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MEGADYNE MEDICAL PRODUCTS, INC.
(Erroneously sued herein as ETHICON, INC.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

**HANNAH and KEVIN
DIETERLE, individually and
as natural parents of SOPHIE
DIETERLE**

Plaintiffs,

v.

**ETHICON, INC., GREAT
FALLS CLINIC, LLC, and
JOHN DOE PERSONS,
CORPORATIONS AND
ENTITIES 1-10,**

Defendants.

Case Number: CV-24-116-GF-JTJ

**DEFENDANT’S NOTICE OF
REMOVAL**

**TO: THE HONORABLE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MONTANA.**

COMES NOW, Defendant Megadyne Medical Products, Inc. (erroneously
sued as “Ethicon, Inc.”, hereafter “Defendant”), through undersigned counsel,
hereby removes the state court action entitled *Hannah Dieterle, et al., v. Ethicon,*

Inc. et al., Cause No. DV-7-2024-0000563-OC, filed in Montana Eighth Judicial District Court, Cascade County to the United States District Court for the District of Montana pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.¹ Removal is proper under 28 U.S.C. § 1441(b) because this is a diversity action over which this Court has original jurisdiction under 28 U.S.C. § 1332.

In support of removal, Defendant states as follows:

1. The present lawsuit was commenced by Plaintiffs Hannah and Kevin Dieterle, in Montana Eighth Judicial District Court, Cascade County, Cause No. DV-7-2024-0000563-OC (the “Lawsuit”) on November 13, 2024. Removing Defendant received service of the Summons and Complaint on November 19, 2024. (*See Exhibit A*).

2. The Lawsuit is a civil action in which Plaintiffs allege that Sophie Dieterle suffered second and third degree skin burns as a result of her physician’s use of a MEGADYN patient return electrode pad during a tonsillectomy surgery. [Compl. ¶¶ 6-9].

3. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Summons and Complaint served upon Defendant in the State Court Action (and

¹ By removing this case from state court Defendants do not waive, and specifically reserve, any defense available to them under Federal Rule 12. *See Great Am. Ins. Co. of New York v. Nippon Yusen Kaisha*, No. 13-CV-00031, 2013 WL 3850675, at *3 (N.D. Cal. May 10, 2013).

other filings available from the state court's files) are attached collectively as **Exhibit A**.

4. As set forth more fully below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441 because this Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1332, and Defendant has satisfied the procedural requirements for removal.

I. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT-MATTER JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332 AND 1441.

5. This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1332 because (1) there is complete diversity of citizenship between the Plaintiff and the Defendants, and (2) the amount in controversy exceeds \$75,000, exclusive of interest and costs. Complete diversity existed at the time the Complaint was filed and at the time of removal.

A. There is Complete Diversity of Citizenship.

6. Plaintiffs Hannah and Kevin Deiterle are the natural parents of Sophie Diterle, and are residents of Great Falls, Cascade County, Montana. [Compl. ¶ 1.]

7. Defendant Megadyne Medical Products, Inc. (erroneously sued as “Ethicon, Inc.”) is a corporation headquartered in Draper, Utah. Thus, Megadyne is a citizen of **Utah** for purposes of diversity jurisdiction. 28 U.S.C. §1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010) (holding that a corporation is a citizen of its

place of incorporation and its “principal place of business,” which is “the actual center of direction, control, and coordination” of the corporation’s activities).

[Compl. ¶ 2.]

8. Defendant Great Falls Clinic, LLC (“GFC”) is a citizen of the State of Montana. [Compl. ¶ 3.]

9. Plaintiff has also named “John Doe Persons, Corporations, and Business Entities 1-10” as putative defendants in this case. [Compl. ¶ 5.] Pursuant to 28 U.S.C. § 1441(b)(1), “the citizenship of defendants sued under fictitious names shall be disregarded” for purposes of determining diversity of citizenship.

10. Thus, Plaintiffs are diverse from all Defendants, with the exception of GFC.

11. The presence of GFC in this case does not defeat diversity jurisdiction, however, because it is fraudulently joined. Under the fraudulent-joinder doctrine, “[j]oinder is fraudulent [i]f the plaintiff fails to state a cause of action against a resident defendant, and the failure is obvious according to the settled rules of the state.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1043 (9th Cir. 2009) (citations and internal quotation marks omitted). A court should disregard the citizenship of a non-diverse defendant where, as here, “a defendant shows that [the] ‘individual[] joined in the action cannot be liable on any theory.’” *Nunn v. Mentor Worldwide*,

LLC, 847 F. App'x 373, 375 (9th Cir. 2021) (quoting *Graneare, LLC v. Thrower ex. rel. Mills*, 889 F.3d 543, 548 (9th Cir. 2018)), *cert. denied*, 142 S. Ct. 514 (2021).

12. This doctrine, known as fraudulent joinder, “applies when a non-diverse defendant’s joinder is a ‘sham’ - that is, when a party is joined ‘without any reasonable basis in fact and without any purpose to prosecute the action in good faith.’” *In re Roundup Prods. Liab. Litig.*, No. 16-md-02741-VC, 2021 WL 4186714, at *1 (N.D. Cal. Sept. 15, 2021) (quoting *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 98 (1921)). A plaintiff must do more than “simply declar[e] that there is a factual dispute” to defeat a claim of fraudulent joinder, and the Court is not forced to “close its eyes to reality” when considering the parties’ arguments. *In re Roundup Prods. Liab. Litig.*, No. 16-md-02741-VC, 2021 WL 5149862, at *2 (N.D. Cal. Nov. 5, 2021); *see also Giard v. Ouellette*, No. CV-12-113-BLG-RFC-CSO, 2012 WL 5386958, at *5 (D. Mont. Nov. 1, 2012) (“The [c]ourt concludes that the complaint fails to state a claim against Ouellette. The [c]ourt further concludes that this failure is obvious under Montana law.”), *report and recomm. adopted*, No. CV-12-113-BLG-RFC, 2013 WL 796366 (D. Mont. Mar. 4, 2013).

13. As set forth fully below, Plaintiffs allege no viable claims under Montana law against GFC, nor do Plaintiffs’ allegations against GFC satisfy federal pleading requirements.

1. All of Plaintiff's Claims Against GFC Are Doomed to Fail Under Montana Law.

14. Plaintiffs seek to hold GFC liable under a theory of negligence (Count III) for the injuries Sophie Dieterle allegedly sustained as a result of the use of a Megadyne electrode grounding pad during a surgical procedure—a theory that, as pled, is plainly contrary to Montana law. Plaintiffs exempt GFC from Count I and Count II—claims for strict liability and breach of warranty. [Compl. ¶¶ 27-37]. The factual allegations upon which the claim against GFC rests is that the Megadyne grounding pad was used during Sophie Dieterle's surgery performed at GFC. [Compl. ¶ 6]. Aside from this singular allegation, Plaintiffs do not allege any affirmative nor individualized facts as to GFC to support their claims.

