaintiff.

46. The Zimmer Persona device was defective, due to defective design rendering the system unsafe.

47. The Zimmer Persona device was not reasonably safe due to defective design, because the foreseeable risks of harm posed by the device were sufficiently greater than its foreseeable therapeutic benefits, such that reasonable healthcare providers, knowing of such foreseeable risks and lack of therapeutic benefits, would not prescribe the device for any class of patients.

48. Plaintiff was not able to discover, nor could he have discovered through the exercise of reasonable care, the defective nature of the Zimmer Persona device. Further, in no way could Plaintiff have known that Defendants had designed, developed, and manufactured the Zimmer Persona Knee in such a way as to make the risk of harm or injury outweigh any therapeutic benefits.

49. The Zimmer Persona device is defective in design because of its propensity to loosen, specifically, the Persona's porous coated, uncemented trabecular metal tibial plate which was the focus of the class II recall was more likely to loosen, and cause patients unnecessary pain and repeat surgical procedures requiring revision resulting in additional bone loss.

50. The Zimmer Persona device is defective in design because of the increased risk for radiolucent lines, loosening and ultimately device failure stemming from the porous coated, uncemented trabecular metal tibial plate. The Persona device is also defective in design because the risk of revision surgery is unreasonably greater than other knee implants. The Zimmer Persona device offers no clinical benefit over the traditional knee replacement device or devices that feature the standard tibial plate/tibial component that involves cementing or an appropriate stability attachment to the tibia bone.

51. The design of the Persona device was flawed in that while it was theoretically

designed to remain in place once implanted in the patient, but in practice, its design would actually cause the tibial plate to loosen and or dislodge, causing injury.

52. The Persona device was designed in a manner presenting:

a. An unreasonable risk of loosening due to the design allowing the tibial plate to be used without cementing the plate to the tibia bone;

b. An unreasonable risk of radiolucent lines, which evidence poor placement and are an early warning sign of loosening and failure; and

c. Insufficient structural integrity and design to withstand normal, foreseeable placement within the human body.

53. The Zimmer Persona device is unreasonably dangerous because it was sold to Plaintiff without adequate warnings regarding, *inter alia*, the propensity of the Persona's porous coated, uncemented trabecular metal tibial plate to loosen and cause serious pain and necessitate additional surgery; the post-marketing experience of higher rates of loosening and revision surgery with the Zimmer Persona device; and the probability of suffering loosening, pain and revision surgery.

54. The Zimmer Defendants failed to develop and make available alternative products that were designed in a safe or safer manner, or provide a safer tibial plate with cementing to the Persona device, even though such products were feasible and marketable at the time Defendants sold the Zimmer Persona device to Plaintiff.

55. The Zimmer Persona device is unreasonably dangerous because it was sold to Plaintiff without adequate warnings regarding, *inter alia*, the increased risk of failure of Zimmer Persona device resulting in revision surgery which is unreasonably greater than other knee implants and safer tibial plate components.

56. Defendants had knowledge and information confirming the defective and dangerous nature of the Zimmer Persona device.

57. Despite this knowledge and information, Defendants failed to adequately and sufficiently warn Plaintiff and his physicians that Zimmer Persona device causes serious permanent injuries including, high failure rate, loosening of the implant, bone loss, decreased range of motion, diminished mobility, and revision surgery.

58. As a direct and proximate result of Defendants' wrongful conduct, including the defective and dangerous design and inadequate warnings of the Zimmer Persona device, Plaintiff has sustained and will continue to sustain severe and debilitating injuries, economic loss, and other damages including, but not limited to, cost of medical care, rehabilitation, lost income, permanent instability and loss of balance, immobility, and pain and suffering, for which he is entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT II
PRODUCT LIABILITY ACT — FAILURE TO WARN
(N.J.S.A. 2A:58C-1, *et seq.*)

59. Plaintiffs repeat and incorporate by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows.

60. The Zimmer Defendants researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold, and otherwise released into the stream of commerce the Zimmer Persona device, in the course of same, directly advertised or marketed the product to the FDA, health care professionals, and consumers, including Plaintiff, or persons responsible for consumers, and therefore had a duty to warn of the risks associated with the use of the Zimmer Persona device.

61. The Zimmer Defendants failed to adequately warn health care professionals and the public, including Plaintiff and his prescribing physician, of the true risks of the Zimmer Persona device, including that the Zimmer Persona device could loosen, causing severe pain and injury, and requiring further treatment, including revision surgery and/or knee replacement.

62. The Zimmer Defendants failed to timely and reasonably warn of material facts regarding the safety and efficacy of the Zimmer Persona device. Had they done so, proper warnings would have been heeded and no health care professional, including Plaintiff's physicians, would have used the Zimmer Persona device, or no consumer, including Plaintiff, would have purchased and/or used the Zimmer Persona device.

63. Defendants failed to timely and reasonably provide adequate instructions and training concerning safe and effective use of the Zimmer Persona device. Had they done so, healthcare professionals, including Plaintiff's physician, could have safely and effectively implanted the Zimmer Persona device, without causing serious pain and injury to patients, including Plaintiff.

64. The Zimmer Persona Knee, which was researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold and otherwise released into the stream of commerce by Defendants, was defective due to inadequate post-marketing warnings and/or instruction because, after Defendants knew or should have known that there was reasonable evidence of an association between the Zimmer Persona device and implant loosening causing serious injury and pain, Defendants failed to provide adequate warnings to health care professionals and the consuming public, including Plaintiff, and continued to aggressively promote the Zimmer Persona device.

65. The Zimmer Persona device, which was researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold and otherwise released into the stream of commerce by Defendants, was defective due to inadequate post-marketing warnings and/or instruction regarding the increased risk of failure of the Zimmer Persona device resulting in revision surgery while knowing that a safer alternative design including the traditional total knee replacements that featured cemented tibial plates existed.

66. Defendants failed to provide adequate warnings to health care professionals and

the consuming public, including Plaintiff, and continued to aggressively promote the Zimmer Persona device, even though it provides no clinical benefits over other knee replacement systems such as the traditional LPS knee, CR knee and standard tibial components, and had a higher failure rate than the traditional LPS knee, CR knee and standard tibial components.

67. Defendants failed to perform or otherwise facilitate adequate testing; failed to reveal and/or concealed testing and research data; and selectively and misleadingly revealed and/or analyzed testing and research data.

68. As a direct and proximate result of the conduct of Defendants as aforesaid, Plaintiff suffered serious and permanent non-economic and economic injuries.

69. The Zimmer Defendants' conduct, as described above, was reckless. Defendants risked the lives of consumers and users of their products, including Plaintiff, with knowledge of the safety and efficacy problems and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspecting consuming public. Defendants' reckless conduct warrants an award of punitive damages.

COUNT III
PRODUCT LIABILITY ACT — MANUFACTURING DEFECT
(N.J.S.A. 2A:58C-1, *et seq.*)

70. Plaintiffs repeat and incorporate by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows:

71. The Zimmer Defendants designed, developed, manufactured, tested, packaged, advertised, promoted, marketed, distributed, labeled and/or sold the Zimmer Persona device, in a condition which rendered them unreasonably dangerous due to its propensity to result in early failure of the device. The subject product was unreasonably dangerous in construction or composition.

72. The Zimmer Persona device manufactured and/or supplied by Defendants was defective in manufacture, construction or composition in that, when it left the hands of

Defendants, it deviated in a material way from Defendants' manufacturing performance standards and/or it differed from otherwise identical products manufactured to the same design formula.

73. The Zimmer Defendants knew or should have known that the Zimmer Persona device could fail early in patients therefore giving rise to pain and suffering, debilitation and the need for revision surgery to replace the device with the attendant risks of complications and death from such further surgery, Defendants continued to market the Zimmer Persona device as a safe and effective knee replacement system.

74. Based on information and belief, the manufacturing process employed by Defendants for their Zimmer Persona device, including the Persona Knee implanted in Plaintiff, increased the risk of radiolucent lines and loosening. Based on information and belief, Defendants maintained design and manufacturing specifications that the device's tibial plates were required to have the appropriate metal content, strength, size, durability, appearance, resistance levels, and should not be subject to radiolucent lines, poor seating, and loosening. The manufacturing process was intended to catch and identify any end-product Persona devices that did not meet specifications and not distribute said devices.

75. As a direct and proximate result of the use of the subject product as manufactured, designed, sold, supplied and introduced into the stream of commerce by Defendant, Plaintiff suffered harm, damages and economic loss as previously described and will continue to suffer such harm, damages and economic loss in the future.

COUNT IV
PRODUCT LIABILITY – NEGLIGENCE
(N.J.S.A. 2A-58C-1 *et seq.)*

76. Plaintiffs repeat and incorporate by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows:

77. The Zimmer Defendants were negligent with respect to the designing,

manufacturing, testing, inspecting, distributing, and selling of the Zimmer Persona trabecular metal tibial baseplate device.

78. At all times relevant hereto, the Zimmer Defendants had a duty to protect the Plaintiff from the injury that is the basis of this Complaint.

79. The Zimmer Defendants failed to perform that duty, and injury and damages to the Plaintiff was proximately cause by such failure.

80. The Zimmer Defendants failed to warn the Plaintiff of the information that it had in its possession, custody and control regarding the functionality and defectiveness of its product prior to the Zimmer device being distributed within the State of New York and prior to the defective component's installation in the Plaintiff.

81. The Zimmer Defendants breached their duty of care by:

a. Failing to use due care in the development, design, formulation, manufacturing, labeling, testing, assembly, marketing, adverting, promotion, inspection, sale and/or distribution of the Zimmer Persona device, and/or to utilize and/or implement reasonably safe designs for them;

b. Failed to require cementing for all Zimmer Persona tibial plates;

c. Failing to provide adequate and proper warnings to the public and to Plaintiff of the dangerous propensities of Zimmer Persona device when used in a reasonably foreseeable manner;

d. Failed to conduct adequate post marketing surveillance;

e. Failing to design, formulate, manufacture and incorporate or to reformulate the Zimmer Persona device with reasonable safeguards and protections against the type of injury and damage suffered by Plaintiff when used in a reasonably foreseeable manner;

f. Failing to adequately prevent, identify, mitigate, and fix defective designs and hazards associated with the Zimmer Persona device in accordance with good design practices;

g. Failing to notify and warn the public including Plaintiff of reported incidents involving injury, etc., and the negative health effects attendant to the use of the Zimmer Persona device, thus misrepresenting the safety of the product;

h. Failing to make timely and adequate corrections to the manufacture, design and formulation of Zimmer Persona device so as to prevent and/or minimize the problems suffered by Zimmer Persona device use;

i. Failing to use due care in training and informing health care providers on proper surgical technique and limitations of the device so as to avoid injuries and premature device failure;

j. Failing to use due care in the testing, formulation, inspection, distribution, sale and instructions regarding the product at all times prior to Plaintiff's injuries having manifested themselves;

k. Despite its knowledge of these risks, Defendant continued to promote and market the device; and

l. Being otherwise being careless, reckless and negligent.

82. As a direct and proximate result of Defendants' acts and omissions, including their failure to exercise ordinary care in the design, formulation, testing, manufacture, sale, labeling, warnings and distribution of the Zimmer Persona device and, Plaintiff was implanted with the Zimmer Persona device and suffered severe and debilitating injuries, economic loss, and other damages, including but not limited to, cost of medical care, rehabilitation, lost income, permanent instability and loss of balance, immobility, and pain and suffering, for which he is entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

83. As the direct and proximate result of Zimmer's negligence, the Plaintiff sustained severe and permanent physical injury, suffered and continues to suffer great pain of body and anguish of mind, required extensive hospital care and treatment, incurred medical expenses, lost time from work, loss of value to pension; Mr. Vessella required a revision surgery and continues to experience issues with his second knee revision due to the failed first knee revision; and his ability to engage in normal and usual activities has been adversely affected.

COUNT V
NEGLIGENT MISREPRESENTATION

84. Plaintiffs repeat and incorporate by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows.

85. Prior to the Plaintiff receiving the Zimmer Persona device, Defendants misrepresented that the Zimmer Persona was a safe and effective total knee replacement system.

86. Defendants failed to disclose material facts regarding the safety and efficacy of the Zimmer Persona device, including information regarding increased risk of loosening and failure, harmful side-effects, increased risk of revision surgery due to the uncemented tibial plate, with little to no clinical benefit over standard tibial components.

87. Defendants had a duty to provide Plaintiff, physicians and other consumers with true and accurate information and warnings of any known risks and harmful side effects of the medical device they marketed, distributed and sold.

88. Defendants knew or should have known, based on prior experience, adverse event reports, studies and knowledge of the efficacy and safety failures associated with the Zimmer Persona that their representations regarding the Zimmer Persona device were false, and that they had a duty to disclose the dangers associated with the device.

89. Defendants made the representations and failed to disclose the material facts with the intent to induce consumers, including the Plaintiff, and the medical community to act in reliance by purchasing the Zimmer Persona device.

90. Plaintiff and the medical community justifiably relied on Defendants representations and nondisclosures by purchasing and using the Zimmer Persona device.

91. Defendants' representations and nondisclosures regarding the safety and efficacy of the Zimmer Persona was the direct and proximate cause of Plaintiff's injuries.

COUNT VI
BREACH OF EXPRESS WARRANTY

92. Plaintiffs repeat and incorporate by reference each and every paragraph of this Complaint as if fully set forth herein and further allege as follows:

93. The Zimmer Defendants advertised, labeled, marketed and promoted the Zimmer Persona device, representing the quality to health care professionals, the FDA, Plaintiff, and the public in such a way as to induce its purchase or use, such as:

a. Indicating that the Persona device was the "personalized knee system" which was "designed to minimize the compromises experienced with yesterday's standard knee systems.";

b. And that the Persona device offered "unparalleled levels of personalization, empowering surgeons to restore the unique identity of every knee."

94. These assertions made an express warranty that the Zimmer Persona device would conform to the representations.

95. More specifically, the Zimmer Defendants represented that the Zimmer Persona device was safe and effective, that it was safe and effective for use by individuals such as Plaintiff, and/or that it was safe and effective to treat Plaintiff's condition.

96. The representations, as set forth above, contained or constituted affirmations of fact or promises made by the seller to the buyer which related to the goods and became part of the basis of the bargain creating an express warranty that the goods shall conform to the affirmations of fact or promises.

97. The Zimmer Persona device did not conform to the representations made by Defendants in that the Zimmer Persona device was not safe and effective, was not safe and effective for use by individuals such as Plaintiff, and/or was not safe and effective to treat in

individuals, such as Plaintiff.

98. At all relevant times, Plaintiff used the Zimmer Persona Knee for the purpose and in the manner, which was reasonably foreseeable to Defendants.

99. Plaintiff and Plaintiff's physicians, by the use of reasonable care, could not have discovered the breached warranty and realized its danger.

100. The breach of the warranty was a substantial factor in bringing about Plaintiff injuries.

101. As a direct and proximate result of Defendants' acts and omissions, including their failure to exercise ordinary care in the design, formulation, testing, manufacture, sale, and distribution of Zimmer Persona device, Plaintiff was implanted with Zimmer Persona device and suffered severe and debilitating injuries, economic loss, and other damages, including but not limited to, cost of medical care, rehabilitation, lost income, permanent instability and loss of balance, immobility, and pain and suffering, for which he is entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT VII
PRODUCT LIABILITY - BREACH OF IMPLIED WARRANTY
(N.J.S.A. 2A:58C-1 *et seq.)*

102. Plaintiffs repeat and incorporate by reference all other paragraphs of this Complaint as if fully set forth herein and further allege as follows:

103. The Zimmer Persona device was not reasonably fit for the ordinary purposes for which such goods are used and did not meet the expectations for the performance of the product when used in the customary, usual and reasonably foreseeable manner. Nor was the Zimmer Persona device minimally safe for its expected purpose.

104. At all relevant times, Plaintiff used the Zimmer Persona device for the purpose and in the manner intended by Defendants.

105. Defendants sold the Persona device for Plaintiff's ultimate use.

106. Plaintiff and Plaintiff's physicians, by the use of reasonable care, could not have discovered the breached warranty and realized its danger.

107. Defendants impliedly warranted to Plaintiff and his physicians that the Persona device was safe and of merchantable quality and for the ordinary purpose for which the product was intended and marketed to be used.

108. The alleged defects existed at the time the Persona device left the Zimmer Defendants' possession.

109. The representations and implied warranties made by Defendants were false, misleading, and inaccurate because the Persona device was defective, unsafe, unreasonably dangerous, and not of merchantable quality, when used as they were marketed and intended to be used. Specifically, at the time Plaintiff and his physicians purchased and used the devices, the products were not in a merchantable condition in that the Persona device offered no benefit to patient outcomes and the Persona device suffered from unreasonably high loosening and revision rates.

110. The breach of the warranty was a substantial factor in bringing about Plaintiff's injuries.

111. As a direct and proximate result of Defendants' acts and omissions, including their failure to exercise ordinary care in the design, formulation, testing, manufacture, sale, and distribution of Zimmer Persona device, Plaintiff was implanted with a Zimmer Persona device and suffered severe and debilitating injuries, economic loss, and other damages, including but not limited to, cost of medical care, rehabilitation, lost income, permanent instability and loss of balance, immobility, and pain and suffering, for which he is entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT VIII
BREACH OF WARRANTY OF FITNESS FOR ORDINARY USE

112. Plaintiffs repeat and incorporate each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

113. Defendants warrant, as a matter of law, that the subject product is reasonably fit for its ordinary and intended use.

114. The subject product is not safe, has numerous and serious side effects and causes severe and permanent injuries including, but not limited to, permanent instability and loss of balance, immobility, and pain and suffering. As a result, the Zimmer Persona device is unfit and inherently dangerous for ordinary use.

115. As a direct and proximate result of Defendants' actions, Plaintiff suffered permanent instability and loss of balance, immobility, and pain and suffering and was forced to undergo a revision surgery. Plaintiff has and will sustain significant injuries, damages, and losses, including, but not limited to: medical and related expenses, loss of income and support, and diminished economic horizons. Plaintiff has also suffered and will continue to suffer other losses and damages, including, but not limited to: diminished capacity for the enjoyment of life, a diminished quality of life and grief.

COUNT IX
FRAUDULENT MISREPRESENTATION

116. Plaintiffs repeat and incorporate each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

117. Defendants made fraudulent misrepresentations with respect to the Zimmer Persona device in the following particulars:

a. Defendants represented through their labeling, advertising,

marketing materials, publications and additional statements and materials that the Zimmer Persona device had been tested and found to be safe and effective; and

b. Upon information and belief, Defendants represented that the Zimmer Persona device was safer than other alternative devices.

118. 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 Zimmer Persona device to Plaintiff, other consumers, Plaintiff's physicians, and the medical community.

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

120. Defendants' representations were made with the intent of defrauding and deceiving Plaintiff, other consumers, Plaintiff's physicians, and the medical community to induce and encourage the sale of the Zimmer Persona device.

121. Plaintiff, Plaintiff's doctors, and others relied upon these representations.

122. As a foreseeable, direct, and proximate consequence of Defendants' actions, omissions, and misrepresentations, Plaintiff suffered permanent instability and loss of balance, immobility, and pain and suffering and was forced to undergo a revision surgery, among other damages.

COUNT X
FRAUDULENT CONCEALMENT

123. Plaintiffs repeat and incorporate each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

124. Throughout the relevant time period, Defendants knew that the Zimmer

Persona device was defective and unreasonably unsafe for its intended purpose, and intentionally and willfully failed to disclose and/or suppressed information regarding the true nature of the risks of use of the Zimmer Persona device.

125. Defendants fraudulently concealed information with respect to the Zimmer Persona device in the following particulars:

a. Defendants represented through their labeling, advertising, marketing materials, publications and additional statements and materials that the Zimmer Persona device had been tested and found to be safe and effective; and

b. Upon information and belief, Defendants represented that the Zimmer Persona device was safer than other alternative devices.

126. Defendants were under a duty to Plaintiff to disclose and warn of the defective and dangerous nature of the Zimmer Persona device because:

a. Defendants had sole access to material facts concerning, and unique and special expertise regarding, the dangers and unreasonable risks of the Zimmer Persona device;

b. Defendants knowingly made false claims and omitted important information about the safety and quality of the Zimmer Persona device in the documents and marketing materials Defendants provided to physicians and the general public; and

c. Defendants fraudulently and affirmatively concealed the defective and dangerous nature of the Zimmer Persona device from Plaintiff.

127. As the designers, manufacturers, sellers, promoters, and/or distributors of the Zimmer Persona device, Defendants had unique knowledge and special expertise regarding Zimmer Persona. This placed them in a position of superiority and influence over Plaintiff and his

healthcare providers. As such, Plaintiff and his physicians reasonably placed their trust and confidence in Defendants and in the information disseminated by Defendants.

128. The facts concealed or not disclosed by Defendants to Plaintiff were material facts that a reasonable person would have considered to be important in deciding whether or not to purchase or use the Zimmer Persona device.

129. The concealment and/or non-disclosure of information by Defendants about the severity of the risks caused by the Zimmer Persona device was intentional, and the representations made by Defendants were known by them to be false.

130. The concealment of information and the misrepresentations about the Zimmer Persona device were made by Defendants with the intent that doctors and patients, including Plaintiff, rely upon them so that Plaintiff would request and purchase the Zimmer Persona device and his health care providers would recommend the Zimmer Persona device.

131. Plaintiff, his doctors, and others reasonably relied on Defendants' representations and were unaware of the substantial risk posed by the Zimmer Persona device.

132. Had Defendants not concealed or suppressed information regarding the severity of the risks of the Zimmer Persona device, Plaintiff and his physicians would not have decided to use the device.

133. Defendants, by concealment or other action, intentionally prevented Plaintiff and his health care professionals from acquiring material information regarding the lack of safety of the Zimmer Persona device, thereby preventing Plaintiff from discovering the truth. As such, Defendants are liable for fraudulent concealment.

134. As a foreseeable, direct, and proximate consequence of Defendants' actions, omissions, and misrepresentations, Plaintiff suffered permanent instability and loss of balance, immobility, and pain and suffering and was forced to undergo a revision surgery, among other damages.

COUNT XI
FRAUD

135. Plaintiffs repeat and incorporate each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

136. Defendants intentionally, willfully, and knowingly, fraudulently misrepresented to Plaintiff, his health care professionals, the health care industry, and consumers that the Zimmer Persona device had been adequately tested in clinical trials and was found to be safe and effective.

137. Defendants knew or should have known at the time they made their fraudulent misrepresentations that their material misrepresentations and omissions were false regarding the dangers and risk of adverse health events associated with use of the Zimmer Persona device made their fraudulent misrepresentations willfully, wantonly, and with reckless disregard and depraved indifference for the safety and well-being of the users of the Zimmer Persona device, such as Plaintiff.

138. Defendants' fraudulent misrepresentations were made with the intent of defrauding and deceiving the health care industry and consumers, including Plaintiff and Plaintiff's health care professionals, so as to induce them to recommend or purchase the Zimmer Persona device, despite the risk of severe injury, which Defendants knew were caused by the product.

139. Defendants fraudulently and intentionally concealed material information, as aforesaid. Defendants knew that the Zimmer Persona device was defective and unreasonably unsafe for its intended purpose and intentionally failed to disclose information regarding the true nature of the subject product's risks.

140. Defendants fraudulently and intentionally failed to disclose and warn of the

severity of the injuries described herein, which were known by Defendants to result from use of the Zimmer Persona device.

141. Defendants fraudulently and intentionally suppressed information about the severity of the risks and injuries associated with the Zimmer Persona device from physicians and patients, including Plaintiff and his physicians, used sales and marketing documents that contained information contrary to Defendants' internally held knowledge regarding the aforesaid risks and injuries, and overstated the safety of the Zimmer Persona device. For example:

a. the Zimmer Persona device was not as safe and effective as other alternative devices;

b. Use of the Zimmer Persona device does not result in a safe and more effective method of mobility and stability;

c. The risks of harm associated with the use of the Zimmer Persona device was greater than the risks of harm associated with alternative devices;

d. The risk of adverse events with the Zimmer Persona device was not adequately tested and was known by Defendants, but Defendants knowingly failed to adequately test the product;

e. Defendants knew that the risks of harm associated with the use of the Zimmer Persona device was greater than the risks of harm associated with alternative devices, yet knowingly made material misrepresentations and omissions of fact on which Plaintiff relied when deciding to use the Zimmer Persona device;

f. The limited clinical testing revealed that the Zimmer

Persona device had an unreasonably high risk of injury, including Plaintiff's injuries, above and beyond those associated with alternative devices;

g. Defendants intentionally and knowingly failed to disclose and concealed the adverse events discovered in studies and trials;

h. Defendants had knowledge of the dangers involved with the use of the Zimmer Persona device, which dangers were greater than those associated with alternative devices;

i. Defendants intentionally and knowingly failed to disclose that patients using the Zimmer Persona device could increase the risk of serious injuries and that may require revision surgery; and/or

j. the Zimmer Persona device was defective, and caused dangerous and adverse side effects, including the specific injuries described herein.

142. Defendants had access to material facts concerning the defective nature of the subject product and its propensity to cause serious and dangerous side effects in the form of dangerous injuries and damages to persons who use the Zimmer Persona device, information that was not publicly disseminated or made available, but instead was actively suppressed by the Defendants.

143. Defendants' intentional concealment and omissions of material fact concerning the safety of the Zimmer Persona device was made with purposeful, willful, wanton, fraudulent, and reckless disregard for the health and safety of Plaintiff, and with reckless intent to mislead, so as to cause Plaintiff's health care professionals to purchase and recommend the Zimmer Persona device and to cause Plaintiff to rely on Defendants'

fraudulent misrepresentations that the Zimmer Persona device was a safe and effective device.

144. At the time Plaintiff purchased and used the Zimmer Persona device, Plaintiff was unaware that Defendants had made misrepresentations and omissions, and instead Plaintiff reasonably believed Defendants' representations to constitute true, complete, and accurate portrayal of the Zimmer Persona device's safety.

145. Defendants knew and had reason to know that the Zimmer Persona device could and would cause serious personal injury to the users of the product, and that the product was dangerous in a manner that exceeded any purported warnings given by Defendants.

146. In reliance on Defendants' false and fraudulent misrepresentations, Plaintiff was induced to use and in fact used the Zimmer Persona device, thereby sustaining injuries and damages. Defendants knew and had reason to know that Plaintiff and his health care professionals did not have the ability to determine the true facts intentionally concealed and suppressed by Defendants, and that Plaintiff and his health care professionals would not have used or recommended the Zimmer Persona device if the true facts regarding the device had not been concealed by Defendants.

147. During the marketing and promotion of the Zimmer Persona device to health care professionals, neither Defendants nor the co-promoters who were detailing the Zimmer Persona device on Defendants' behalf, warned health care professionals, including Plaintiff's health care professionals, that the Zimmer Persona device caused serious injuries.

148. Plaintiff reasonably relied upon Defendants' misrepresentations, where knowledge of the concealed facts was critical to understanding the true dangers inherent in the use of the Zimmer Persona device.

149. Defendants willfully, wrongfully, and intentionally distributed false information, assuring Plaintiff, the public, Plaintiff's health care professionals, and the

health care industry that the Zimmer Persona device was safe. Upon information and belief, Defendants intentionally omitted, concealed, and suppressed the true results of Defendants' research and data.

150. Defendants' conduct was intentional and reckless. Defendants risked the health and well-being of consumers and users of the Zimmer Persona device, including Plaintiff. Defendants knew of the Zimmer Persona's safety problems, and suppressed this knowledge from the general public. Defendants' intentional and reckless conduct warrants an award of punitive damages.

151. As a foreseeable, direct, and proximate consequence of Defendants' actions, omissions, and misrepresentations, Plaintiff suffered permanent instability and loss of balance, immobility, and pain and suffering and was forced to undergo a revision surgery, among other damages.

COUNT XII
PUNITIVE DAMAGES UNDER PUNITIVE DAMAGES ACT (N.J.S.A. 2A:15-5.9, *et seq.* and PRODUCT LIABILITY ACT (N.J.S.A. 2A:58C-1 *et seq.*)

152. Plaintiffs repeat and incorporate each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

153. The wrongs done by Defendants were aggravated by malice, fraud, and grossly negligent disregard for the rights of others, the public, and Plaintiff, in that Defendants' conduct was specifically intended to cause substantial injury to Plaintiff. When viewed objectively from Defendants' standpoint at the time of the conduct, considering the probability and magnitude of the potential harm to others, Defendants' conduct involved an extreme degree of risk. Defendants were actually, subjectively aware of the risk involved, but nevertheless proceeded with complete indifference to or a conscious

disregard of the rights, safety, or welfare of others. Moreover, Defendants made material representations that were false, with actual knowledge of or reckless disregard for their falsity, with the intent that the representations be acted on by Plaintiff and his healthcare providers.

154. Plaintiff relied on Defendants' representations and suffered injuries as a proximate result of this reliance.

155. Plaintiff therefore asserts claims for exemplary damages.

156. Plaintiff also alleges that the acts and omissions of Defendants, whether taken singularly or in combination with others, constitute gross negligence that proximately caused the injuries to Plaintiff.

157. Plaintiff is entitled to an award of punitive and exemplary damages based upon Defendants' intentional, willful, wanton, knowing, fraudulent, and malicious acts, omissions, and conduct, and Defendants' reckless disregard for the public safety and welfare. Defendants intentionally and fraudulently misrepresented facts and information to both the medical community and the general public, including Plaintiff, by making intentionally false and fraudulent misrepresentations about the safety of the Zimmer Persona device. Defendants intentionally concealed the true facts and information regarding the serious risks of harm associated with the use of the Zimmer Persona device, and intentionally downplayed the type, nature, and extent of the adverse consequences and defects, despite their knowledge and awareness of these serious side effects and risks.

158. Defendants had knowledge of, and were in possession of evidence demonstrating that the Zimmer Persona device caused serious side effects and was defective. Notwithstanding Defendants' knowledge, Defendants continued to market the device by providing false and misleading information with regard to the product's safety to regulatory agencies, the medical community, and consumers of the device.

159. Although Defendants knew or willfully and wantonly disregarded the fact that the Zimmer Persona device causes serious injury, Defendants continued to market, promote, and distribute the Zimmer Persona device to consumers, including Plaintiff, without disclosing these side effects when there were safer alternative devices.

160. Defendants failed to provide adequate warnings that would have dissuaded health care professionals from using the Zimmer Persona device and consumers from purchasing the Zimmer Persona device.

161. Defendants knew of the Zimmer Persona devices' defective nature as set forth herein, but continued to design, manufacture, market, distribute, sell, and/or promote the device to maximize sales and profits at the expense of the health and safety of the public, including Plaintiff, in a conscious, reckless, or negligent disregard of the foreseeable harm caused by the Zimmer Persona device.

162. Defendants' acts, conduct, and omissions were willful, wanton and malicious. Defendants committed these acts with knowing, conscious, and deliberate disregard for the rights, health, and safety of Plaintiff and other the Zimmer Persona device users and for the primary purpose of increasing Defendants' profits from the sale and distribution of the device. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages against Defendants in an amount appropriate to punish and make an example out of Defendants.

163. Prior to the manufacture, sale, and distribution of the Zimmer Persona device, Defendants knew that the device was in a defective condition and knew that those who used the device would experience and did experience severe physical, mental, and emotional injuries. Further, Defendants, through their officers, directors, managers, and agents, knew that the device presented a substantial and unreasonable risk of harm to the public, including Plaintiff. As such, Defendants unreasonably subjected consumers of the Zimmer

Persona device to risk of injury.

164. Despite their knowledge, Defendants, acting through their officers, directors and managing agents, for the purpose of enhancing Defendants' profits, knowingly and deliberately failed to remedy the known defects in the Zimmer Persona device and failed to adequately warn the public, including Plaintiff, of the extreme risk of injury occasioned by said defects. Defendants and their agents, officers, and directors intentionally proceeded with the manufacturing, sale, distribution, and marketing of the Zimmer Persona device knowing these actions would expose persons to serious danger in order to advance Defendants' pecuniary interest and monetary profits.

165. Defendants' conduct was committed with willful and conscious disregard for the safety of Plaintiff, entitling Plaintiff to exemplary damages.

COUNT XIII
LOSS OF CONSORTIUM

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

167. Plaintiff Anthony C. Vessella is the husband of Plaintiff Joann Vessella.

168. As a result of the medical conditions developed by her husband and the medical treatment that he endured, Plaintiff Joann Vessella lost a substantial measure of her husband's household services and lost, and will continue to lose in the future, a substantial measure of her husband's consortium.

169. Plaintiffs demand judgment against Defendants for compensatory, statutory and punitive damages, together with interest, costs of suit, attorneys' fees and all other such relief as the Court deems appropriate pursuant to the common law and statutory law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants on each of the above-referenced claims and Causes of Action and as follows:

1. Awarding compensatory damages in excess of the jurisdictional amount, including, but not limited to pain, suffering, emotional distress, loss of enjoyment of life, and other non-economic damages available by law or statute in an amount to be determined at trial of this action;

2. Awarding economic damages in the form of medical expenses, out of pocket expenses, lost earnings and other economic damages paid or owed by Plaintiffs in an amount to be determined at trial of this action;

3. Punitive and/or exemplary damages for the wanton, willful, fraudulent, reckless acts of the Defendants, which constitute gross negligent, as Defendants demonstrated a complete disregard and reckless indifference for the safety and welfare of the general public and to the Plaintiff in an amount sufficient to punish Defendants and deter future similar conduct;

4. Prejudgment interest;

5. Post-judgment interest;

6. Awarding Plaintiffs the costs of these proceedings; and

Such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all claims in this action.

Dated: January 12, 2018

Parker Waichman LLP

By: /s/ Melanie Muhlstock
Melanie Muhlstock
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Michael S. Werner*
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**Applications for admission pro hac vice to be filed*

Counsel for Plaintiffs

JS 44 (Rev. 06/17)

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 NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Anthony C. Vessella Sr., and Joann Vessella

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Melanie Muhlstock, PARKER WAICHMAN LLP, 6 Harbor Park Drive,Port Washington, New York 11050

DEFENDANTS

ZIMMER US, INC., et al

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

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

Attorneys *(If Known)*

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

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ☒ 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)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	☒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 835 Patent - Abbreviated New Drug Application
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 376 Qui Tam (31 USC 3729(a))
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 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 - Transfer ❒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S. § 1332

Brief description of cause:
Product Liability

VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ exceeds 75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 01/12/2018

SIGNATURE OF ATTORNEY OF RECORD /s/ Melanie Muhlstock

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Jersey

Anthony C. Vessella Sr., et al.

Plaintiff

v.

Zimmer US Inc ., et al.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Melanie Muhlstock
PARKER WAICHMAN LLP
6 Harbor Park Drive
Port Washington, New York, NY 11050

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc: