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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

MICHELLE ZARICK, an individual; and RYAN ZARICK, an individual

vs.

INTUITIVE SURGICAL, INC., a Delaware corporation; and DOES 1 through 100, inclusive

Defendants.

112CV237723

CASE NO.

COMPLAINT FOR:

1. **PRODUCTS LIABILITY**
2. **NEGLIGENCE**
3. **BREACH OF EXPRESS WARRANTY**
4. **BREACH OF IMPLIED WARRANTY**
5. **UNJUST ENRICHMENT**
6. **LOSS OF CONSORTIUM**
7. **LACK OF INFORMED CONSENT**

DEMAND FOR JURY TRIAL

Plaintiffs Michelle Zarick and Ryan Zarick allege:

INTRODUCTION

1. Following a hysterectomy, Plaintiff Michelle Zarick sustained significant injuries that could have ended her life. To correct the injuries, invasive emergency surgery

was required. These injuries were caused because the da Vinci surgical robot, manufactured and sold by Defendant Intuitive Surgical, Inc., was used to perform her hysterectomy. As further discussed below, Defendant Intuitive Surgical, Inc. hid and concealed important details regarding the substantial risks associated with the da Vinci surgical robot.

THE PARTIES

2. At all times herein mentioned, the Plaintiff Michelle Zarick ("Ms. Zarick") was an individual residing in Sacramento County, California.

3. At all times herein mentioned, the Plaintiff Ryan Zarick ("Mr. Zarick") was an individual residing in Sacramento County, California. Mr. Zarick is currently a Sergeant in the United States Army.

4. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned, Defendant Intuitive Surgical, Inc. ("Defendant" or "Intuitive") was a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware. Upon further information and belief, Intuitive's principal place of business is located in Sunnyvale, California. Intuitive is a publically traded company on the NASDAQ exchange, with current market value of approximately over $2,000,000,000.00.

VENUE AND JURISDICTION

5. Intuitive's residence in the State of California is the City of Sunnyvale, County of Santa Clara, within the jurisdiction of the Superior Court of the State of California, County of Santa Clara.

6. This Court has jurisdiction over the present matter because, as delineated within this Complaint, the nature of the claims and amounts in controversy meet the requirements for jurisdiction in the Superior Court.

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GENERAL ALLEGATIONS

7. Intuitive designed, manufactured, tested, sold, promoted, and labeled the da Vinci Surgical System. On its website, Intuitive represents that surgical robots cause minimally invasive surgery. The said robotic device is used in hospitals for a variety of surgeries, including gynecological, and including therein hysterectomies.

8. Intuitive has promoted the da Vinci Surgical System as (a) safe, and (b) safer than other comparative methods of surgery, including, in the case of hysterectomies, laparoscopy, vaginal surgery, and open surgery. Intuitive uses prominent websites aimed at consumers to create demand for the use of its robotic device by patients who consult surgeons.

9. Intuitive sold its robotic device through a calculated program of intimidation and market management, forcing hospitals and physicians to purchase it in order to appear competitive, and creating fear in their minds that if they did not have this technology, they would lose business to competitors. Intuitive reinforced this calculated program by playing on its website for potential patients, names of physicians who had performed 20 surgeries with the robotic device.

10. The use of Intuitive's robotic device in surgery presents substantial risks of complications and injuries, including burns, tears, dehiscences, bleeding, hematomas, sepsis, and fistulas.

11. More specifically, Intuitive's robotic device can cause damage to the bowel, blood vessels, arteries, ureters, bladder, and vaginal cuff.

12. In addition, due to lengthened time of surgery, patients are unnecessarily exposed to anesthesia for a dangerous period of time.

13. On occasion these complications and injuries cause and/or contribute to the untimely and premature death of the patient.

14. Defendant is aware of the aforesaid risks and complications associated with the use of the said robotic device. Defendant does not provide adequate warnings to physicians and patients about the risks and complications associated with the use of its robotic device.

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15. Defendant has not done, nor sponsored, adequate testing on its said device before and after marketing it to determine whether in random tests its said device is either safer or more effective or otherwise superior to other surgical and laparoscopic methods to which it compares itself. Defendant has not done adequate post marketing surveillance of complications and injuries that have occurred in actual practice.

16. Defendant has not done, nor sponsored, any testing as to long-term outcomes, in comparison to other surgical and laparoscopic methods.

17. Defendant has not revealed, through publications or reports to the Food and Drug Administration and other governmental bodies, the true extent of complications and injuries, which have occurred in actual practice. Defendant has suppressed reports and complaints of complications and performance errors due to the use of its robotic device.

18. Defendant does not adequately train physicians nor proctor them properly on the use of its device, thereby inducing them to cause complications and injuries, which would be avoided in the hands of properly trained physicians.

19. Intuitive represents that it will have skilled technicians in the operating room or on emergency call in the event of problems arising with its robotic device, but often times has neglected to do so.

20. Intuitive has over-promoted its device to hospitals, physicians, and the public, including potential consumers. Combined with this over-promotion, Defendant has minimized the risks and complications associated with the robotic device's use.

21. The da Vinci robotic device is defective in that it relies upon the use of monopolar energy to cut, burn, and cauterize tissue, whereas safer methods are available such as bipolar energy and ultrasonic energy. These methods would substantially reduce the risk of complications.

22. The da Vinci robotic device also has inadequate insulation for its arms, thereby allowing an electrical current to pass into tissue outside of the operative field. Additionally, the insulation on the shafts of the said device becomes torn and worn in places, without the awareness of the physician user, allowing electrical current to pass into tissue outside the

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operative field, causing damage.

23. Defendant has failed to warn users and consumers of the said robotic device about the inadequate insulation on the arms and the potential electrical current to pass into tissue outside of the operative field.

24. Due to design defects, defendant's devices have malfunctioned during the course of operative use causing injury. Additionally, due to the design defects, patients have experienced post-operative injuries necessitating further surgery and medical procedures.

25. Defendant has failed to warn users and consumers of its said device of the design flaws stated in the preceding paragraphs, although it has reached out directly to consumers to promote the device's asserted advantages.

26. Defendant has obtained and continues to maintain approval of its uses of its device from the Food and Drug Administration by failing to fully inform them of its knowledge of risks and complications associated with the use of the robotic device.

STATEMENT OF FACTS

27. In 2008, Ms. Zarick was a 37-year-old woman who was diagnosed with benign ovarian fibroid tumors (the "tumors"). To address the tumors, she consulted with her Obstetrics and Gynecology doctor ("OBGYN"), Dr. Rita Biesen-Bradley to discuss treatment options ("Dr. Biesen-Bradley").

28. Dr. Biesen-Bradley examined Ms. Zarick and recommended that a hysterectomy be performed to remove the tumors. Dr. Bradley further recommended that the hysterectomy be performed using a da Vinci robot manufactured and sold by Intuitive (a "da Vinci robotic hysterectomy"). A hysterectomy was recommended by Dr. Biesen-Bradley instead of a uterine ablation. According to Dr. Biesen-Bradley, a hysterectomy resulted in a quicker healing process, less tearing of tissues, and less chance of infection. Additionally, using the da Vinci robot would allow less invasive removal of the uterus and cervix without having to remove the ovaries. It was important that the ovaries remained because if they were removed, hormone replacement therapy would be necessary. The da Vinci robot was also

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specifically touted as the latest innovation for performing successful hysterectomies.

29. Based on the recommendations by Dr. Biesen-Bradley, Ms. Zarick agreed to proceed with da Vinci robotic hysterectomy. Ms. Zarick underwent surgery on February 2, 2009, at Mercy San Juan Medical Center in Sacramento, California. Following the procedure, Ms. Zarick stayed at Mercy San Juan Medical Center for two days. She was expected to also have a post-operation recovery period of four to six weeks. She was to remain at home during this recovery period.

30. Approximately one to two weeks after the surgery, a post-operation check-up was conducted on Ms. Zarick by Dr. Biesen-Bradley. At this point Dr. Biesen-Bradley indicated that everything appeared to be fine and that there was nothing abnormal to report.

31. Approximately five weeks after the surgery, Ms. Zarick began to feel nauseas and feverish. Her ill feelings were compounded by symptoms of diarrhea. At this time, Mr. Zarick was preparing to travel to Virginia for combat training. The couple had not engaged in sexual intercourse since the surgery. They decided to engage in sexual intercourse. Following the intercourse, Ms. Zarick experienced light vaginal bleeding. This caused Ms. Zarick to contact Dr. Biesen-Bradley, who told her "not to worry about" the bleeding but that she should go to the hospital if she started to feel worse or if hemorrhaging occurred.

32. Following Ms. Zarick's call with Dr. Bradley, Mr. Zarick left to pick up his two daughters from his previous wife. After Mr. Zarick left, Ms. Zarick attempted to use the restroom. While using the restroom, Ms. Zarick felt something "pop," looked down, and saw approximately an inch of intestines coming out of her vaginal area. At this point, Ms. Zarick was in a state of severe shock and her son called for an emergency ambulance. While waiting for the emergency personnel to arrive, Ms. Zarick positioned herself by laying at the top of her stairs and putting her feet on the banister to keep her intestines from suffering further prolapse. Once the fire department and emergency medical technicians arrived, they lifted Ms. Zarick onto a gurney and placed her in the ambulance.

33. In the ambulance, Ms. Zarick disrobed and once the technician saw the state of her body and the status of the intestines, announced that it was a "Code 3" emergency. They

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traveled to Methodist Hospital in Elk Grove, California.

34. When they arrive at the hospital, Ms. Zarick is immediately transferred to the emergency room. The emergency room doctor sees the problem and states that he cannot repair the damage but that he needs to get the intestines back inside Ms. Zarick's body and that he needs the assistance of an OBGYN. While the emergency room personnel were calling for an OBGYN for assistance, the doctor pushed the intestines back inside, causing Ms. Zarick extreme pain. At this point, Ms. Zarick was in constant pain. The OBGYN that was called was Dr. Zenja Watkins ("Dr. Watkins").

35. Once the Dr. Watkins arrived, she attempted to examine Ms. Zarick but was unable to do so because of the puss, fluids, and other residue that were still protruding out of Ms. Zarick's vaginal area. Because of Ms. Zarick's serious condition, Dr. Watkins decided the best course of action was to transfer her to the operating room and begin emergency surgery. Then, Dr. Watkins explained the risks and complications of surgery to Ms. Zarick and went over the necessary details with her. Ms. Zarick, fearing for her life and unsure whether she would survive the surgery, understood that it was her only option and provided her consent for the surgery. Ms. Zarick later learned that it was necessary for Dr. Watkins to consult with colleagues from University of California at Los Angeles Medical Center and University of California Davis Medical Center prior to the surgery because the procedure was so rare that it was not well documented in medical journals.

36. The surgery that was done to repair the damage was invasive. Dr. Watkins made an open laparotomy incision. While conducting the surgery, Dr. Watkins found a massive infection with cysts and adhesions encapsulating Ms. Zarick's ovaries and fallopian tubes. The infection was so severe that the right fallopian tube and right ovary had to be removed. Additionally, the infection deteriorated the quality of the tissue in the vaginal cuff that had been sewn closed during the da Vinci robotic hysterectomy. This caused the cuff to tear leading to a small bowel evisceration. Dr. Watkins cleaned the intestines, performed a surgical debridement of the vaginal cuff to make sure necrotic tissue and infected tissue was removed, and re-sewed the vaginal cuff. The outside of her stomach was also stapled.

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37. The surgery required Ms. Zarick to spend five days in the hospital. After one day, Mr. Zarick had to travel to Virginia for specialized combat training and then immediately on to Baghdad, Iraq, causing Ms. Zarick to spend four days in the hospital alone. During her stay, Ms. Zarick was in extreme pain. She felt more uncomfortable than she did during the original da Vinci robotic hysterectomy. Additionally, after the surgery, Ms. Zarick had an excess flap of skin in her abdominal area.

38. While she was in the hospital, Dr. Bradley called, telling Ms. Zarick she heard she had "quite a night" and that she would have repaired the injury vaginally. Ms. Zarick later learned that repairing such an injury vaginally would greatly increase her chance of death.

39. Following the emergency surgery, six weeks of post-operation home recovery was required.

40. In the period following her life threatening experience, Ms. Zarick did not believe that the da Vinci robotic hysterectomy was the cause of the complications. Ms. Zarick made these conclusions based on research she conducted during her recovery period immediately after the emergency repair surgery. She was not aware until October 1, 2012 that her life threatening experience and the complications could be attributed to the da Vinci robotic hysterectomy.

FIRST CAUSE OF ACTION

(Products Liability, Michelle Zarick Against All Defendants)

41. Plaintiffs incorporate all proceeding paragraphs herein by reference.

42. Defendant placed the da Vinci robotic surgical system into the stream of commerce. This robotic device was defective in design.

43. Defendant owed Plaintiffs a duty to exercise reasonable care when designing, testing, manufacturing, marketing, advertising, promoting, distributing, and/or selling the da Vinci robotic surgical system for hysterectomy purposes.

44. At all relevant times to this action, Defendant owed a duty to properly warn Ms.

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Zarick, the medical community, and the public of the risks, dangers and adverse side effects of the da Vinci robotic surgical system.

45. Defendant breached its duty by failing to exercise ordinary care in the preparation, design, research, testing, development, manufacturing, inspection, labeling, marketing, promotion, advertising, and selling of the da Vinci robotic surgical system. Specifically, Defendant breached its duty by:

a. failing to test the da Vinci robotic surgical system properly and thoroughly before promoting the robotic surgical platform using monopolar current to market;

b. failing to analyze properly and thoroughly the data resulting from the pre-marketing tests of monopolar current used in the da Vinci robotic hysterectomy;

c. failing to report to the FDA, the medical community, and the general public the data resulting from pre-marketing and post-marketing tests of the da Vinci robotic surgical system which indicated the risks associated with use;

d. failing to conduct adequate post-market monitoring and surveillance of post-surgical complications associated with the da Vinci robotic surgical system;

e. failing to conduct adequate analysis of adverse event reports;

f. designing, manufacturing, marketing, advertising, distributing, and promoting the da Vinci robotic surgical system for hysterectomies directly to consumers, including Ms. Zarick, without adequate warning of the significant and dangerous risks associated with the device and without proper instructions to avoid the harm that could foreseeably occur as a result of using the device;

g. failing to exercise due care when advertising and promoting the da Vinci robotic surgical system;

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h. negligently continuing to manufacture, market, advertise, and promote the da Vinci robotic surgical system for hysterectomies after Defendant knew or should have known of the risks of serious injury and/or death associated with using the device;

i. failing to use due care in the preparation and development of the da Vinci robotic surgical system to prevent the aforementioned risk of injuries to individuals;

j. failing to use due care in the design of the da Vinci robotic surgical system with special regard to insulation of the robotic arms and instruments to prevent the aforementioned risks to individuals;

k. failing to conduct adequate pre-clinical testing and research to determine the safety of the use of monopolar current and the insulation of the robotic instruments to be used in robotic hysterectomy, with special regard to the reusing of the instruments up to ten times in ten different patients;

l. failing to conduct adequate intra-operative surveillance and post-operative complication studies to determine the safety of the use of monopolar energy during the surgical robotic hysterectomy procedure, while Defendant knew or should have known that intra-operative surveillance and post-operative complication studies would be the only means to determine the relative risk of using monopolar energy during robotic hysterectomy;

m. Failing to give specific attention to the risks of the da Vinci robotic hysterectomy in performing a colpotomy incision or an amputation of the uterus, causing severe thermal injury to bladder, ureter, bowel, vaginal cuff, and blood vessels, in the absence of clinical trials which cannot be conducted for this purpose, and that surveillance would be necessary for a due diligence program that would alert Defendant to the

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need to change the techniques associated with the da Vinci robotic hysterectomy or withdraw it from the market;

n. Failing to completely, accurately, and in a timely fashion disclose the results of pre-marketing testing of issues with monopolar energy and post-marketing surveillance of da Vinci robotic hysterectomy related injuries and complications to Ms. Zarick, consumers, the medical community, and the FDA;

o. Failing to accompany marketing materials promoting the da Vinci robotic surgical system with proper warning regarding all possible adverse side effects associated with the use of the device;

p. Failing to use due care in manufacture, inspection, and safety evaluation of the da Vinci robotic surgical system to prevent the aforementioned risk of injuries who underwent a da Vinci robotic hysterectomy;

q. Failing to use due care in the promotion of the da Vinci robotic surgical system to prevent the aforementioned risk of injuries to individuals;

r. Failing to use due care in the sale and marketing of the da Vinci robotic surgical system to prevent the aforementioned risk of injuries to individuals who were to undergo robotic hysterectomy;

s. Failing to provide adequate and accurate training and information to the sales representatives who sold the da Vinci robots;

t. Failing to provide adequate and accurate training and information to healthcare provides for the appropriate use of the da Vinci robot for hysterectomy;

u. Failing to conduct or fund research into the development of safer robotic surgical instruments which would pose the least risk of causing severe thermal injury to bowel, bladder, ureter, and blood vessels;

v. Failing to educate healthcare providers and the public about the safest use of the monopolar scissors in da Vinci robotic surgery;

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w. Failing to give healthcare providers adequate information to weigh the risks of serious injury and/or death for a given patient using the da Vinci robotic hysterectomy platform and technique featuring the use of monopolar current; and

x. Being otherwise reckless, careless, and/or negligent.

46. Defendant placed into the stream of commerce its aforesaid device, which was defective in its labeling and warnings.

47. Defendant placed into the stream of commerce its aforesaid device, which was defective in its testing and approval. Defendant designed, tested, manufactured, packaged, marketed the da Vinci surgical system, placing the device in the stream of commerce for hysterectomies.

48. At the time the device left the possession of the Defendant it was in an unreasonably dangerous and defective condition for application for robotic hysterectomy.

49. Despite the fact that Defendant knew or should have known that the da Vinci robotic hysterectomy platform had increased the risk of serious injury and/or death, Defendant continued to promote and market the da Vinci robotic hysterectomy platform to consumers, including Ms. Zarick, when safer and more effective methods of treatment were available.

50. The da Vinci robot was designed, tested, manufactured, assembled, developed, labeled. sterilized, licensed, marketed, advertised, promoted, sold, packaged, supplied and/or distributed by Defendant in a defective and unreasonably dangerous condition to consumers, including Ms. Zarick.

51. The da Vinci robotic surgical system was expected to reach, and did reach, users and/or consumers, including Ms. Zarick, without substantial change in the defective and unreasonably dangerous condition in which it was manufactured and sold.

52. Ms. Zarick's surgeon used the da Vinci robotic hysterectomy platform including monopolar current as instructed by and certified by and in the foreseeable manner normally intended, recommended, promoted, and marketed by Defendant. The da Vinci robotic

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hysterectomy platform was unreasonably dangerous in that, as designed, it failed to perform safely when used by ordinary consumers, including Ms. Zarick's surgeon, when it was used as intended in a reasonably foreseeable manner.

53. The da Vinci robotic hysterectomy platform was unreasonably dangerous in that, as designed, the risks of serious injury and/or death, including bowel, bladder, ureteral, vaginal cuff, or vascular injury, posed by its monopolar current risks exceeded anybenefit the robotic approach was designed to or might in fact bestow.

54. The da Vinci robotic hysterectomy platform was unreasonably dangerous in that, as designed, it was dangerous to an extent beyond that contemplated by the medical community, and ordinary users, including Ms. Zarick.

55. Although Defendant knew or should have known of the defective nature of the da Vinci robotic surgical system, it continued to design, manufacture, market, and promote its use to maximize sales and profits at the expense of public health and safety. Defendant acted with conscious and deliberate disregard for the foreseeable harm caused by the continued use of the da Vinci robotic surgical system.

56. Ms. Zarick could not, through the use of reasonable care, have discovered the risk of injury and/or death associated with and/or caused by the da Vinci robotic surgical system. Had Ms. Zarick been aware of these additional risks, she could have chosen a surgical procedure with similar results but without these additional risks. As a result, Ms. Zarick suffered the personal injuries described herein.

57. As a direct and proximate consequence of Defendant's negligence, willful wanton, and/or intentional acts, omissions, misrepresentations, and/or otherwise culpable acts described herein, Ms. Zarick sustained injuries and damages.

58. Because of Defendant's conduct, among other things, Ms. Zarick suffered injuries that caused her to undergo additional surgeries, endured pain and suffering and will continue to do so in the future, has suffered mental anguish and will continue to do so in the future, has lost the pleasure of sexual activity, and has incurred medical expenses.

59. As a result of said conduct, Defendant has become strictly liable to Ms. Zarick.

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60. Defendant's conduct of continuing to market, sell, and distribute the aforesaid device after obtaining knowledge that it was defective and not performing as represented and intended, showed complete indifference to and/or conscious disregard for the safety of others justifying an award of punitive damages for aggravating circumstances in such a sum which will serve to deter Defendant and others from similar conduct in the future.

SECOND CAUSE OF ACTION

(Negligence, Michelle Zarick Against Defendants)

61. Plaintiffs incorporate all proceeding paragraphs herein by reference.

62. Defendant was careless in the design, testing, manufacturing, labeling, and promotion of the da Vinci robotic surgical system.

63. Defendant failed to warn consumers of the risks of the da Vinci robotic surgical system.

64. Defendant took it upon itself to "train" and "certify" Ms. Zarick's surgeon on the use of the da Vinci robotic surgical system. Defendant had a duty to Ms. Zarick to properly train her surgeon.

65. Defendant breached this duty by failing to properly proctor and/or properly instruct Ms. Zarick's surgeon and attending staff as to the safe use of the da Vinci robotic surgical system nor how to detect complications which Defendant's device causes and is known to cause.

66. As a proximate and foreseeable result of Defendant's breach, Ms. Zarick suffered significant damages and injuries.

THIRD CAUSE OF ACTION

(Breach of Express Warranty, Michelle Zarick against All Defendants)

67. Plaintiffs incorporate all proceeding paragraphs herein by reference.

68. Defendant made express warranties to safety to the buyers and consumers of the da Vinci robotic surgical system during Ms. Zarick's surgery, upon which the buyers and

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users, as agents of Ms. Zarick, relied, to her detriment. Defendant expressly represented to Ms. Zarick (and to other consumers and the medical community) that the da Vinci robotic surgical system was safe, efficacious, and fit for its intended purposes. Defendant also represented that the da Vinci robotic surgical system was of merchantable quality, that it did not produce any unwarned dangerous side effects, and that it was adequately tested.

69. Defendant breached the expressed warranties with respect to the da Vinci robotic surgical system in the following ways:

a. Defendant represented through its labeling, advertising, marketing materials, detail persons, seminar presentations, surgeon training sessions, publications, notice letters, and regulatory submissions that the da Vinci robotic surgical system was safe, and fraudulently withheld and concealed information about the substantial risks or serious injury and/or death associated with using the da Vinci robotic surgical system;

b. Defendant represented that the da Vinci robotic surgical system was safe and/or safer than alternative surgical methods, and fraudulently concealed information which demonstrated that the da Vinci robotic surgical system was not safer than alternatives; and

c. Defendant represented that the da Vinci robotic surgical system was more efficacious than other alternative methods, and fraudulently concealed information that it was not more efficacious than alternative surgical methods.

70. The da Vinci robotic surgical system does not conform to Defendant's express representations, because it is not safe, efficacious, has numerous serious unwarned-of side effects, causes severe and permanent injuries including death, and was not adequately tested.

71. The da Vinci robotic surgical system including the use of monopolar current did not perform as safely as an ordinary physician, as an agent of Ms. Zarick, would have expected when used as intended or in a reasonably foreseeable manner.

72. Ms. Zarick, her surgeon, and others in the medical community, relied upon

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Defendant's express warranties, resulting in Ms. Zarick's da Vinci robotic hysterectomy.

73. Ms. Zarick, after ascertaining through her injuries, that the da Vinci robotic surgical system violated express warranties, supplied notice to Defendant by filing this complaint.

74. As a direct and proximate cause of Defendant's breach of express warranty and/or intentional acts, omissions, misrepresentations, Plaintiffs sustained injuries and damages, including emotional distress.

75. Defendant's conduct of continuing to market, sell, and distribute the aforesaid device after obtaining knowledge that it was defective and not performing as represented and intended, showed complete indifference to and/or conscious disregard for the safety of others justifying an award of punitive damages for aggravating circumstances in such a sum which will serve to deter Defendant and others from similar conduct in the future.

FOURTH CAUSE OF ACTION

(Breach of Implied Warranty, Michelle Zarick Against All Defendants)

76. Plaintiffs incorporate all proceeding paragraphs herein by reference.

77. At all relevant times, Defendant manufactured, distributed, advertised, promoted, and sold the da Vinci robotic surgical system.

78. At all relevant times, Defendant intended that the da Vinci robotic surgical system be used in the manner that Ms. Zarick's surgeon used and Defendant impliedly warranted the product to be of merchantable quality, safe, and fit for such use. Defendant also impliedly warranted that the product was adequately tested.

79. Defendant breached the implied warranties with respect to the da Vinci robotic surgical system in the following ways:

a. Defendant represented through its labeling, advertising, marketing materials, detail persons, seminar presentations, publications, notice letters, and regulatory submissions that the da Vinci robotic surgical system was safe and withheld and concealed information about the

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substantial risks of serious injury or death associated with the device;

b. Defendant represented that the da Vinci robotic surgical system was safer than alternative methods; and

c. Defendant represented that the da Vinci robotic surgical system was more efficacious than alternative methods.

80. In reliance upon Defendant's implied warranty, Ms. Zarick's surgeon used the da Vinci robotic surgical system for a hysterectomy in the foreseeable manner normally intended, recommended, promoted, instructed, and marketed by Defendant.

81. Defendant breached the implied warranty to Ms. Zarick in that the da Vinci robotic surgical system was not of merchantable quality, safe, and fit for its intended use. Defendant also breached the implied warranty because the da Vinci robotic surgical system was not adequately tested.

82. As a direct and proximate result of Defendant's conduct, Plaintiffs suffered injuries and damages, including emotional distress.

FIFTH CAUSE OF ACTION

(Unjust Enrichment, Michelle Zarick Against All Defendants)

83. Plaintiffs incorporate all proceeding paragraphs herein by reference.

84. At all relevant times Defendant designed, advertised, marketed, promoted, manufactured, distributed, supplied, and/or sold the da Vinci robotic surgical system for hysterectomy use.

85. Mercy Hospital purchased the da Vinci robotic surgical system from Defendant for the purpose of robotic hysterectomy. Mercy Hospital purchased disposable and reusable instruments for performing Ms. Zarick's surgery.

86. Defendant accepted payment from said hospital for both the da Vinci robotic surgical system used in Ms. Zarick's surgery, but also for routine maintenance and per surgery cost of additional items including disposable items.

87. Ms. Zarick did not receive the safe and effective surgical product for which she

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intended to purchase, nor did the hospital where Ms. Zarick had her surgery.

88. It is unjust for Defendant to retain money because Ms. Zarick did not receive safe and efficacious services from the da Vinci robotic surgical system.

SIXTH CAUSE OF ACTION

(Loss of Consortium, Ryan Zarick Against All Defendants)

89. Plaintiffs incorporate all proceeding paragraphs herein by reference.

90. As a direct consequence of the injuries sustained by Ms. Zarick because of the da Vinci robotic surgical system, and the pains associated with the surgery and post-surgery procedures, Mr. Zarick has been deprived of the normal companionship, company, affection, regard, assistance, comfort, sexual relations, and emotional stability of his wife Ms. Zarick.

91. These physical and emotional consequences of the injuries have negatively impacted the quality of and caused undo hardship to the marriage relationship. Mr. Zarick continues to be denied the full enjoyment of his marital relationship.

92. Mr. Zarick suffered damages in an amount to be proven at trial.

SEVENTH CAUSE OF ACTION

(Lack of Informed Consent, Michelle Zarick Against All Defendants)

93. Plaintiffs incorporate all proceeding paragraphs herein by reference.

94. Defendant owed a fiduciary duty to Ms. Zarick to provide and disclose all information material to her care and treatment. Specifically, Defendant owed a duty to disclose all issues with the da Vinci robotic surgical system and the substantial risks of serious injury or death associated with the device.

95. Defendant failed and refused to provide adequate information to provide Ms. Zarick agents with informed consent. Defendant failed to provide without limitation testing, studies, diagnostic procedures, and surgical procedures of the da Vinci robotic surgical system. Additionally, Defendant failed to provide the substantial risks of serious injury or death associated with the device.

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96. Defendant's acts of failing to inform Ms. Zarick caused her to suffer significant damages in an amount to be proven at trial.

WHEREFORE, Plaintiffs pray judgment against Defendants as follows:

1. On *all* causes of action asserted by Plaintiffs, for general and special damages in an amount according to proof;
2. For punitive damages and/or exemplary damages as allowed by law and according to proof;
3. For attorneys' fees as allowed by statute;
4. For prejudgment interest as allowed by law;
5. For costs of suit incurred herein; and
6. For all other relief as the court may deem proper.

DATED: December 12, 2012

GERAGOS & GERAGOS, APC
RILEY & JACKSON, PC

By: _____
MARK J. GERAGOS
Attorneys for Plaintiffs
MICHELLE ZARICK and
RYAN ZARICK

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DEMAND FOR JURY TRIAL

Plaintiffs Michelle Zarick and Ryan Zarick hereby demand a jury trial.

DATED: December 12, 2012

GERAGOS & GERAGOS, APC
RILEY & JACKSON, PC

By: _____
MARK J. GERAGOS
Attorneys for Plaintiffs
MICHELLE ZARICK and
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