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6 IN THE UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 JOYCE KENNEDY,

10 Plaintiff,

NO.

COMPLAINT AND DEMAND FOR JURY TRIAL

11 v.  
12

13 ETHICON ENDO-SURGERY, INC.; ETHICON  
14 ENDO-SURGERY, LLC.,

15 Defendants.  
16

17 COMES NOW the Plaintiff, Joyce Kennedy, and brings this complaint for damages against  
18 Defendants, and in support thereof states as follows:

19 I. THE PARTIES

20 1.1. At all times material, Plaintiff Joyce Kennedy was and is an individual residing in  
21 the State of Washington.

22 1.2 At all times material, Defendant Ethicon Endo-Surgery, Inc., was and is an Ohio  
23 corporation with its principal place of business at 4545 Creek Road, Mail Location 11, Cincinnati,  
24 Ohio 45242. At all times material, Defendant Ethicon Endo-Surgery, Inc., has been conducting  
25 business throughout the State of Washington and maintains significant, systematic and  
26 continuous contacts throughout the State of Washington, but does not appear to have a

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1 designated agent within the state upon whom service of process may be had for causes of action  
2 arising out of such business.

3 1.3 At all times material, Defendant Ethicon Endo-Surgery, LLC, was and is a foreign  
4 corporation with its principal place of business at 475 Calle C, Guaynabo, Puerto Rico 00969. At  
5 all times material, Defendant Ethicon Endo-Surgery, LLC, has been conducting business  
6 throughout the State of Washington and maintains significant, systematic and continuous  
7 contacts throughout the State of Washington, but does not appear to have a designated agent  
8 within the state upon whom service of process may be had for causes of action arising out of  
9 such business.

## 10 II. JURISDICTION AND VENUE

11 2.1 The Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(a),  
12 inasmuch as the amount in controversy exceeds \$75,000, exclusive of interest and costs, and  
13 Plaintiff is a citizen of a different state than one or more of Defendants.

14 2.2 Venue in this district for pretrial proceedings in this civil action is proper under 28  
15 U.S.C. § 1391, inasmuch as a substantial part of the events or omissions giving rise to the claim  
16 occurred in this district.

17 2.3 At all times material, Defendant Ethicon Endo-Surgery, Inc. has been in the  
18 business of the researching, developing, selling, and marketing of surgical staplers and staples.  
19 At all times material, Defendant Ethicon Endo-Surgery, Inc. has been in the business of and did  
20 design, research, manufacture, test, advertise, promote, market, sell, and distribute the surgical  
21 stapler and staples that constitute the basis of this lawsuit in the State of Washington. This Court  
22 has personal jurisdiction over Defendant Ethicon Endo-Surgery, Inc. because Defendant has  
23 submitted itself to the jurisdiction of this Court by engaging in conduct in the State of  
24 Washington as set forth in this Complaint.

25 2.4 At all times material, Defendant Ethicon Endo-Surgery, LLC has been in the  
26 business of the researching, developing, selling, and marketing of surgical staplers and staples.  
At all times material, Defendant Ethicon Endo-Surgery, LLC has been in the business of and did

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1 design, research, manufacture, test, advertise, promote, market, sell, and distribute the surgical  
2 stapler and staples that constitute the basis of this lawsuit in the State of Washington. This Court  
3 has personal jurisdiction over Defendant Ethicon Endo-Surgery, LLC because Defendant has  
4 submitted itself to the jurisdiction of this Court by engaging in conduct in the State of  
5 Washington as set forth in this Complaint.

6 2.8 Defendants Ethicon Endo-Surgery, Inc. and Ethicon Endo-Surgery, LLC shall be  
7 referred to herein individually by name or jointly as the "Ethicon Defendants."

### 8 III. FACTS

9 3.1 On November 20, 2018, Joel G. Dean, M.D., undertook to perform a robotic  
10 assisted laparoscopic sigmoid colectomy surgery to remove a portion of Plaintiff's sigmoid colon  
11 because of an active flare up of smoldering diverticulitis with colonic obstruction affecting a  
12 portion of Plaintiff's sigmoid colon at Skagit Valley Regional Hospital. After gaining access to  
13 Plaintiff's abdomen, Dr. Dean observed that her colon was significantly distended, severely  
14 diseased and inflamed and he made the decision to abandon the minimally invasive approach  
15 and converted to an open descending sigmoid colectomy procedure. Dr. Dean then mobilized  
16 the sigmoid colon and cleared an area proximal to the diseased portion of the colon and  
17 transected the diseased portion using a contour stapler.

18 3.2 Dr. Dean then assessed the proximal staple line of the remaining colon and  
19 determined it would not reach into Plaintiff's pelvis, so he proceeded with mobilizing Plaintiff's  
20 splenic fixture laparoscopically, which was successfully accomplished. After mobilizing Plaintiff's  
21 splenic fixture, Dr. Dean determined the proximal staple line of the remaining colon still would  
22 not reach into Plaintiff's pelvis, so he removed some additional adhesions which allowed him to  
23 get the proximal staple line out of her abdomen. Dr. Dean observed this portion of the colon  
24 and noted that colon was clearly obstructed, so he elected to make a small incision in the colon  
25 and drained a liter and half of liquid stool from her colon. Dr. Dean then utilized a contour stapler  
26 to remove a couple more inches of the colon that included the portion where he had made the  
incision.

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1           3.3    Dr. Dean then assessed the colon and determined the distal six inches of the colon  
2 looked venous congested and he made the decision to perform a small colotomy in the colon to  
3 allow him to introduce the anvil of the EEA stapler more proximally in the well perfused area of  
4 the colon. Dr. Dean then utilized a stapler to cut away the ischemic end of the tissue and  
5 removed it. Dr. Dean proceeded to the next portion of the surgery and created a side-to-end  
6 stapled anastomosis using an EEA 29 stapler. Dr. Dean performed a leak test by inflating the  
7 anastomosis with air through the anus while it was submerged in water. He performed this test  
8 twice and no leaks were detected. At the closure of the surgery no complications were noted  
9 and Plaintiff was transferred to the PACU.

10           3.4    In the days following the surgery, Plaintiff began experiencing delirium and  
11 exacerbation of her chronic obstructive pulmonary disease along with increased levels of  
12 leukocytes in her blood which necessitated her being transferred to the intensive care unit,  
13 where she was administered intravenous steroids and intensive nebulizer therapy. Plaintiff also  
14 underwent a CT scan of her abdomen which revealed a possible anastomotic leak with dilated  
15 small bowel and increase in subcutaneous fluid.

16           3.5    On November 30, 2018, Plaintiff underwent an exploratory laparotomy performed  
17 by Dr. Chinnaya Parimi, M.D. at Skagit Valley Regional Hospital. After making an incision and  
18 accessing Plaintiff's abdomen, Dr. Parimi immediately encountered pus and stool throughout  
19 her abdomen. Dr. Parimi identified the transverse colon and examined the colon anastomosis  
20 and noticed there was a pocket of fluid posterior to the anastomosis with stool and pus. Dr.  
21 Parimi palpated the anastomosis and discovered that the anterior wall of the anastomosis was  
22 intact and the rest of the anastomosis had completely fallen apart. Dr. Parimi then performed a  
23 resection of the colorectal anastomosis and closure of the rectal stump with an end transverse  
24 colostomy. Dr. Parimi also performed a washout of the pelvic sepsis, an incision and drainage  
25 of the surgical wound infection and placed a pressure wound vacuum on the wound. At the end  
26 of the surgery, Plaintiff was transferred to the PACU in stable condition.

1           3.6   Following the remedial surgery, Plaintiff developed an abdominal wall abscess at  
2 the site of the original stoma and was placed on intravenous steroids. Plaintiff remained  
3 hospitalized until she was discharged from Skagit Valley Regional Hospital on December 10, 2018  
4 with a PICC line in place, ostomy bag in place, and a wound vac on her incision site. Plaintiff  
5 returned to Skagit Valley Regional Hospital to receive PICC line infusion therapy from December  
6 11, 2018 through December 19, 2018 due the infection and sepsis she developed following the  
7 initial surgery. Plaintiff also returned to Skagit Valley Regional Hospital to receive incisional  
8 wound care treatment until February 19, 2019.

9           3.7   Plaintiff still has a colostomy and will likely have to have the colostomy for the  
10 remainder of her life.

11           3.8   Dr. Dean has identified the surgical stapler and staples he used during Plaintiff's  
12 sigmoid colectomy surgery as Ethicon products. Ethicon surgical staplers and staples are  
13 designed, manufactured, marketed and sold by Ethicon Endo-Surgery, Inc. and/or Ethicon Endo-  
14 Surgery, LLC.

15           3.9   Plaintiff's medical records and bills have identified the surgical stapler used by Dr.  
16 Dean during Plaintiff's November 20, 2018 sigmoid colectomy surgery as an Ethicon CDH29A  
17 Circular stapler.

18           3.10   The failure of the surgical stapler and staples to properly close Plaintiff's colon  
19 resulted in a number of complications, including:

- 20           a.   the need to convert from a less invasive laparoscopic procedure to an open  
21                descending sigmoid colectomy surgical procedure;
- 22           b.   the need to undergo an emergent exploratory laparotomy, resection of the  
23                colorectal anastomosis and closure of the rectal stump with an end transverse  
24                colostomy on November 30, 2018, due to the complications from her November  
25                20, 2018 surgery;
- 26           c.   a prolonged hospital stay, which included time in the ICU as result of the  
              complications from her November 20, 2018 surgery;

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