15. Instead, Plaintiffs allege that “[t]o the extent Ethicon establishes that GFC provided substandard care and was negligent, Plaintiff also asserts those positions and GFC is liable for Plaintiffs’ injuries, damages, harms and losses.” [Compl. ¶ 40]. Plaintiffs’ Negligence claim against GFC, as pled, is untenable under Montana law.

16. Essentially, Plaintiffs plead a negligence cause of action which is wholly contingent upon Defendant Megadyne's proof of an affirmative defense of GFC's contributory negligence. [Compl. ¶ 40]. By doing so, Plaintiffs effectively shift the burden of proof on their own negligence claim to Defendant. *Id.* However, “[t]o maintain an action in negligence, a plaintiff must plead four essential elements:

(1) duty; (2) breach; (3) causation; and, (4) damages.” *Fisher v. Swift Transp. Co.*, 342 Mont. 335, 339, 181 P.3d 601, 606 (2008). “Without duty, and a breach of that duty, no negligence can exist.” *Id.*; *see also Myhre v. Vroom Auto., LLC*, No. CV 24-28-H-BMM-KLD, 2024 U.S. Dist. LEXIS 211491, at *12 (D. Mont. Oct. 30, 2024) (dismissing negligence claim on motion to dismiss for failure to allege elements of negligence cause of action).

17. Plaintiffs do not allege any duty owed to them by GFC, a breach of the duty, how GFC’s conduct caused Plaintiffs’ harm, and what damages they suffered. Instead, Plaintiffs “join” in a hypothetical, not yet asserted affirmative defense of Defendants, and claim resulting damages. [Compl. ¶ 40]. Such a pleading is akin to advancing no negligence claim at all. *See e.g. Fisher*, 342 Mont. at 339; *Myhre*, 2024 U.S. Dist. LEXIS 211491, at *12 (requiring all of the elements of a negligence claim to be pled with factual allegations in support).

18. Plaintiffs’ Complaint—which is bereft of any individualized allegations directed towards GFC—therefore cannot establish a viable negligence claim against Defendant GFC, over which Plaintiff—not Defendant Megadyne—carries the burden of proof.

B. GFC is Fraudulently Joined Because Plaintiffs Also Fail to Satisfy FRCP Rule 8.

19. GFC is also fraudulently joined because Plaintiffs’ allegations against it are utterly bereft of factual detail and thus do not satisfy the basic pleading

requirements of Federal Rule of Civil Procedure 8. In fact, other than one boilerplate allegation that generally identifies GFC as the location where Sophie Dieterle was exposed to the Megadyne electrode pad, and Plaintiffs' deficient negligence claim (as discussed, *supra*), Plaintiffs do not make *any* allegations about its specific conduct or tie it to their claims. [Compl. ¶¶ 6, 27-37, 38-41].

20. “[I]t is axiomatic that where a plaintiff’s complaint is devoid of any factual allegations suggesting a basis for recovery against a particular defendant, there can be no ground for concluding that a claim has been stated.” *Walker v. Medtronic, Inc.*, No. 1:03CV74-D-D, 2003 WL 21517997, at *3 (N.D. Miss. June 4, 2003). “Failure to specify a factual basis for recovery against a nondiverse party, therefore, constitutes a fraudulent joinder of that party.” *Id.* Indeed, courts have recognized that there is “no better admission of fraudulent joinder of [resident] defendants” than the failure of the plaintiffs “to set forth any specific factual allegations” against them. *Lyons v. Am. Tobacco Co.*, No. Civ. A. 96-0881-BH-S, 1997 WL 809677, at *5 (S.D. Ala. Sept. 30, 1997); *see also, e.g., Badon v. RJR Nabisco, Inc.*, 224 F.3d 382, 393-94 (5th Cir. 2000) (upholding district court’s finding of fraudulent joinder where plaintiff did not “allege any particular or specific activity, agreement, or state of mind on the part of either of the in-state distributor defendants”); *Beavers v. DePuy Orthopaedics, Inc.*, No. 1:11-dp-20275, 2012 WL 1945603 (N.D. Ohio May 30, 2012).

21. In *Beavers*, for example, the plaintiffs sued DePuy, Johnson & Johnson, Johnson & Johnson Services, Inc., and a non-diverse distributor called Orthopaedic Partners, LLC for injuries allegedly caused by the ASR Hip Implant device. DePuy and the Johnson & Johnson defendants removed the case to federal court on the ground that the distributor was fraudulently joined, and plaintiffs moved for remand. *Beavers*, 2012 WL 1945603, at *1-2. Applying federal pleading standards, the ASR MDL court found that the plaintiffs’ complaint lacked factual allegations to support plaintiffs’ claims against Orthopaedic Partners, LLC—and that the defendant was therefore fraudulently joined. According to Judge Katz, plaintiffs’ “allegations against Orthopaedic Partners, LLC, [fell] well below the threshold required to meet the plausibility standard required under *Twombly*.” *Id.* at *5.

22. Plaintiffs’ pleadings suffer from precisely the same flaws. Rule 8(a)(2) of the Federal Rules of Civil Procedure requires claimants to include in their complaint “a short and plain statement of the claim showing that the pleader is entitled to relief.” Yet, here, Plaintiffs do not allege any viable cause of action against GFC, instead “joining” into Defendant Megadyne’s not yet asserted comparative negligence affirmative defense, to claim damages for negligence. While Rule 8 and *Twombly* demand that Plaintiffs assert claims beyond the “speculative,” Plaintiffs’ negligence claim against GFC contains no factual matter

in support. [Compl. ¶¶ 38-41]. As such, Plaintiffs' negligence claim against GFC "fall[s] well below the threshold required to meet the plausibility standard required under *Twombly*." *Beavers*, 2012 WL 1945603, at *5.

23. For this reason too, GFC is fraudulently joined, and their citizenship must be disregarded for jurisdictional purposes.

C. The Amount in Controversy Exceeds the \$75,000 Threshold.

24. Although the initial pleading does not set forth the dollar amount requested, under 28 U.S.C. § 1446(c)(2)(B), removal of this action is proper because the amount in controversy exceeds \$75,000.00, exclusive of interests and costs.

25. Plaintiffs allege in their Complaint that "Sophie was badly burned by MEGADYNE'S return pad, went through extraordinary pain and suffering as a result, and will have to live with the consequences of the burns for the rest of her life." [Compl. ¶ 23]. Plaintiffs also allege that Sophie will need "Medical and supportive care expenses" for both past and future expenses. [Compl. ¶ 43].

26. It is widely recognized that personal injury claims facially meet the \$75,000 jurisdictional threshold. *See, e.g., Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014) ("[A] defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold."); *In re Rezulin Prods. Liab. Litig.*, 133 F.Supp. 2d 272, 296 (S.D.N.Y. 2001) (finding that a complaint alleging various injuries from taking a prescription

drug “obviously asserts a claim exceeding \$75,000”); *Smith v. Wyeth, Inc.*, 488 F. Supp. 2d 625, 630-31 (W.D. Ky. 2007) (denying motion to remand); *Copley v. Wyeth, Inc.*, No. 09-722, 2009 WL 1089663 (E.D. Pa. Apr. 22, 2009) (same).

27. Thus, the amount in controversy in this matter exceeds \$75,000, exclusive of interest and costs, as required by 28 U.S.C. § 1332(a).

II. OTHER REMOVAL REQUIREMENTS MET

28. Defendants’ Notice of Removal is timely under 28 U.S.C. § 1446(b)(3) because the Complaint was the first pleading from which Defendant first could ascertain that the case was removable and this Notice is filed within 30 days of service of the Summons and Complaint (which occurred on November 13, 2024). *See Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

29. The Montana Eighth Judicial District Court, Cascade County is located within the United States District Court for the District of Montana. *See* 28 U.S.C. §1441(a).

30. The removing defendant is not a citizen of the State of Montana, the State where this action was brought. *See* 28 U.S.C. §1441(b).

31. It is well settled that co-defendants who are fraudulently joined need not join in the removal. *See Borusk v. Mass Mut. Life Ins. Co.*, No. C 03-630 VRW, 2003 U.S. Dist. LEXIS 25259, at *7-8 (N.D. Cal. Sept. 4, 2003). As set forth above, GFC is fraudulently joined. Therefore, it need not consent to removal.

32. No previous application has been made for the release requested herein.

33. This Notice of Removal is in compliance with Rule 11 of the Federal Rules of Civil Procedure.

34. Copies of all pleadings filed and orders received in this matter are attached as **Exhibit A**.

35. The written notice required by 28 U.S.C. § 1446(d) will be promptly filed in the Montana Eighth Judicial District Court, Cascade County and will be promptly served on counsel for Plaintiffs.

36. Defendant will, upon filing of this notice of removal, give written notice to the above-named Plaintiffs and file with the Montana Eighth Judicial District Court, Cascade County, the notice of their filing and request for transfer pursuant to Rule 77(e), M. R. Civ. P. This case will then be removed from the state district court to the above-captioned United States District Court. *See Exhibit B*, Notice of Filing of Notice of Removal and Request for Transfer.

37. Defendant does not waive any legal defenses and expressly reserve their rights to raise any and all legal defenses in subsequent proceedings.

38. Removal of this action is not prohibited by 28 U.S.C. § 1445.

WHEREFORE, Defendants hereby remove this action from Montana Eighth Judicial District Court, Cascade County, bearing Cause No. DV-7-2024-0000563-

OC, to the Great Falls Division of the United States District Court for the District of Montana.

Dated: December 19, 2024

Davis, Hatley, Haffeman & Tighe, P.C.

/s/ Maxon R. Davis

Maxon R. Davis

Attorneys for Defendant

MEGADYNE MEDICAL

PRODUCTS, INC. (erroneously sued
herein as ETHICON, INC.)

EXHIBIT A



Service of Process Transmittal Summary

TO: Ra-Jcus Ldsop
Johnson & Johnson
1 JOHNSON AND JOHNSON PLZ
NEW BRUNSWICK, NJ 08933-0001

RE: Process Served in Montana

FOR: Ethicon, Inc. (Domestic State: NJ)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Re: HANNAH and KEVIN DIETERLE, individually and as natural parents of SOPHIE DIETERLE // To: Ethicon, Inc.

CASE #: DV720240000563OC

NATURE OF ACTION: Product Liability Litigation - Manufacturing Defect

PROCESS SERVED ON: C T Corporation System, Missoula, MT

DATE/METHOD OF SERVICE: By Traceable Mail on 11/19/2024

JURISDICTION SERVED: Montana

ACTION ITEMS: CT has retained the current log, Retain Date: 11/19/2024, Expected Purge Date: 11/24/2024

Image SOP

Email Notification, Ra-Jcus Ldsop ra-jcus-ldsop@its.jnj.com

Email Notification, DASIA Townes dtownes@its.jnj.com

Email Notification, Morgan Varella mvarelli@its.jnj.com

Email Notification, Lillian Maita lmaita1@its.jnj.com

REGISTERED AGENT CONTACT: C T Corporation System
3011 American Way
Missoula, MT 59808
855-844-0739
ServiceSolutionsTeam@wolterskluwer.com

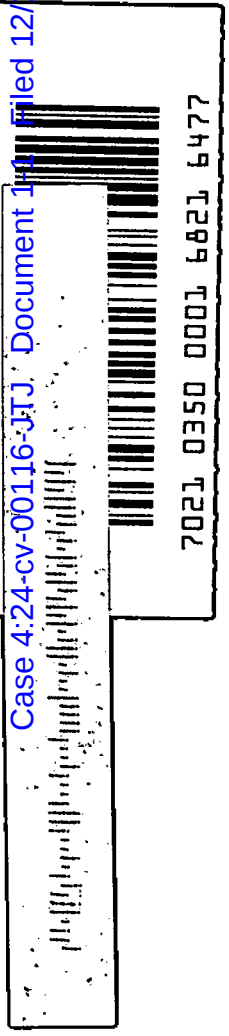
The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

Service of Process

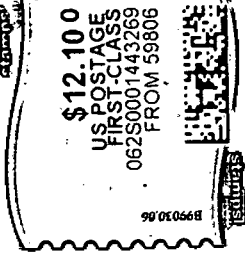
Date: Tue, Nov 19, 2024
Location: MT
Job ID: 553473-11
Method of Service: Traceable Mail
Portal UID: 553473-5865804

Inserts			





702J 0350 000J 682J 6477

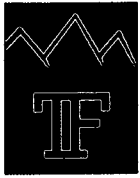


\$12.100
US POSTAGE
FIRST-CLASS
06250001443269
FROM 59806

Towe & Fitzpatrick, PLLC
619 S. W. Higgins, Suite O
P.O. Box 1745
Missoula, MT 59806

To:

CT Corporation System
3011 American Way
Missoula, MT 59808



TOWE & FITZPATRICK PLLC
ATTORNEYS AT LAW

MAILING ADDRESS:
P.O. Box 1745
Missoula, Montana 59806

OFFICE ADDRESS:
619 Southwest Higgins, Suite O
Missoula, Montana 59803

TELEPHONE: (406) 829-1669
Toll Free: (855) 748-8693
Fax: (406) 493-0538

James T. Towe, Esq.
John M. Fitzpatrick, Esq.
Kimberly L. Towe, Esq.

Mary Brown, Paralegal
Hayley Austin, Paralegal

November 13, 2024

Sent Via Certified Mail

Article No. 7021 0350 0001 6821 6477

Return Receipt Requested

CT Corporation System
3011 American Way
Missoula, MT 59808

Re: Dieterle vs. Ethicon Inc. and Great Falls Clinic, LLC., Cause No. DV-7-2024-0000563-OC

Dear Sir or Madam,

Enclosed are the following:

1. Notice of Lawsuit and Request to Acknowledge and Waive Service of a Summons;
2. Copy of the Complaint;
3. Copy of the Summons;
4. Copy of Plaintiffs' First Combined Discovery Requests to Defendant Ethicon, Inc.;
5. Two copies of the Acknowledgment and Waiver of Service of Summons; and
6. Stamped, self-addressed envelope.

Please sign and send the Acknowledgment and Waiver of Service of Summons back to me in the enclosed envelope.

Thank you for your time and attention. Please call if you have any questions or concerns.

Sincerely,

TOWE & FITZPATRICK, PLLC

John M. Fitzpatrick

Enclosures

cc: Clients

John M. Fitzpatrick, Esq.
TOWE & FITZPATRICK, PLLC
619 S.W. Higgins, Suite O
P.O. Box 1745
Missoula, MT 59806
Telephone: (406) 829-1669
Fax No.: (406) 493-0538
Email: jfitz@towefitzlaw.com

Attorneys for Plaintiffs

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

HANNAH and KEVIN DIETERLE,
individually and as natural parents of
SOPHIE DIETERLE,

Plaintiffs,

-vs-

ETHICON, INC., GREAT FALLS
CLINIC, LLC, and JOHN DOE
PERSONS, CORPORATIONS AND
ENTITIES 1-10,

Defendants.

) Cause No. DV-7-2024-0000563-
) OC
) Hon. John A. Kutzman
)

) NOTICE OF A LAWSUIT AND
) REQUEST TO ACKNOWLEDGE
) AND WAIVE SERVICE OF A
) SUMMONS

To: ETHICON, INC.

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the Complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you acknowledge and waive formal service of a summons by signing and returning the enclosed acknowledgment and waiver. To avoid these expenses, you must return the signed acknowledgment and waiver within 21 days (42 days if you are the State of Montana, a state agency, or a state officer or employee) from the date shown below, which is the date this notice was sent. Two copies of the acknowledgment and waiver are enclosed, along with a stamped, self-addressed envelope, or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

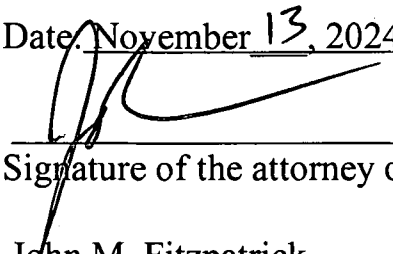
If you return the signed acknowledgment and waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 21 days from the date you sign the acknowledgment and waiver (42 days if you are the State of Montana, a state agency, or a state officer or employee sued in an official capacity) to answer the complaint.

If you do not return the signed acknowledgment and waiver within the time indicated, I will arrange to have the summons and complaint served on you, and I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date November 13, 2024



Signature of the attorney or unrepresented party

John M. Fitzpatrick

Printed name

619 SW Higgins, Suite O, Missoula, MT 59803

Address

jfitz@towefitzlaw.com

E-mail address

406-829-1669

Telephone number

John M. Fitzpatrick, Esq.
TOWE & FITZPATRICK, PLLC
619 S.W. Higgins, Suite O
P.O. Box 1745
Missoula, MT 59806
Telephone: (406) 829-1669
Fax No.: (406) 493-0538
Email: jfitz@towefitzlaw.com

Attorneys for Plaintiffs

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

HANNAH and KEVIN DIETERLE,	)	Cause No. DV-7-2024-0000563-
individually and as natural parents of	)	OC
SOPHIE DIETERLE,	)	Hon. John A. Kutzman
)	
Plaintiffs,	)	FIRST AMENDED
	)	COMPLAINT AND DEMAND
-vs-	)	FOR JURY TRIAL
)	
ETHICON, INC., GREAT FALLS)	
CLINIC, LLC, and JOHN DOE)	
PERSONS, CORPORATIONS AND)	
ENTITIES 1-10,)	
)	
Defendants.)	
)	

For their claims against the Defendants, the Plaintiffs allege as follows:

FACTS COMMON TO ALL CLAIMS

1. Hannah and Kevin Deiterle are the natural parents of Sophie Diterle, and are residents of Great Falls, Cascade County, Montana.

2. Defendant Ethicon, Inc., is a foreign profit corporation headquartered in Raritan, New Jersey. Defendant Ethicon is a surgical technology company whose business is to manufacture and sell surgical devices, including MEGADYN patient return electrode pads used in electrosurgery. Defendant Ethicon is registered to do business in the State of Montana.

3. In 2017, Ethicon acquired Megadyne Medical Products, Inc., and continues to manufacture, supply and sell Megadyne products under that name. As a result of the acquisition, Ethicon is legally liable and responsible for Megadyn products.

4. Defendant Great Falls Clinic, LLC (GFC), is a Montana LLC with its principal place of business in business in Great Falls, Cascade County, Montana.

5. John Doe Persons, Corporations and Business Entities 1-10 are persons, corporations, or entities who may qualify as "sellers" of the defective product that is at issue in this case, or may otherwise be liable for Plaintiffs' injuries, harms and losses.

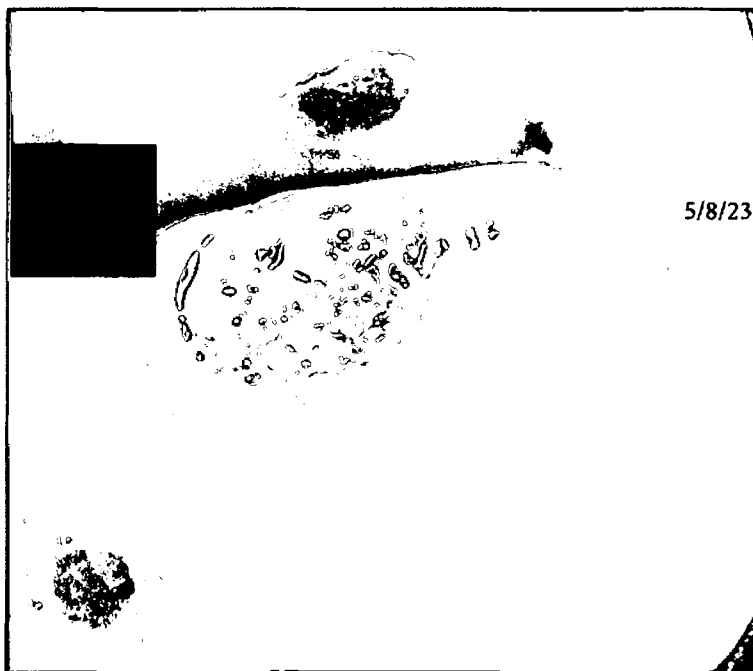
6. On April 20, 2023, 5-year-old Sophie Deiterle underwent a routine tonsillectomy surgery at GFC.

7. During the surgery, the doctor used electrosurgical instruments, including a MEGADYN patient return electrode pad manufactured, sold and/or supplied to GFC by Defendant Ethicon, Inc.

8. The morning after the procedure, Sophie's mom noticed blistering on areas of her bottom. Hannah brought Sophie in to be seen by the doctor and he prescribed burn cream and referred her to wound care.

9. The wound care provider documented three burn wounds on Sophie's backside. She described two as 2nd degree and the larger one (4 x 4 cm) as 3rd degree.

10. Sophie received mentally and physically painful wound care for the next three months. Her wounds interfered with her activities and quality of life. Her wounds were severe and painful, as demonstrated in the following photo from May 8, 2023:



11. On May 18, 2023, Sophie was seen by dermatologist Jonathan Bingham, MD. Dr. Bingham concluded that the wounds were burns and noted "the findings are concerning for possible burn injury from the electrosurgical unit."

12. Sophie's injuries are thermal burns.

13. Sophie's injuries are thermal burns from the Megadyn electrode grounding pad.

14. Sophie will have scarring from her burns for the rest of her life, and the associated psychological and physiological impacts that go along with them.

15. Sophie's parents sustained and continue to sustain mental distress as a result of seeing their little girl go through this horrific situation and knowledge she will have permanent scarring.

16. Return electrode alternative site burns can be caused by inappropriate placement and use of the grounding pad and/or a defective grounding pad.

17. According to a notice from the U.S. Food and Drug Administration, on May 10, 2024, MEGADYNE initiated a global discontinuation and voluntary recall of all MEGADYNE MEGA SOFT Pediatric Patient Return Electrodes. MEGADYNE removed the product because it received reports of patient burn injuries in procedures where the return electrodes were used.

18. A root cause investigation on the reports included testing which showed a combination of factors that, when present together, can result in burn injuries.

19. The combination of these conditions may be more likely when the pad is used with infants and small children.

20. The FDA identified this as a Class I recall, "the most serious type of

recall. Use of these devices may cause serious injuries or death.”

21. According to the FDA recall notice:

Megadyne has received reports of patient burn injuries, including third-degree burns requiring intervention. Burn injuries may lead to extended hospital stay, scarring, and additional surgeries in both pediatric and adult patients. Severe burns could lead to potentially long-lasting impacts on patients especially under the age of 12 years.

* * *

There have been 99 reported injuries.

22. The pad used during Sophie’s tonsillectomy was one of the defective pads recalled by Ethicon/Megadyne and the FDA.

23. Sophie was badly burned by MEGADYNE’S return pad, went through extraordinary pain and suffering as a result, and will have to live with the consequences of the burns for the rest of her life.

24. Sophie’s burns were caused by a defective product or a combination of a defective produce and improper use by the surgical team.

25. GFC alleges that Sophie’s burn injuries were caused by the defective Megadyne return electrode pad.

26. Ethicon/Megadyne allege that Sophie’s burns were caused by GFC’s improper use of the Megadyne return electrode pad.

///

COUNT I: Ethicon/Megadyne
(Strict Product Liability)

27. Plaintiffs reallege the allegations contained in the preceding paragraphs and incorporate them here by reference.

28. Ethicon designed, manufactured, distributed and/or sold the Megadyne return electrode pad that was used in Sophie's tonsillectomy.

29. Ethicon placed the defective product into the stream of commerce in the State of Montana.

30. Ethicon's return electrode pad was by design, manufacture and/or lack of warning, in a defective condition unreasonably dangerous to Sophie, as evidenced by its failure and the fact that it was recalled for this very issue.

31. The failure of the product was beyond that which would be expected by an ordinary user.

32. The product was unreasonably unsuitable for its intended and foreseeable purpose.

33. Defendant Ethicon is strictly liable for all of Plaintiffs' injuries, damages, harms and losses caused by the failure of its defective product.

COUNT II: Ethicon/Megadyne
(Breach of Warranty)

34. Plaintiffs reallege the allegations contained in the preceding paragraphs and incorporate them here by reference.

35. Under Montana law, implicit in every sale of goods is an implied warranty of merchantability, Mont. Code Ann. § 30-2-314, which warrants that the goods sold are fit for the ordinary purpose for which they are intended. Additionally, where the seller of goods has reason to know that they will be used for a particular purpose, a warranty that the goods will be fit for that purpose is implied in the sale, Mont. Code Ann. § 30-2-315.

36. Implicit in the sale and purchase of the product at issue in this action were warranties of merchantability and fitness for a particular purpose. These warranties warranted that the product would be fit and safe for the ordinary and particular purpose for which it was to be used.

37. The product was defective in design, material, manufacture and/or workmanship and was not fit for the use for which it was intended, as evidenced by the failure of the product and, therefore, Defendant Ethicon breached the implied warranties of merchantability and fitness for a particular purpose. As a result, Defendant Megadyne is liable for all of Plaintiffs' injuries, damages, harms and losses caused by the failure of the product.

COUNT III: GFC
(Negligence)

38. Plaintiffs reallege the allegations contained in the preceding paragraphs and incorporate them here by reference.

39. According to Ethicon, Sophie's burn injuries were caused by improper

use and/or placement of the return pad by GFC agents, employees and staff during Sophie's procedure.

40. To the extent Ethicon establishes that GFC provided substandard care and was negligent, Plaintiff also asserts those positions and GFC is liable for Plaintiffs' injuries, damages, harms and losses.

41. Defendants are jointly and severally liable to Plaintiffs for damages caused by the defective product and/or negligence.

Count IV
(Damages)

42. Plaintiffs reallege the allegations contained in the preceding paragraphs and incorporate them here by reference.

43. Plaintiffs seek all special and general damages allowed under Montana law including, without limitation, the following losses and damages:

- (a) Medical and supportive care expenses, past and future;
- (b) Disfigurement, mental and physical pain and suffering, past and future;
- (c) Loss of established course of life and quality of life;
- (d) Anxiety, worry, fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment and mental and emotional suffering and distress, past and future; and
- (e) All other special and general damages proved at trial.

WHEREFORE, Plaintiffs request judgment against the Defendants as

follows:

1. For all special, general and compensatory damages in a sum to be proven at the trial of this action;
2. For all costs and expenses of suit as are allowed by law;
3. For any and all interest allowed by law; and
4. For such other and further relief against the Defendants which this Court deems just and proper.

Dated this 13th day of November, 2024.

/s/ John M. Fitzpatrick
John M. Fitzpatrick
TOWE & FITZPATRICK, PLLC
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury of all issues of fact in this case.

Dated this 13th day of November, 2024.

/s/ John M. Fitzpatrick
John M. Fitzpatrick
TOWE & FITZPATRICK, PLLC
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, John M. Fitzpatrick, hereby certify that I have served true and accurate copies of the foregoing Complaint - Amended Complaint to the following on 11-13-2024:

Ethicon, Inc (Defendant)
Service Method: Certified Mail

Great Falls Clinic, LLC (Defendant)
PO Box 5012
Great Falls MT 59403
Service Method: Certified Mail

Electronically signed by Mary Brown on behalf of John M. Fitzpatrick
Dated: 11-13-2024

John M. Fitzpatrick, Esq.
TOWE & FITZPATRICK, PLLC
619 S.W. Higgins, Suite O
P.O. Box 1745
Missoula, MT 59806
Telephone: (406) 829-1669
Fax No.: (406) 493-0538
Email: jfitz@towefitzlaw.com

Attorneys for Plaintiffs

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

HANNAH and KEVIN DIETERLE,)
individually and as natural parents of)
SOPHIE DIETERLE,)

Plaintiffs,)

-vs-)

ETHICON, INC., GREAT FALLS)
CLINIC, LLC, and JOHN DOE)
PERSONS, CORPORATIONS AND)
ENTITIES 1-10,)

Defendants.)

Cause No. DV-7-2024-0000563-OC

SUMMONS Judge John A. Kutzman

To: ETHICON, INC.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you or (42 days if you are the State of Montana, a state agency, or a state officer or employee), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule

12 of the Montana Rules of Civil Procedure. Do not include the day you were served in your calculation of time. The answer or motion must be served on the plaintiff or plaintiff's attorney, if plaintiff is represented by an attorney, whose name and address are listed above.

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 THE DISTRICT COURT

Date: November 12, 2024

By: _____



John M. Fitzpatrick, Esq.
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619 S.W. Higgins, Suite O
P.O. Box 1745
Missoula, MT 59806
Telephone: (406) 829-1669
Fax No.: (406) 493-0538
Email: jfitz@towefitzlaw.com

Attorneys for Plaintiffs

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

HANNAH and KEVIN DIETERLE,	)	Cause No. DV-7-2024-0000563-
individually and as natural parents of	)	OC
SOPHIE DIETERLE,	)	Hon. John A. Kutzman
)	
Plaintiffs,)	
	)	PLAINTIFFS' FIRST
-vs-	)	COMBINED DISCOVERY
	)	REQUESTS TO DEFENDANT
ETHICON, INC., GREAT FALLS	)	ETHICON, INC.
CLINIC, LLC, and JOHN DOE)	
PERSONS, CORPORATIONS AND)	
ENTITIES 1-10,)	
)	
Defendants.)	
_____)	

TO: Ethicon, Inc.:

In answering these Interrogatories, Requests for Admission, and Requests for Production, you are required not only to furnish such information as you know

of your own personal knowledge, but also information available to you including, but not limited to, information in the possession of your attorneys, investigators, insurance carriers, or anyone else acting on your behalf or their behalf.

These Interrogatories, Requests for Admission, and Requests for Production shall be deemed continuing and supplemental answers shall be required to be filed promptly if Defendant directly or indirectly obtains further information of the nature sought herein between the time answers are served and time of trial.

DEFINITIONS

The following definitions shall be used herein absent clear indication to the contrary:

1. "Document" means any written, recorded, or graphic material of any kind, whether prepared by you or by any other person, that is in your possession, custody, or control. The term "document" also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable form. The term "document" includes all drafts of a document and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. A document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person
2. The term "files" as used herein shall mean the envelope, folder, file or other container in which documents are found.
3. To "identify" a person means to state the person's name, last known business address, telephone number and, if a natural person, last known residential address and telephone number and to state the employment positions held by such person at all times pertinent to this controversy.

4. The terms "you" and "your" include the named Defendant, its agents, employees, insurance companies, attorneys of any one else acting for or on its behalf.

5. The term "person" as used herein shall mean any natural person, company, corporation, association, partnership, joint venture, proprietorship, cooperative or other entity.

INTERROGATORY NO. 1: Do you expect to call any expert witness or witnesses at the trial of this action? If so, please provide the following additional information:

- (a) Identify each and every such expert;
- (b) State the subject matter on which the expert is expected to testify;
- (c) State the substance of the facts and opinions to which each such expert is to testify;
- (d) State a summary of the grounds for each opinion of each such expert.

If such expert maintains a resume or curriculum vitae, please produce true and correct copy of such document, pursuant to Rule 34, M.R.Civ.P.

ANSWER:

INTERROGATORY NO. 2: Please identify any and all policies of liability insurance that potentially cover, in whole or in part, the acts, errors and omissions alleged in the Complaint. Please also provide the following additional information:

- (a) Identify the insurance company providing coverage applicable to this

claim;

(b) State the limits of all insurance available to indemnify you against the claims (or any of them) asserted herein; and

(c) State a summary of the insurer's position with regard to coverage (i.e., if there is a coverage dispute, please state what the basis and or grounds for that dispute are).

ANSWER:

REQUEST FOR PRODUCTION NO. 1: Please produce a true and correct copy of each insurance policy, including the declarations page, identified in your answer to the preceding Interrogatory.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: Please produce true and correct copies of any and all reservation of rights letters, non-waiver letters/agreements, or other correspondence evidencing any coverage issue.

RESPONSE:

INTERROGATORY NO. 3: Identify any person who you believe or know to have knowledge of any facts relating to any allegation, contention or issue in this case and with respect to such persons, please identify any such person that you intend to call as a witness in the event of trial of this matter.

ANSWER:

INTERROGATORY NO. 4: With regard to the return electrode pad in the photographs attached as **Exhibit 1**, please:

- (a) Identify it by name, model number and product code;
- (b) Identify where and by whom it was manufactured;
- (c) State who distributed it;
- (d) State the identity of all retailers through whom it was marketed;
- (e) State the inclusive dates in which this model was manufactured;
- (f) If this model was discontinued, state when and why; and
- (g) State the most similar models to the model shown in the attached photos.

ANSWER:

REQUEST FOR ADMISSION NO. 1: Please admit the return electrode pad in the photographs attached as **Exhibit 1** is a Medadyne return electrode pad subject to recall because of reports of burn injuries.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: Please produce all documents, photographs, videos, records, complaints, correspondence, internal investigative reports, investigations, lawsuits, spreadsheets, files, and/or materials of any kind pertaining to reports of burn injuries involving Megadyne Mega Soft patient return electrodes.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4: Please produce all files, documents, and materials of any kind pertaining to communications between you and the FDA regarding issues involving Megadyne Mega Soft patient return electrodes.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5: Please produce all files, documents, or materials of any kind pertaining to communications between you and customers regarding issues involving Megadyne Mega Soft patient return electrodes.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6: Please produce the original IFU for the patient return electrode pad depicted in the photographs attached as Exhibit 1.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7: Please produce all corrections the the IFU for the patient return electrode pad depicted in the photographs attached as Exhibit 1.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8: Please produce the “Cleaning and Care Visual Aid and Placement and Setup Aid” associated with Megadyn Mega Soft patient return electrodes.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9: According to a FDA notice dated May 10, 2024:

A root cause investigation on the reports included testing which showed a combination of factors when present together may result in potential for thermal injuries.

Please produce all files, documents, or materials of any kind pertaining to root cause investigations and testing pertaining to reports of burn injuries from Megadyn Mega Soft patient return electrodes.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10: Please Produce any photographs, videotapes, motion pictures or any similar photographic evidence which pertains in any way to the claims and defenses asserted in this case.

RESPONSE:

REQUEST FOR ADMISSION NO. 2: Please admit that Sophie Dieterle sustained burn injuries during her tonsillectomy surgery.

RESPONSE:

REQUEST FOR ADMISSION NO. 3: Please admit that the burn injuries Sophie Dieterle sustained during surgery are consistent with other burn injuries reported from Megadyn Mega Soft patient return electrodes.

RESPONSE:

REQUEST FOR ADMISSION NO. 4: Please admit that you recalled the

Megadyn Mega Soft patient return electrode used in Sophie Dieterle's surgery because they were causing burns on children like the burns Sophie sustained.

RESPONSE:

REQUEST FOR ADMISSION NO. 5: Please admit that a patient return electrode that causes burns to children is unreasonably unsuitable for its intended or foreseeable purpose.

RESPONSE:

INTERROGATORY NO. 5: Is it your contention that Sophie Dieterle's injuries were caused, in whole or in part, by something other than the Megadyn Mega Soft patient return electrode? If so, please identify each other such person or entity and describe how, or in what manner, such other person or entity caused or contributed to Sophie's injuries or damages.

ANSWER:

REQUEST FOR PRODUCTION NO. 11: Identify and produce all documents upon which your contentions in your answer to the preceding interrogatory are based, in whole or part.

RESPONSE:

INTERROGATORY NO. 6: Do you contend that any of Sophie's health care providers are at fault for causing Sophie's injuries or damages? If so, please identify each such health care provider and describe how, or in what manner, such health care

provider caused or contributed to Sophie's injuries or damages.

ANSWER:

REQUEST FOR PRODUCTION NO. 12: Identify and produce all documents upon which your contentions in your answer to the preceding interrogatory are based, in whole or part.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13: If not already produced, please produce any and all files, records, or documents of any kind from any person or entity that you have received pertaining in any way to alleged burn injuries associated with use of Megadyn Mega Soft patient return electrodes, including the model shown in the photographs attached as Exhibit 1. [Note: this request includes, without limitation, production of information transmitted by any means, including writing and/or electronically, i.e., e-mail].

RESPONSE:

REQUEST FOR PRODUCTION NO. 14: If not already produced, please produce any and all complaints, formal or informal, or knowledge of any other incidents that you have ever received, in writing or otherwise, alleging (1) a defect or failure of a Megadyne Mega Soft patient return electrode and/or (2) injury or damage allegedly caused because of such defect or failure. (In your answer describe each complaint and/or incident separately and state the date of each and the name and

address of the individual making the complaint or sustaining the damage or injury).

RESPONSE:

REQUEST FOR PRODUCTION NO. 15: Please produce any and all advertising materials that you have produced or disseminated with respect to the Megadyne Mega Soft patient return electrode shown in the photographs attached as Exhibit 1.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16: Please produce copies of exemplar package inserts that would have come with the Megadyne Mega Soft patient return electrode shown in the photographs attached as Exhibit 1.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17: If you did not manufacture the Megadyne Mega Soft patient return electrode at issue, please produce copies of any agreements with the manufacturer pertaining to liability, indemnification or insurance.

RESPONSE:

REQUEST FOR PRODUCTION NO. 18: Please produce copies of any expert reports by both Plaintiffs and Defendants in litigation pertaining to burn injuries allegedly caused by Megadyne Mega Soft patient return electrodes.

RESPONSE:

REQUEST FOR PRODUCTION NO. 19: Please produce all pleadings and answers to discovery from any litigation involving burn injuries caused by the alleged failure or malfunction of a Megadyne Mega Soft patient return electrode.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20: Please produce all documents pertaining in any way to settlement of claims alleging burn injuries caused by Megadyne Mega Soft patient return electrodes.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21: Please produce any inter-company files, documents or materials discussing or pertaining to the issue of Megadyne Mega Soft patient return electrodes allegedly causing burn injuries.

RESPONSE:

INTERROGATORY NO. 7: Do you intend to refer to any learned text, treatise, journal article or other such publication, within the meaning of M. R. Evid. 803(18) either in support of any contention asserted by you in this action or in examination of any expert witness who may be called or identified by the Plaintiff? If so, please identify by appropriate bibliography each and every such item.

ANSWER:

REQUEST FOR PRODUCTION NO. 22: Please produce all files, documents, photographs, video recordings, audio recordings and other records, including

electronically stored records and information, pertaining to the recall of Megadyne Mega Soft patient return electrodes.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23: If not already produced, please produce all documents and records pertaining to investigation(s) of why Megadyne Mega Soft patient return electrodes were allegedly causing burn injuries.

RESPONSE:

INTERROGATORY NO. 8: When did you first become aware of reports of Megadyne Mega Soft patient return electrodes allegedly causing burn injuries?

ANSWER:

REQUEST FOR PRODUCTION NO. 24: Please produce all documents or materials pertaining to your response to the preceding interrogatory.

RESPONSE:

INTERROGATORY NO. 9: When did you first notify notify customers/health care providers that you had received reports of Megadyne Mega Soft patient return electrodes allegedly causing burn injuries?

ANSWER:

REQUEST FOR PRODUCTION NO. 25: Please produce all documents or materials pertaining to your response to the preceding interrogatory.

RESPONSE:

REQUEST FOR ADMISSION NO. 6: Please admit that you manufactured the Megadyne Mega Soft patient return electrode attached as Exhibit 1.

RESPONSE:

REQUEST FOR ADMISSION NO. 7: Please admit that you distributed the Megadyne Mega Soft patient return electrode attached as Exhibit 1.

RESPONSE:

REQUEST FOR ADMISSION NO. 8: Please admit that you sold the Megadyne Mega Soft patient return electrode attached as Exhibit 1.

RESPONSE:

INTERROGATORY NO. 10: If any of your answers to any of the Requests for Admission are anything other than an unqualified admission, please state, with particularity, the bases for your qualification or denial.

ANSWER:

INTERROGATORY NO. 11: Please state the name and position of all persons who helped in responding to these discovery requests.

ANSWER:

INTERROGATORY NO. 12: Please state and describe the factual and legal basis of each affirmative defense you contend you have to the claims asserted in Plaintiffs' Complaint and identify all facts, witnesses and documents supporting such affirmative defenses.

ANSWER:

REQUEST FOR PRODUCTION NO. 26: If any request for production is objected to based on a privilege, please provide in a privilege log:

(a) a description of the material withheld;

(b) the identity and position of its author;

(c) the date it was written;

(d) the identity and position of recipients;

(e) the material's present location; and

(f) the specific reasons for its being withheld, including the privilege invoked and the grounds thereof. [This is the minimum information needed to be responsive and compliant with Fed.R.Civ.P. 26(b)(5) *see Kephart v. Natl. Union Fire Ins. Co. of Pitt. Pa.*, 2007 WL 2253608].

RESPONSE:

REQUEST FOR PRODUCTION NO. 27: Please provide all files, documents and materials pertaining to the acquisition of Megadyne Medical Products, Inc.

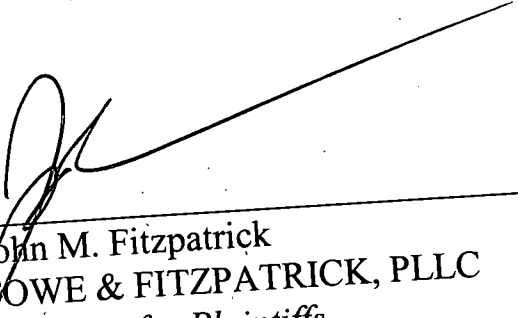
RESPONSE:

REQUEST FOR PRODUCTION NO. 28: Please provide all files, documents and materials pertaining to FDA approval of the Megadyne Mega Soft patient return electrodes subject to the recall.

RESPONSE:

Dated this 13 day of November, 2024.

By: _____


John M. Fitzpatrick
TOWE & FITZPATRICK, PLLC
Attorneys for Plaintiffs

John M. Fitzpatrick, Esq.
TOWE & FITZPATRICK, PLLC
619 S.W. Higgins, Suite O
P.O. Box 1745
Missoula, MT 59806
Telephone: (406) 829-1669
Fax No.: (406) 493-0538
Email: jfitz@towefitzlaw.com

Attorneys for Plaintiffs

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

HANNAH and KEVIN DIETERLE,	)	Cause No. DV-7-2024-0000563-
individually and as natural parents of	)	OC
SOPHIE DIETERLE,	)	Hon. John A. Kutzman
)	
Plaintiffs,	)	ACKNOWLEDGMENT AND
	)	WAIVER OF SERVICE OF
-vs-	)	SUMMONS (ETHICON, INC.)
)	
ETHICON, INC., GREAT FALLS)	
CLINIC, LLC, and JOHN DOE)	
PERSONS, CORPORATIONS AND)	
ENTITIES 1-10,)	
)	
Defendants.)	
)	

To: John M. Fitzpatrick
Towe & Fitzpatrick, PLLC
619 S.W. Higgins, Suite O
Missoula, MT 59806

I have received your request to acknowledge and waive service of a summons in this action along with a copy of the complaint, two copies of this

acknowledgment and waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Montana Rule of Civil Procedure 12 within 21 days from the date I sign this acknowledgment and waiver form (or 42 days if I am signing on behalf of the State of Montana, a state agency, or a state officer or employee).

If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature

Printed name

Relationship to entity or authority to receive service

Address

E-mail address

Telephone number

John M. Fitzpatrick, Esq.
TOWE & FITZPATRICK, PLLC
619 S.W. Higgins, Suite O
P.O. Box 1745
Missoula, MT 59806
Telephone: (406) 829-1669
Fax No.: (406) 493-0538
Email: jfitz@towefitzlaw.com

Attorneys for Plaintiffs

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

HANNAH and KEVIN DIETERLE,)
individually and as natural parents of)
SOPHIE DIETERLE,)

Plaintiffs,)

-vs-)

ETHICON, INC., GREAT FALLS)
CLINIC, LLC, and JOHN DOE)
PERSONS, CORPORATIONS AND)
ENTITIES 1-10,)

Defendants.)

Cause No. DV-7-2024-0000563-)
OC)
Hon. John A. Kutzman)

ACKNOWLEDGMENT AND)
WAIVER OF SERVICE OF)
SUMMONS (ETHICON, INC.))

To: John M. Fitzpatrick
Towe & Fitzpatrick, PLLC
619 S.W. Higgins, Suite O
Missoula, MT 59806

I have received your request to acknowledge and waive service of a
summons in this action along with a copy of the complaint, two copies of this

acknowledgment and waiver form, and a prepaid means of returning one signed copy of the form to you.

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If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature

Printed name

Relationship to entity or authority to receive service

Address

E-mail address

Telephone number

EXHIBIT B

Maxon R. Davis
Davis, Hatley, Haffeman & Tighe, P.C.
The Milwaukee Station, 3rd Floor
101 River Drive N.
Great Falls, MT 59401
Telephone: 406-761-5243
Email: max.davis@dhhtlaw.com
Attorneys for Defendant
MEGADYNE MEDICAL PRODUCTS, INC.
(Erroneously sued herein as ETHICON, INC.)

**MONTANA EIGHTH JUDICIAL DISTRICT COURT,
CASCADE COUNTY**

HANNAH and KEVIN DIETERLE,
individually and as natural parents of
SOPHIE DIETERLE,

Plaintiffs,

v.

ETHICON, INC., GREAT FALLS
CLINIC, LLC, and JOHN DOE
PERSONS, CORPORATIONS AND
ENTITIES 1-10,

Defendants.

No. DV-7-2024-0000563-OC

**NOTICE OF FILING NOTICE OF
REMOVAL AND REQUEST FOR
TRANSFER**

TO: Plaintiffs Hannah and Kevin Dieterle; and the Clerk of the Eighth Judicial District Court, Cascade County, Montana, MT 59401

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE THAT on the 19th day of December, 2024, the above-named Defendants in this matter filed a Notice of Removal in the United States District Court for the District of Montana, for the removal of the above-entitled action from the Montana Eighth Judicial

District Court, Cascade County, to the above-entitled District Court of the United States, and filed with the Clerk of Court a copy of the Notice of Removal. A copy of the Notice of Removal to the federal court is served upon you. *See Exhibit A.* Pursuant to Rule 77(e), M. R. Civ. P., request is made upon the Clerk of the Eighth Judicial District Court, Cascade County, Montana, that the file be transferred and promptly delivered to the Clerk of Court, United States District Court for the District of Montana.

Dated: December 19, 2024

Davis, Hatley, Haffeman & Tighe, P.C.

/s/ Maxon R. Davis

Maxon R. Davis
Attorneys for Defendant
MEGADYNE MEDICAL
PRODUCTS, INC. (erroneously sued
herein as ETHICON, INC.)

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: Hannah and Kevin Dieterle, individually and as natural parents of Sophie Dieterle. (b) County of Residence of First Listed Plaintiff: Cascade County, MT. (c) Attorneys: John M. Fitzpatrick, TOWE & FITZPATRICK, PLLC. DEFENDANTS: Megadyne Medical Products, Inc., erroneously sued as Ethicon, Inc. County of Residence of First Listed Defendant: Salt Lake County, UT. Attorneys: Maxon R. Davis, Davis, Hatley, Haffeman & Tighe, P.C.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
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.
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.
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, 880 Defend Trade Secrets Act of 2016.
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 (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 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.C. §§ 1332, 1441, and 1446
Brief description of cause: Products Liability action related to use of product manufactured by Defendant

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE: December 19, 2024 SIGNATURE OF ATTORNEY OF RECORD: [Signature]

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE