

revision surgery to remove the implant and have her left toe bones fused together. She has suffered and will suffer both economic and non-economic losses, including health care bills, untold pain and suffering, and loss of enjoyment of life.

The Defendant recalled the Cartiva implant on October 31, 2024. Until that time, neither surgeons nor their patients were aware of the unreasonably dangerous and defective propensities of the device.¹

PARTIES

1. Plaintiff is, and at all times relevant to this action was, a citizen and resident of the State of Maryland, with her place of residence located at 29 Beecham Court, Owings Mills, Maryland 21117 (Baltimore County).

2. Defendant Cartiva, Inc. is, and at all times relevant to this action was, a corporation with its principal place of business and headquarters located at 6120 Windward Parkway, Suite 220, Alpharetta, Georgia 30005. As a manufacturer of medical devices, Cartiva is, and at all times relevant was, subject to regulations and consensus industry standards governing the medical device industry, including those promulgated by the United States Food and Drug Administration (“FDA”).

3. At all times material hereto, Defendant developed, tested, assembled, manufactured, packaged, labeled, prepared, distributed, marketed, supplied, and/or sold the defective product sold under the name “Cartiva SCI” (Synthetic Cartilage Implant hereinafter referred to as “SCI” or “Defective Device”), either directly or indirectly, to members of the general

¹ See Urgent Medical Device Recall for Cartiva Synthetic Cartilage Implant, available at https://www.stryker.com/content/dam/stryker/foot-and-ankle/resources/CartivaFSN30Oct2024_US.pdf (last visited Jan. 21, 2026).

public within the State of Maryland, including Plaintiff.

4. Defendant's Defective Device was placed into the stream of interstate commerce and was implanted in Plaintiff's left great toe on or about August 3, 2017, at Mercy Medical Center in Baltimore, Maryland, by Clifford Jeng, M.D., an orthopedic surgeon and Medical Director of The Institute for Foot and Ankle Reconstruction at Mercy.

5. Plaintiff did not discover that the Defective Device was, in fact, defective until June 2025 when she learned about the Cartiva recall while doing online research. Therefore, Plaintiff did not know that her injuries may have been caused by the manufacturer's negligence, despite exercising reasonable diligence.

JURISDICTION AND VENUE

6. This Court has original jurisdiction pursuant to diversity jurisdiction prescribed by 28 U.S.C. § 1332 in that the amount of controversy exceeds \$75,000.00, exclusive of costs and interest, and involves citizens of different states.

7. Venue is proper in the U.S. District Court for the District of Maryland (Northern Division) pursuant to 28 U.S.C. § 1391 because it is the judicial district in which a substantial part of the events or omissions giving rise to the claim occurred and the Defendant is subject to personal jurisdiction in that District.

8. Defendant has submitted to the jurisdiction of this Honorable Court by doing, personally or through agents, at all times material to this lawsuit, the following acts:

- a. Committing tortious acts within this state by selling and delivering defective products, including the Defective Device, to persons, firms, corporations, physicians, or hospitals in this state via its distributors, dealers, wholesalers, retailers and/or brokers. Such products were used by healthcare providers on consumers/patients in the State of Maryland in the ordinary course of trade, commerce or healthcare;

- b. Conducting and engaging in substantial business and other activities in the State of Maryland by selling its products to persons, firms, corporations, physicians, or hospitals in this state via its distributors, dealers, wholesalers, retailers and/or brokers;
- c. Causing injuries to persons in the State of Maryland including Plaintiff, and likely others. Before, at or about the time of said injuries, the Defendant engaged in solicitation activities in the State of Maryland to promote the sale of its products;
- d. Selling defective products, including the Defective Device, with knowledge or reason to foresee that its product would be shipped in interstate commerce and would reach the market of users or consumers in the State of Maryland.

9. Upon information and belief, at all relevant times, Defendant was present and transacted, solicited, and conducted business in the State of Maryland through its employees, agents and/or sales representatives, and derived substantial revenue from such business.

10. Defendant is conclusively presumed to have been doing business in the State of Maryland and is subject to Maryland's long arm jurisdiction.

11. At all relevant times, Defendant expected or should have expected that its acts and omissions would have consequences within the United States and the State of Maryland.

GENERAL ALLEGATIONS

12. This lawsuit arises from the Defendant's negligence, choice to manufacture, market, and sell a defective product, and violations of various sections of the Federal Code of Regulations all of which caused harm to Plaintiff.

13. Big toe arthritis affects about 2.2 million people in the United States. As arthritis deteriorates the joint's cartilage a person develops an extremely painful bone-on-bone rubbing of the bones. This condition can be surgically treated with 1) Arthrodesis a/k/a "fusion" or 2)

Arthroplasty a/k/a “joint replacement,” including according to the Defendant’s representations, a Cartiva® SCI, which is supposed to act like a cushion to prevent the bone-on-bone pain.

A. Cartiva Implant Treatment Option

14. The Cartiva implant is a molded cylindrical implant that is placed into the metatarsal head in the first metatarsophalangeal joint via press-fit implantation using instruments specifically designed for placement of the device.²

15. Defendant touted Cartiva as a simple procedure, which enables surgeons to replace the damaged cartilage with a bullet-sized implant they can place into an intraoperatively created pilot hole in the first metatarsal head.

16. The Cartiva implant was promoted for use in the treatment of patients with painful degenerative or post-traumatic arthritis (hallux limitus or hallux rigidus) in the first metatarsophalangeal joint with or without the presence of mild hallux valgus.

17. The Cartiva instrumentation is used to drill an appropriately sized cavity in the metatarsal head and deploy the Cartiva implant into the prepared cavity.

18. Defendant claims that joint resurfacing with a Cartiva implant is simple, does not require significant removal of healthy tissue, and typically results in nominal surgical trauma and rapid recovery.³

19. Cartilage is a specialized tissue responsible for mediating contact between bones on surfaces with relative movement. Since cartilage is not vascularized, chondrocytes depend mainly on anaerobic metabolism and get their nutrients through diffusion from the synovial

² Home > For Physicians > Implant Procedure(<https://www.cartiva.net>) (<https://www.cartiva.net/for-physicians/>)

³ Id.

fluid into the matrix.

20. Cartilage does not restore itself or recover quickly from injury -- e.g. the complete turnover of the human femoral head cartilage would take approximately 400 years.⁴ Joint replacement with polyvinyl alcohol-based hydrogels (PVA), such as the one used in Cartiva, is a joint replacement alternative to traditional fusion treatment.

21. The biomechanical design of these implants relies on "hard-on-hard" and "hard-on-soft" interactions. This type of design does not mimic the soft-on-soft interactions that occur in natural cartilage.

22. PVA is biocompatible and has good swelling properties.⁵ But the characteristics of the resulting hydrogel could also be tailored by adjusting the production method or by combining PVA with other materials to produce a more suitable and stable material than the current design.

B. Fusion Treatment Option

23. In contrast to the implantation of a Cartiva, an arthrodesis (hereinafter "fusion") is a procedure where the phalangeal and metatarsal bones are cut and shaped to fit (fuse) together to relieve toe joint pain.

24. The two bones are then aligned, set at a predetermined angle and permanently fixed with either screws and/or a plate so the two bones "fuse" together permanently. A typical fusion procedure eliminates the ability to move the big toe but eliminates the patient's pain.

C. A Questionable Study Raises Questions by Insurance Carriers

⁴ Maroudas a. Physicochemical properties of cartilage in the light of ion exchange theory. *Biophys J.* 1968;8(5):575-595. doi:10.1016/S0006-3495(68)86509-9

⁵ Id.

25. Defendant has a duty to be truthful about the risks of their products in marketing and promotion of the product. Yet, Defendant has suppressed medical industry knowledge from the FDA and public that Cartiva implants have a high failure rate due to migration of the implant caused by implant shrinkage.

26. Defendant obtained Premarket Approval Application (“PMA”) approval for Cartiva as a Class III device, yet the approval was largely based on the “substantial equivalence” of the Cartiva implant performing similarly to the gold standard treatment of fusion. Substantial equivalence is generally used for Class II medical devices and evades a full FDA safety review.

27. The pivotal clinical study (“Motion Study”)⁶ compared the Cartiva implant to the traditional gold standard fusion treatment. The study was a non-inferiority clinical study of 202 subjects treated at 12 sites in the United Kingdom and Canada. The “Motion Study,” put simply, is a comparison to a fusion procedure. However, the results of the Motion Study have not been replicated in clinical practice and the Cartiva failure rate is much higher.⁷

28. The Motion Study has been widely criticized by industry experts because of its insufficient sample size prompting Cigna to deem the use of the Cartiva implant to treat big toe arthritis “experimental” based upon the lack of sufficient scientific evidence to support the successful treatment claims made by Defendant.⁸

⁶ Baumhauer JF, Singh D, Glazebrook M, Blundell C, De Vries G, Le IL, Nielsen D, Pedersen ME, Sakellariou A, Solan M, Wansbrough G, Younger AS, Daniels T; for and on behalf of the CARTIVA Motion Study Group. Prospective, Randomized, Multi-centered Clinical Trial Assessing Safety and Efficacy of a Synthetic Cartilage Implant Versus First Metatarsophalangeal Arthrodesis in Advanced Hallux Rigidus. *Foot Ankle Int.* 2016 May;37(5):457-69. doi: 10.1177/1071100716635560. Epub 2016 Feb 27. PMID: 26922669.

⁷ <https://www.medtechdive.com/news/wright-medical-shares-tumble-amid-report-of-cartiva-slowdown/558132/>

⁸ Partial or total replacement of the first MTP joint or any other foot joint using ANY of the following is considered experimental, investigational or unproven: Page 2 of 12 Medical Coverage Policy: 0446; ceramic implant (e.g., Moje prosthesis [Orthosonics, Ltd., Devon UK]); synthetic cartilage implant (e.g., Cartiva Synthetic Cartilage Implant)

29. In support of its position, Cigna cited a report by Hayes, Inc.⁹ which found that individual outcome measures were inconsistent and some suggested better outcomes with arthrodesis. Patients treated with Cartiva SCI reported statistically significantly worse pain scores (i.e., more pain) when compared with the arthrodesis group from six weeks to two years post-procedure. The Hayes report concluded that the very-low-quality body of evidence relied upon by the Defendant was insufficient to draw conclusions regarding the effectiveness and safety of the Cartiva implant for treatment of first MTP joint arthritis. Hayes Inc. noted that substantial uncertainty exists regarding the efficacy and benefit of the Cartiva implant due to a single identified trial, inconsistencies within the individual study results, and lack of long-term comparative effectiveness data. Hayes, Inc., and, in turn, Cigna, concluded that large studies assessing the comparative effectiveness and safety of the Cartiva implant are needed.

30. The Defendant's Motion Study reported on a prospective, randomized non-inferiority study to compare the efficacy and safety of the Cartiva implant to great toe fusion surgery for advanced-stage hallux rigidus. The study included 152 implants and 50 arthrodesis patients. The three primary study outcomes assessed were pain, function, and safety. There were no cases of implant fragmentation, wear, or bone loss. This study is the basis of the PMA approval for the Cartiva implant.

31. Cigna also recognized that clinical practice guidelines suggest a different implant design is recommended which renders the Cartiva implant unreasonably dangerous by design. Clinical practice guidelines published by the First Metatarsophalangeal Joint Disorders Panel of the American College of Foot and Ankle Surgeons in 2003 states that interposition

⁹ Hayes, Inc. Hayes Health Technology Brief. Cartiva Synthetic Cartilage Implant (Wright Medical Group) for Treatment of First Metatarsophalangeal Joint Arthritis. Hayes, Inc.; March 2019; updated May 2020.

arthroplasty with double-stem silicone hinged implants is still a useful procedure for the end-state arthrosis of hallux, and that titanium grommets are recommended to minimize ectopic bone formation and protect the implant from the adjacent bone. In addressing total joint systems, the guideline states that numerous implant systems have been developed during the years and several are still used clinically, although long-term clinical usefulness has yet to be established. Judicious use and strict criteria are recommended to avoid complications and problematic revisions (Vanore, et al., 2003).

32. Outside the U.S., NICE published Interventional Procedure Guidance in 2005 based on analysis of seven case series: Hanyu et al. (2001); Sharnkar, et al., (1991); Cracchiolo et al., (1992); Granberry et al., (1991); Bommireddy et al., (2003); Ibrihim et al., (2004); and Malviya et al., (2004). The guidance also states there is little evidence on the durability of newer implants, and that complications may necessitate removal of the joint. These complications include persistent pain, infection, implant loosening, implant fracture, osteolysis, bone over-production, cyst formation, silastic granulomas and transfer metatarsalgia.

D. Defendant Suppressed Adverse Data from FDA and Medical Providers

33. On information and belief, Defendant had knowledge at all relevant times of the clinical guidelines and outside studies mentioned herein but has suppressed the medical data and information and failed to update the label, failed to update physicians, and failed to voluntarily recall the defective device.

34. A follow up to the “Motion Study”, Baumhauer et al. (2017) (“Motion II Study”), a study funded by Defendant, retrospectively evaluated the Motion Study finding identical success rates between fusion surgery and the Cartiva implant.

35. These claimed success rates, however, do not exist in clinical practice. Actual patient results have reported failure rates of 64% as opposed to the 13.5% failure rate Defendant reported to the FDA. A 2020 study by Rosas revealed high failure rates of the Cartiva implant in patients with Hallux Rigidus and significant radiologic subsidence with lysis around the implant, erosion of the proximal phalanx countersurface as well as recorded implant wear are harbingers for concern in the long term.¹⁰

36. One of the conditions of approval required a post-approval study (“PAS”) that demonstrates no greater than 13.5% complication rate and tracking the number of patients that were converted to arthrodesis (a/k/a fusion) surgery.

37. On July 12, 2019, the FDA approved Defendant’s updated label based upon the findings of the Post-Approval Motion Study to include implant subsidence. However, Defendant incorrectly claimed a majority (76%; 13/17) of the Cartiva serious adverse events were for pain. Additionally, Defendant incorrectly stated in the updated label that 9.2% of Cartiva subjects and 12% of fusion subjects had the implant and/or hardware removed during the course of the study. On information and belief, Defendant has misrepresented the failure rates to the FDA by labeling the adverse event as pain rather than implant subsidence.

38. Prior to the implantation of Plaintiff’s Cartiva implant, Defendant was aware of higher than reported loss of toe mobility, pain, and high failure rates of the Cartiva implant due to shrinkage including but not limited to over 144 adverse event reports filed with the FDA.

39. To date there are at least 144 adverse event reports in the Maude database with the majority of events attributed to implant loosening or failure. The loosening is likely due to shrinkage of the implant that is well supported by peer-reviewed literature mentioned herein.

¹⁰ Rosas K, Hurley ET, Kennedy JG. Early Failures of Polyvinyl Alcohol Hydrogel Implant for the Treatment of Hallux Rigidus. *Foot & Ankle Orthopaedics*. October 2020. doi:10.1177/2473011420S00414

40. The Patient Brochure for the Defective Device does not list loss of range of motion of the toe, bone lysis, shrinkage of implant, bone erosion or the inability to walk as a known risk of the Cartiva implant. Plaintiff relied upon the representations made to her in the Patient Brochure, provided to her directly and/or communicated by her healthcare provider, which formed the basis of her decision to use the Cartiva implant.

41. Device migration was underreported as a risk that occurred in 1 out of 152 patients in a two-year clinical study. However, upon information and belief, Defendant's label and patient brochures failed to provide Plaintiff with information relating to the true failure rate due to migration and prevalence of those failures sufficient for her to make an informed decision prior to her surgery.

42. Defendant's label reflects a Cartiva implant failure of 13.5%. However, in view of continual and ongoing reports and studies, the actual rate of failure of the defective Cartiva device is likely 6-7 times higher than Defendant's reported failure rate, which it is believed the Defendant knew of before December 2019.

43. Unfortunately, for patients with Cartiva implant failure, many in the medical community believe that loss of toe range of motion is a symptom of shrinkage (aka implant subsidence), which is a precursor to failure. By any account, the number of Cartiva implant failures is not only exponentially greater than Defendant will admit but the failure rate has reached alarming proportions.

44. However, during the time Defendant marketed, labeled, and sold the Cartiva implant to Plaintiff, Defendant knew or should have known that the likelihood of patients experiencing implant shrinkage was significantly higher than they reported, and in fact is higher

than any comparable product on the market and that pain and discomfort would be a likely consequence of implant shrinkage and migration.

45. The Cartiva implant was touted as a revolution in great toe arthritis therapy. It came out with a splash and the original studies to get the implant through FDA approval showed striking results.

46. Bob Baravarian, DPM, FACFAS, was involved in helping launch Cartiva and educating other surgeons on the proper use of the Cartiva SCI. However, Dr. Baravarian's clinic, University Foot and Ankle Institute, began to see failures due to the implant slipping into the bone, a process referred to as subsidence. Dr. Baravarian and his clinic will no longer use Cartiva, because the failures of Cartiva implants in clinical practice occur more frequently than

the results noted in Cartiva's "Motion Study".¹¹ "Currently, we no longer use the Cartiva implant as a treatment option for first MPJ arthritis as we have found an over 50 percent failure rate in our cases."

47. Dr. Baravarian is not alone in his findings, a retrospective review of 64 Cartiva SCI procedures by Cedars Sinai Medical Center showed a higher level of patient dissatisfaction with implant outcomes than was seen in Cartiva's Motion Study clinical trial. In the Cedars Sinai trial 37.5% of the patients underwent revision surgery at average 20.9 months of follow-up. More importantly, the radiographic loss of MTP (great toe) joint space and progression of arthritis were present for all cases studied. MRI revealed bony channel widening and a smaller implant-evidence of subsidence (a/k/a shrinkage) with peri-implant fluid suggesting instability at the implant-bone interface. Persistent edema was observed in soft tissues and bone.

¹¹ <https://www.hmpgloballearningnetwork.com/site/podiatry/examining-obligations-when-implant-procedure-fails-reflections-surgeon>

E. Defendant Issued a Recall of the Cartiva SCI Device

48. As failure rates continued to rise, Defendant issued a recall of the Cartiva SCI device on October 31, 2024 based on reports, including the Rosas study, indicating patients, including Plaintiff, who received a Cartiva SCI implant experienced alarmingly high rates of revision, removal, displacement, pain, or nerve damage that were higher than previously disclosed in premarket and post-approval studies.

49. The recall notice instructed healthcare providers to remove and quarantine any remaining Cartiva SCI devices in their inventory and return them to Stryker. It also asked physicians to continue monitoring their patients, and look for new or worsening symptoms including pain, and difficulties walking.

50. A recall is an alternative to a Food and Drug Administration-initiated court action for removing or correcting violative, distributed products by setting forth specific recall procedures for the Food and Drug Administration to monitor recalls and assess the adequacy of a firm's efforts in recall. See 21 CFR § 7.40(a).

51. The Defendant knew or should have known the Cartiva SCI should have been recalled long before October 31, 2024, in violation of federal regulations including making an adulterated device that proximately and directly caused Plaintiff's injuries and damages.

F. Degradation of Cartiva (PVA Gel Implant)

52. The Cartiva implant is a polyvinyl membrane gel implant. Cartiva implants have had degradation of the PVA membrane noted in the Rosas study with findings of loosening, marring and deformity of the implant.

53. Upon information and belief, Plaintiff's Cartiva implant had loosening of the implant due to shrinkage, marring and deformity of the implant caused by PVA degradation which directly and proximately caused implant failure, subsequent multiple surgeries, pain, loss of mobility and bone.

54. The PVA degradation is not an anticipated or intended outcome of the manufacture of the Cartiva implant.

55. The PVA degradation is a mechanical defect that rendered the Cartiva implant inserted in the Plaintiff defective and unreasonably dangerous.

56. The importance of *swelling behavior* is connected to the mechanical and tribological properties of the Cartiva SCI hydrogel, as well as how swelling behavior impacts the risk of implant failure. In 2007, PVA hydrogels were used for treatment of knee cartilage defects in adult rabbits. Results revealed growth over the implant and implant shrinkage.¹² Gels can react to osmotic gradients and swell and de-swell accordingly, even in hydrated conditions. This volume change may induce detachment from the tissue or implant and interfacial debonding.¹³

57. Since Cartiva implants are composed of PVA which is soluble in water, crosslinking is a crucial step for PVA gel formation. Without a stable structure, the gel is not able to withstand the swelling pressure upon fluid intake and may dissolve.¹⁴

¹² Maher SA, Doty SB, Torzilli PA, et al. Nondegradable hydrogels for the treatment of focal cartilage defects. *J Biomed Mater Res - Part A*. 2007;83(1):145-155. doi:10.1002/jbm.a.31255

¹³ Carolina Borges, Rogério Colaço & Ana Paula Serro (2019) Poly(vinyl alcohol)-based hydrogels for joint prosthesis, *Annals of Medicine*, 51:sup1, 105, DOI: 10.1080/07853890.2018.156271

¹⁴ Peppas NA. *Hydrogels in Medicine and Pharmacy*. Boca Raton: CRC Press; 1989

58. Cartiva is a proprietary PVA-based hydrogel, and its production consists of successive freeze-thawing cycles.

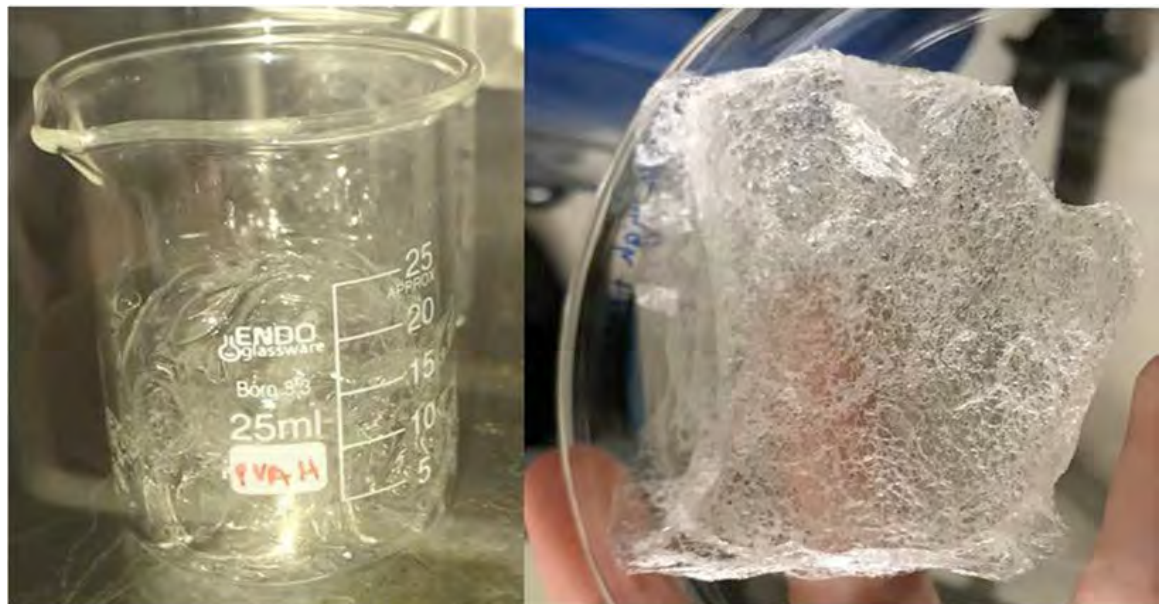
59. The Cartiva implant is a PVA-based hydrogel. PVA hydrogels are problematic because the method of manufacturing may result in 1) air bubbles, 2) PVA clumping, 3) fragility of the PVA hydrogel, 4) improper binding of crystallites, 5) disintegration and 6) striation.



Partially disintegrated Freeze Thawed PVA gel



Striations on gel caused by rapid cooling and oxygenation of pre gel solution.



Effects of vacuum on gelation of PVA cause air bubbles to be trapped inside hydrogel.



Semi-irreversible contracture of thick PVA hydrogel

60. Manufacturing methods are more problematic for thicker gels like the Cartiva implant. Thicker gels are prone to a lot more variation, and small tweaks in temperature and aeration can contribute to these variations. Consistent temperature and aeration are much harder to produce on a larger scale in a manufacturing environment.

61. The violations of federal regulations, including but not limited to making an adulterated device because the manufacture of the defective device failed to meet established performance standards, or if the methods, facilities or controls used for its manufacture, packing, storage or installation are not in conformity with federal requirements proximately and directly caused Plaintiff's injuries and damages. See 21 U.S.C. §351.

G. Product Representations

62. Defendant's label and patient brochure failed to provide accurate substantive or quantitative prevalence rates of failure or other adverse effects to Plaintiff prior to her surgery.

63. Defendant has represented in patient marketing literature that Cartiva is a quick 35-minute procedure where your physician replaces the damaged cartilage in your big toe with a new synthetic cartilage that behaves like the natural cartilage of your big toe joint.

64. Defendant additionally told patients, including Plaintiff, that “movement matters” further stating in marketing materials - “Your big toe joint is uniquely designed for movement and provides most of the force needed for walking and running. Unlike fusion surgery, which locks the joint in place, CARTIVA Synthetic Cartilage Implant (SCI) reduces pain while also allowing your joint to move how it’s supposed to.”

65. In addition to promises about the increased toe mobility and function, Defendant alleges in marketing that the Cartiva implant is proven to provide long-term pain reduction and increased foot mobility, with 97% reduction in pain demonstrated at almost six years post-procedure. These statements exceed the scope of the FDA approved label.

66. Plaintiff was induced to purchase/use a Cartiva implant based on the Defendant’s representations about the safety and efficacy of the product. Furthermore, Plaintiff has endured medical expenses, loss of income, and pain and suffering based upon her reliance on Defendant’s product representations and will continue to have future expenses to repair the bodily harm caused by the defective Cartiva implant.

67. Defendant’s labeling was false and/or misleading. Defendant violated the federal regulations in the labeling of Plaintiff’s Cartiva implant thereby causing a misbranded medical device to be ultimately implanted into Plaintiff’s body.

68. The conditional approval letter relating to the Cartiva implant stated: “CDRH does not evaluate information related to contract liability warranties, however you should be aware

that any such warranty statements must be truthful, accurate, and not misleading, and must be consistent with applicable Federal and State laws”.

69. Failure to comply with the conditions of approval invalidates this approval order.

70. Commercial distribution of a device that is not in compliance with these conditions is a violation of the Food, Drug and Cosmetic Act. 21 U.S.C. §§ 301 et seq.

71. Defendant violated the conditional approval requirements and consequently the federal regulations in, among other things, making untrue, inaccurate and/or misleading statements regarding Plaintiff’s Cartiva implant. If Defendant had not made these statements and violated the requirements and regulations, Plaintiff would have chosen an alternative treatment option or a different device for implantation into her body.

I. Defendant Failed to Comply with PMA-Post-Approval Surveillance Study

72. The PMA approval order of the Cartiva implant required Defendant to collect data to assess the following primary and secondary study endpoints:

- a. **Primary Study Endpoints-** The primary endpoint will evaluate the long-term safety of the Cartiva implant by demonstrating the following:
 - i. Durability of the implant over the longer term.
 - ii. Assessment of no unanticipated safety concerns that arise after Month 24 up to 5 years.

Addressed by:

- 1. determining the incidence of serious device-related

adverse events per year and overall from Month 24 to Year 5; and

2. summarizing device-related radiographic major complications over time from Month 24 to Year 5.

b. Provide the following **secondary endpoints**:

- i. Evaluation of maintenance of range of motion;
- ii. Wear characteristics or device degradation for any Cartiva implant removed;
- iii. Pain and function over time (Visual Analog Scale [VAS] pain scores, Foot and Ankle Ability Measure [FAAM] Activities of Daily Living [ADL] function scores and FAAM Sports function scores); and
- iv. Evaluation of radiographic findings (radiolucency, bony reactions, and heterotopic ossification) looking at presence or progression from 24 months to 5+ years as well as correlation with the 5+ years clinical outcomes (effectiveness and safety).

73. In addition to *not* following the PMA post-approval orders, Defendant has largely ignored the endpoints the FDA placed in the PMA to protect public safety. The safety data the FDA established did not narrow the Defendant's focus to the Motion study participants. Yet, Defendant has violated the FDA's PMA order by not assessing the safety of each endpoint for each device with reported adverse events, including the Plaintiff's defective device.

74. The lack of safety surveillance served to suppress information from the FDA in violation of the PMA order and the lack of safety surveillance makes the product unreasonably dangerous to end consumers, including Plaintiff.

75. Defendant failed to develop practices and procedures to assure compliance with 21 C.F.R. § 814 concerning device modifications, instructions for use, pre-market approval conditions; and to comply with 21 C.F.R. §§803, 806 and 820, concerning maintaining MDRs, implementing Device Removals and Corrections and establishing Quality Systems.

76. Defendant failed to develop practices and procedures to assure compliance with the federal requirements for reporting adverse events, or MDRs, in accordance with 21 U.S.C. §360.

77. Despite the obligations described above, and the obligations of every medical device manufacturer to comply with federal law, Defendant failed to meet numerous federal requirements in their manufacture and sale of the Cartiva implant prior to Plaintiff's surgery and implantation of her Cartiva device which caused her to have implanted a defective and adulterated device causing her injuries and damages.

78. Defendant's failure to meet the specific federal requirements outlined above which are applicable to Plaintiff's Cartiva implant, directly and proximately caused Plaintiff's Cartiva implant to be defective and proximately caused harm and injury to Plaintiff.

79. The causes of action set forth in this complaint are not preempted by § 360k, because the violations alleged are all based on an exclusively federal statutory and regulatory standard of care which includes no "requirement, which is different from, or in addition to, any requirement applicable under" the Food, Drug and Cosmetic Act and regulations promulgated thereunder. As such, the claims set forth in this cause of action contain requirements that are parallel to the Food, Drug and Cosmetic Act and regulations promulgated thereunder.

J. Defendant's Corporate Facts

80. Prior to obtaining FDA approval, Cartiva, Inc., raised revenue on July 24, 2013 with an equity funding by offering a round of Regulation D security offerings totaling Four Million Three Hundred Twelve Thousand and Seven Hundred Twelve Dollars (\$4,312,712.00).

81. Three years later on July 1, 2016 Cartiva, Inc. obtained premarket approval of the Cartiva SCI.

82. On or about October 10, 2018, Wright Medical Group purchased Cartiva, Inc. for Four Hundred Thirty-Five Million Dollars (\$435,000,000). Stock analysts considered it a hefty price tag but also were impressed with strong early adoption of Cartiva SCI, which offers an alternative to fusion surgery which is the gold standard for treating severe arthritis in the big toe.

83. Despite the initial excitement at product launch, stock analysts quickly caught wind of the reports of Cartiva implant failure. By July 2019, RBC stock analysts found some surgeons were implanting fewer of the devices or they had even stopped offering the treatment altogether. Problems with post-operative pain, degree of motion, or the device slipping into the bone in a process known as subsidence (“shrinkage”) were reported. Doctors have been unable to replicate the positive results of the company's Motion clinical trial in the broader patient population and have stopped implanting the device or are more cautious about using it. Despite analyst concerns that physicians were dropping the offering of Cartiva SCI to patients due to failed implants, Wright Medical Group CEO Bob Palmisano remained upbeat on prospects for Cartiva.

84. On the company's earnings call in May 2019, Palmisano said sales growth for the device was exceeding expectations, and he identified the market for treatment of big toe arthritis as a \$400 million opportunity.

85. The failure rate of the Cartiva SCI was much higher in clinical practice than reported in the Motion Study. Wright Medical Group CEO Bob Palmisano confirmed Cartiva sales in the second quarter of 2019 fell short of Wright's expectations while touting Wright still maintained gross profit margins of 79%. Palmisano further commented,

“The unexpected weakness in our U.S. lower extremities business was due to a combination of factors, including the significant reduction in sales by the Cartiva distributors and disappointing performance in our core foot products driven by a higher-than-normal level of sales rep turnover that occurred in a concentrated period of time mid-quarter. To address this, we acted quickly and terminated the Cartiva distributors, and as of August 1, the U.S. Cartiva business has been transitioned to our direct U.S. lower extremities sales force. **We also adjusted the sales compensation program for our entire U.S. lower extremities sales team and are increasing the size of the sales force and aggressively adding experienced reps. We are confident that the actions we have taken will improve the growth rates of Cartiva** and the whole U.S. lower extremities business; however it will take some time for the benefits of these actions to be evident in the sales results, and we believe our updated guidance takes that timing appropriately into account.”

86. Stryker, B.V., a wholly owned subsidiary of Stryker, purchased Wright Medical Group on or about November 11, 2020 for Four Billion Seven Hundred Thousand Dollars (\$4,700,000,000.00).¹⁴

87. The basis of the “Motion Study” that helped Cartiva gain FDA approval was premised upon a claim that there was a less than 10% failure of the Cartiva implant group that would require subsequent conversion to fusion surgery within the first two years of the implant.¹⁵

88. Defendant alleged the Cartiva implant was determined to be statistically

¹⁴ <https://investors.stryker.com/press-releases/news-details/2020/Stryker-completes-acquisition-of-Wright-Medical/default.aspx>

¹⁵ Baumhauer JF, Singh D, Glazebrook M, Blundell C, De Vries G, Le IL, Nielsen D, Pedersen ME, Sakellariou A, Solan M, Wansbrough G, Younger AS, Daniels T; for and on behalf of the CARTIVA Motion Study Group. Prospective, Randomized, Multi-centered Clinical Trial Assessing Safety and Efficacy of a Synthetic Cartilage Implant Versus First Metatarsophalangeal Arthrodesis in Advanced Hallux Rigidus. *Foot Ankle Int.* 2016 May;37(5):457-69. doi: 10.1177/1071100716635560. Epub 2016 Feb 27. PMID: 26922669.

equivalent to arthrodesis (fusion surgery) but with the added benefit of greater mobility and less surgical downtime.

89. Initial results for the Cartiva implant were encouraging, however, unbiased reviewers adopted the position that more independent, non-industry funded research is necessary with larger cohorts to identify implant survivorship and long-term efficacy¹⁶ - something the FDA had already required the Defendant to do in the PMA approval order.

90. Since 2016, Defendant, Stryker, f/k/a Cartiva, has manufactured, introduced and/or delivered the Cartiva SCI into the stream of interstate commerce in clear violation of the PMA order issued by the FDA.

91. Before commercially distributing the Cartiva SCI in the United States, federal law required Defendant, Stryker f/k/a Cartiva, Inc to submit an application for premarket approval (“PMA”) of the device to the Secretary of Health and Human Services. On July 1, 2016, the Food and Drug Administration (“FDA”) completed its review of Defendant, Cartiva, Inc.’s PMA application for the Cartiva implant.

92. Based on the materials submitted by Defendant, Stryker f/k/a Cartiva, the FDA conditionally approved the Cartiva implant for commercial distribution.¹⁷ The conditional approval letter from the FDA stated that “[c]ommercial distribution of a device that is not in compliance with these conditions is a violation of the [Food, Drug and Cosmetic] act, [21 U.S.C. §§301, et seq.]”

K. Plaintiff’s Case Specific Allegations – Her Cartiva Implant

¹⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7067982/pdf/main.pdf>

¹⁷ PMA # P150017

93. On or about April 2017, the Plaintiff consulted with Dr. Clifford Jeng at the Institute for Foot & Ankle Surgery at Mercy, complaining of bilateral big toe pain.

94. Dr. Jeng diagnosed the Plaintiff with hallux rigidus, a type of arthritis causing pain, stiffness and limited motion in the big toe joint due to cartilage breakdown, making it hard to bend the toe, walk, or even stand.

95. Dr. Jeng recommended surgery, and thus on or about August 3, 2017, Dr. Jeng performed surgery on Plaintiff whereby the Defective Product was implanted in her left great toe. Specifically, the following components of said system were used:

- a. Placer;
- b. Placement guide Pin;
- c. Introducer;
- d. Metatarsal Drill Bit; and
- e. Cartiva Implant.

96. This surgery and the recovery were extremely painful.

97. Regrettably, the pain in her foot continued without resolution.

98. She returned to Dr. Jeng on multiple occasions until, not finding resolution, she agreed to undergo surgery to remove the implant.

99. On or about January 11, 2022, Dr. Jeng performed the removal surgery at Mercy Medical Center.

100. Dr. Jeng did not tell her that the implant device was defective, and of course, she did not know that it would later be recalled.

101. As a direct and proximate result of Defendant placing the Defective Product into the stream of commerce, Plaintiff has suffered and continues to suffer both injuries and damages including but not limited to: past, present and future physical and mental pain and suffering, and loss of the ability to enjoy the pleasures of life, and disfigurement; and past, present and future medical, hospital, monitoring, rehabilitative and pharmaceutical expenses and lost wages.

102. As a result of the implantation of the Defective Device, Plaintiff has suffered additional medical expenses for removal of the implant, subsequent surgery to "fuse" her big toe bones together, all of which was needed to correct the toe deformity and bone loss caused by the Defective Device, and causing additional loss of income, and pain and suffering.

103. Plaintiff pleads that the discovery rule should be applied to toll the running of the statute of limitations until Plaintiff knew, or through the exercise of reasonable care and diligence should have known, of facts indicating that the Plaintiff had been injured, the cause of the injury and the tortious nature of the wrongdoing that caused the injury.

104. Plaintiff's discovery of Cartiva defects is premised on Defendant's communications with physicians, sales representatives and/or distributors and the FDA that failures of a successful Cartiva implant were due to surgical technique and not the implant.

105. Despite diligent investigation by Plaintiff into the cause of her injuries, including consultations with Plaintiff's medical providers, the nature of Plaintiff's injuries and damages and their relation to the Plaintiff's Cartiva and Defendant's wrongful conduct was delayed and could not have been discovered, until a date within the applicable statute of limitations for filing each of Plaintiff's claims.

106. Any applicable statutes of limitations have been tolled by the knowing and

active concealment and denial of material facts known by the Defendant when it had a duty to disclose those facts. The Defendant's purposeful and fraudulent acts of concealment have kept Plaintiff ignorant of vital information essential to the pursuit of Plaintiff's claims, without any fault or lack of diligence on Plaintiff's part, for the purpose of obtaining delay on Plaintiff's filing of her causes of action. The Defendant's fraudulent concealment did result in such delay.

107. Defendant is estopped from relying on the statute of limitations defense because Defendant failed to timely disclose, among other things, facts evidencing the defective and unreasonably dangerous nature of its Cartiva implants.

COUNT I
(Strict Products Liability)

108. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

109. The SCI implanted in Plaintiff on August 3, 2017 was designed and/or manufactured in violation of the Federal Food, Drug and Cosmetic Act ("Act") and regulations promulgated pursuant to it, including but not limited to improper workmanship and errors at the point of manufacture which caused defects in the SCIs that occurred in the manufacturing process. These defects caused Plaintiff's SCI to shrink and migrate from the initial implant site causing pain, loss of mobility and bone loss due to the defective product.

110. At the time the Cartiva SCI was implanted in Plaintiff on August 3, 2017 it was not reasonably safe due to non-compliance by Defendant and the regulations promulgated pursuant to it in one or more of the following ways:

- a. Failed to accurately establish the in vivo life expectancy of the Cartiva SCI, in violation of 21 C.F.R. § 820.30(f). There have been reports of

synthetic cartilage implant failure with ballooning osteolytic cyst formation throughout the first metatarsal head.¹⁸

- b. Failed to validate the anticipated wear of the Cartiva SCI prior to its release into commercial distribution, in violation of 21 C.F.R. § 820.30(g). Despite peer-reviewed literature backed by radiological evidence that SCI does not perform as expected long-term as seen in the Rosas and Fogelman literature, Defendant has not reported these findings to the FDA or undertaken any similar study;
- c. Failed to establish and maintain appropriate reliability assurance testing to validate the Cartiva design both before and after its entry into the marketplace, in violation of 21 C.F.R. § 820.30(g);
- d. Failed to conduct adequate bio-compatibility studies to determine the Cartiva implant's propensity to migrate from the joint space. Radiologic evidence of implant shrinkage is evident in peer-reviewed literature, but Defendant has not undertaken studies to analyze the implant shrinkage when exposed to deep matrix bone;
- e. Failed to identify the component discrepancy, in violation of 21 C.F.R. § 820.80(c);
- f. Failed to capture the component discrepancy or defect during their Final Acceptance Activities, in violation of 21 C.F.R. § 820.80(d);
- g. Failed to establish and maintain procedures for implementing corrective and preventative action in response to, inter alia, complaints regarding the Cartiva, returned Cartiva, and other quality problems associated with the Cartiva, in violation of 21 C.F.R. § 820.100;
- h. Failed to appropriately respond to adverse incident reports that strongly indicated the Cartiva implant was Malfunctioning [as defined in 21 C.F.R. § 803.3], or otherwise not responding to its Design Objection Intent, in violation of 21 C.F.R. § 820.198. Physician complaints report failure rates of 50-64% with Cartiva implants and Defendant has largely ignored the clinical evidence by not adequately responding to adverse incident reports or initiating a voluntary recall;
- i. Failed to conduct complete device investigations on returned Cartiva implants and components in violation of 21 C.F.R. § 820.198. Defendant has failed to investigate and analyze Cartiva implant failures;

¹⁸ Fogleman J, Robles A, Hollyfield J, Whitlow S, Lundeen GA. Failed Hydrogel Synthetic Cartilage Implant With Osteolytic Cyst Formation in the First Metatarsophalangeal Joint. *Foot & Ankle Orthopaedics*. July 2020. doi:10.1177/2473011420934384

and/or

- j. Continued to inject Cartiva implants into the stream of interstate commerce when Defendant knew, or should have known, that the Cartiva implants were Malfunctioning [as defined in 21 C.F.R. § 803.3] or otherwise not responding to its Design Objective Intent. Multiple press releases by Wright demonstrate an awareness of high Cartiva failure rates coupled with physicians ceasing to use SCI, but Defendant responded to these failures by increasing sales commissions and aggressive sales strategies.

111. The defects existing in the Cartiva SCI implanted in Plaintiff existed at the time the Defective Device was in Defendant's possession, insofar as (i) one or more were defective because they deviated in a material way from the manufacturer's or designer's specifications, (ii) such defective condition rendered them unreasonably dangerous to the user, and (iii) such condition proximately caused the damages for which recovery is sought herein.

112. At all relevant times, there existed a feasible alternative design and/or procedure that would have prevented the harm and injury which occurred to Plaintiff.

113. This cause of action is based entirely on the contention that Defendant violated federal safety statutes and regulations. Plaintiff does not bring the underlying action as an implied statutory cause of action, but rather they are pursuing parallel state common law claims based upon Defendant's violations of the applicable federal regulations.

114. Under Maryland law, Defendant's violations of the aforementioned federal statutes and regulations establish an inference of products liability that can be asserted in Maryland: defective design, defective manufacturing, and failure-to-warn.

115. The cause of action set forth in this Claim for Relief is not preempted by 21 U.S.C. § 306(k) because the violations alleged are all based on an exclusively federal statutory and regulatory set of requirements which include no "requirement, which is different from, or in

addition to, any requirement applicable under” the Act and regulations promulgated thereunder.¹⁹ As such, the claims set forth herein contain requirements that are parallel to the Act and regulations promulgated thereunder and not preempted.

116. As a direct and proximate result of Defendant’s violations of one or more of these federal statutory and regulatory standards of care, the Cartiva implant implanted in Plaintiff failed and such failure directly caused and/or contributed to the severe and permanent injuries sustained and endured by Plaintiff as defined in 21 C.F.R. § 803.3.

117. As a direct and proximate result, Plaintiff endured pain and suffering, including, but not limited to failure of the Cartiva SCI, migration of the implant with swelling and pain, bone loss, loss of mobility which will require additional fusion surgeries and she has incurred significant medical expenses in the past and will incur additional medical expenses in the future; physical pain and suffering, both past and future; mental anguish and emotional distress, both past and future, including, but not limited to, annoyance and aggravation.

COUNT II
(Negligent Design, Manufacture and/or Distribution)

118. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

119. Plaintiff is in the class of persons that Defendant should reasonably foresee as being subject to the harm caused by defectively designed Cartiva SCI insofar as Plaintiff was the type of person for whom the Cartiva SCI was intended to be used.

¹⁹ “We concluded that federal manufacturing and labeling requirements applicable across the board to almost all medical devices did not pre-empt the common-law claims of negligence and strict liability at issue in *Lohr. Riegel v. Medtronic, Inc.*, 552 U.S. 312, 322 (2008).

120. At all times herein mentioned, Defendant created, designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and/or distributed its SCI as herein above described that was used by the Plaintiff.

121. Defendant could reasonably have foreseen that its SCI was expected to and did reach the usual consumers, handlers, and persons coming into contact with said product without substantial change in the condition in which they were produced, manufactured, sold, distributed and marketed by Defendant.

122. The SCI inserted into Plaintiff on August 3, 2017 was a Class III device while the instruments used to insert SCIs are all Class II devices designed and/or manufactured by Defendant and placed into the interstate stream of commerce. Defendant marketed, distributed and/or permitted use of its SCI in violation of the Act and regulations promulgated pursuant to it.

123. It was the duty of Defendant to comply with the Act, and the regulations promulgated pursuant to it, yet, notwithstanding this duty, Defendant violated the Act in one or more of the following ways:

- a. Failed to accurately establish the in vivo life expectancy of the Cartiva, in violation of 21 C.F.R. § 820.30(f);
- b. Failed to accurately validate the anticipated wear of the Cartiva SCI prior to its release into commercial distribution, in violation of 21 C.F.R. § 820.30(g) and the PMA approval order for the SCI;
- c. Failed to establish and maintain appropriate reliability assurance testing to validate the Cartiva SCI design both before and after its entry into the marketplace, in violation of 21 C.F.R. § 820.30 (g) and the PMA approval order for the SCI;
- d. Failed to conduct adequate bio-compatibility studies to determine the Cartiva SCI's latent propensity to loosen, migrate into bone and fail to integrate into the joint space as required by the PMA approval order for Cartiva;

- e. Failed to identify the component discrepancy, in violation of 21 C.F.R. § 820.80(c);
- f. Failed to capture the component discrepancy or defect during their Final Acceptance Activities, in violation of 21 C.F.R. § 820.80(d) and as required by the PMA approval for the SCI;
- g. Failed to establish and maintain procedures for implementing corrective and preventative action in response to, inter alia, complaints regarding the Cartiva SCI, returned Cartiva SCI, and other quality problems associated with the Cartiva SCI, in violation of 21 C.F.R. § 820.100 and the PMA approval order for the SCI;
- h. Failed to appropriately respond to adverse incident reports that strongly indicated the SCI was Malfunctioning [as defined in 21 C.F.R. § 803.3], or otherwise not responding to its Design Objection Intent, in violation of 21 C.F.R. § 820.198 and the PMA approval order for the SCI;
- i. Failed to conduct complete device investigations on returned SCIs and components, in violation of 21 C.F.R. § 820.198 and the PMA approval order for the SCI; and/or

124. Failed to comply with the FDA policies and procedures to transfer ownership of the 510k and/or PMA. Without proper transfer of ownership pursuant to FDA requirements it is not certain the SCIs with current Defendant are within the PMA issued for Cartiva, which means preemption is a non-issue for an unregulated manufacturer.

125. The SCI and accompanying instruments have been owned by three corporations: Cartiva (2015–2017), Wright (2018–2020) and Stryker (2020-present). Yet, the 510k for instruments and the SCI is still listed with the FDA as Cartiva with no PMA Supplement approving new manufacturing sites with ownership changes which implies the FDA has not reviewed or approved ownership of the 510k transfer.

126. The following is the FDA timeline:

Date	FDA Action	Approval Number
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7/1/16	PMA Approval	P150017
8/25/16	PMA Supplement- Change vendor of foil lidstock used to seal primary packaging of SCI device.	S001
9/29/16	PMA Supplement-Approval of protocol for ODE lead PMA Post Approval Study.	S002
11/1/16	PMA Supplement- Approval of 8- and 20-unit shipping configurations for smaller orders	S003
1/6/17	PMA Supplement- Change is supplier of a component used in manufacture of Cartiva SCI	S004
3/1/17	PMA Supplement/Label Change- Modifications to Surgical implantation Technique Guide	S005
11/9/17	PMA Supplement- Expansion of Manufacturing facility	S006
1/29/18	SCI Instruments Reclassified as Class II device.	Q180170
8/28/18	PMA Supplement-Approval of manufacturing site for instruments to Arcamed LLC.	S007
7/2/18	PMA Supplement- Approval of an alternate raw material provider.	S008
7/2/18	PMA Supplement- Add additional clean room for manufacture of SCI.	S009
7/11/19	PMA Supplement- Approval of addition of 6 mm and 12 mm sizes of SCI to the previously approved 8 mm and 10 mm device.	S010
7/12/19	PMA Supplement/Label change based on findings of PAS.	S011

3/22/19	PMA Supplement-Approval to add clarifying statement regarding need for irrigation during drilling within Instructions for Use and the Surgical Implantation Technique for the SCI.	S012
2/9/20	PMA Supplement- add manufacturing site at Steris Synergy Health in Saxonburg, PA.	S013
11/26/19	PMA Supplement - Expanded release criteria of final finished device to accept those that have a homogenously opaque appearance	S014

127. The FDA does permit 510k transfers with the caveat that two companies may not manufacture the same device under a single 510k clearance. Therefore, if a 510k holder wishes to license the right to manufacture a device but also wishes to continue its own manufacturing activity, the FDA's policy is to require the licensee to obtain a new 510(k) clearance.

128. When the holder of an approved PMA enters into an agreement to permit another firm to manufacture and distribute a device under the licensee's private label, FDA approval may be obtained by either of two procedures: (i) the PMA holder may submit a supplement to the approved PMA; or (ii) the licensee may submit an original PMA that includes, or includes by authorized reference to the holder's approved PMA, all appropriate information required by 21 C.F.R. § 814.20 (required information for PMA applications). There is no evidence on the FDA medical device database that the SCI used in Plaintiff was manufactured or marketed with FDA approval for Wright or Stryker.

129. As a direct and proximate result of Defendant's violations of one or more of these federal statutory and regulatory standards of care, the Cartiva implant was used on the Plaintiff and failed and such failure directly caused and/or contributed to the severe and permanent injuries sustained and endured by Plaintiff, as defined in 21 C.F.R. § 803.3. As

a direct result, Plaintiff endured pain and suffering, including, but not limited to the scarring and disfigurement, and has required additional and debilitating surgeries and has incurred significant medical expenses in the past and will incur additional medical expenses in the future; physical pain and suffering, both past and future; mental anguish and emotional distress, both past and future, including, but not limited to, annoyance and aggravation.

130. This cause of action is based entirely on the contention that Defendant violated federal safety statutes and regulations. Plaintiff did not bring the underlying action as an implied statutory cause of action, but rather she is pursuing parallel state common law claims based upon Defendant's violations of the applicable federal regulations.

131. Under Maryland law, Defendant's violations of the aforementioned federal statutes and regulations establish a prima facie case of negligence. Defendant created, designed, researched, manufactured, tested, advertised, promoted, marketed, sold and distributed a defective product which created an unreasonable risk to the health of consumers and to Plaintiff, in particular, and Defendant is therefore liable for the injuries sustained by the Plaintiff.

132. The cause of action set forth in this Claim for Relief is not preempted by 21 U.S.C. § 306(k) because the violations alleged are all based on an exclusively federal statutory and regulatory set of requirements which include no "requirement, which is different from, or in addition to, any requirement applicable under" the Act and regulations promulgated thereunder. As such, the claims set forth herein contain requirements that are parallel to the Act and regulations promulgated thereunder and not preempted.²⁰

²⁰ In *Riegel*, the Court noted that § 360k "does not prevent a State from providing a damages remedy for claims premised on a violation of FDA regulations; the state duties in such a case 'parallel,' rather than add to federal requirements." 552 U.S. at 330.

COUNT III
(Misbranded and Adulterated Device)

133. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

134. Plaintiff has endured painful surgeries, scarring and nerve damage caused by the defective Cartiva implants. The original SCI was a Class III device, and all instruments used to insert the SCI are Class II devices designed and/or manufactured by Defendant and placed into the interstate stream of commerce.

135. Defendant marketed, distributed and/or permitted use of its SCI and insertion instruments in violation of the Act and regulations promulgated to it.

136. It was the duty of Defendant to comply with the Act, and the regulations promulgated pursuant to it, yet, notwithstanding this duty, Defendant violated the Act in one or more of the following ways:

- a. Failed to submit a PMA supplement to warn of risk of implant shrinkage, migration and bone loss for review and approval as required by the FDA. 21 C.F.R. §814.39 and PMA approval order for the SCI. Despite Defendant's knowledge of higher failure rates than previously reported to the FDA, Defendant chose to do nothing. It is the Defendant, not the FDA, who had a duty to report the failure rates and manufacturing problems to the FDA. The burden for determining whether a supplement is required is primarily on the PMA holder, changes for which an applicant shall submit a PMA supplement include, but are not limited to, the following types of changes if they affect the safety or effectiveness of the device:
 - i. New indications for use of the device.

- ii. Labeling changes.
 - iii. The use of a different facility or establishment to manufacture, process, or package the device.
 - iv. Changes in sterilization procedures.
 - v. Changes in packaging.
 - vi. Changes in the performance or design specifications, circuits, components, ingredients, principle of operation, or physical layout of the device.
- b. Defendant sold, distributed and permitted use of its devices in violation of the regulations prescribed under 21 U.S.C. § 360j(e) and 21 U.S.C. § 352(q) which required design validation and manufacturing controls to assure the Defendant would not produce a medical device with impurities or inconsistencies. Defendant also had a duty to provide a label that was truthful about the risks associated with the SCI and Defendant has failed to do so;
- c. Failed to restrict the use of the SCI and instruments in violation of 21 U.S.C. § 352(r) and the PMA approval order for Cartiva. The Cartiva PMA approval order provided the device is further restricted under section 515(d)(1)(B)(ii) of the act insofar as the labeling must specify the specific training or experience practitioners need in order to use the device. In direct violation of the PMA order, Defendant's Directions For Use merely state, "The Cartiva SCI device should only be used by experienced surgeons who have undergone training in the use of this device". There is no limitation on the physician experience-specialty type, years of experience nor do the instructions provide any details about the type of training required. The PMA approval order further states the FDA has determined that these restrictions on sale and distribution are necessary to provide reasonable assurance of the safety and effectiveness of the device. Your device is therefore a restricted device subject to the requirements in sections 502(q) and (r) of the act, in addition to the many other FDA requirements governing the manufacture, distribution, and marketing of devices. As mentioned herein, Defendant had a duty to print on the label and marketing of the Cartiva implant all relevant warnings, precautions, side effects, instructions for use and contraindications and has failed to issue any warnings beyond the generalizations provided in the label;
- d. Failed to comply with the requirements of 21 U.S.C. § 360i which provides a device manufacturer shall report to the FDA when the manufacturer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices may have caused

or contributed to a death or serious injury, or has malfunctioned and that such device or a similar device marketed by the manufacturer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. As mentioned herein, Defendant has knowledge that failure rates are higher than reported to the FDA, yet Defendant has taken no action to protect the public, including Plaintiff from harm caused by the SCI; and

- e. Defendant failed to comply with 21 U.S.C. § 360l which required Defendant to submit a surveillance plan for its device once commercial distribution began to detect adverse health events to the public. Instead, Defendant relied solely on the Motion Study to continue with commercial distribution ignoring the adverse event reports and other studies correlating findings that the failure rate is 6–7 times higher than reported by Defendant.

137. As a direct and proximate result of Defendant’s violations of one or more of these federal statutory and regulatory standards of care, Plaintiff had a SCI implanted using Cartiva instruments and it failed, and such failure directly caused and/or contributed to the severe and permanent injuries sustained and endured by Plaintiff as defined in 21 C.F.R. § 803.3. As a direct result, Plaintiff endured suffering, including, but not limited to, recurrent dislocations and subluxations with swelling, toe enlargement, and has required additional and debilitating surgeries and has incurred significant medical expenses in the past and will incur additional medical expenses in the future; physical pain and suffering, both past and future; mental anguish and emotional distress, both past and future, including, but not limited to, annoyance and aggravation.

138. This cause of action is based entirely on the contention that Defendant violated federal safety statutes and regulations. Plaintiff does not bring the underlying action as an implied statutory cause of action, but rather she is pursuing parallel state common law claims based upon Defendant’s violations of the applicable federal regulations.

139. The cause of action set forth in this Claim for Relief is not preempted by 21 U.S.C. § 306(k) because the violations alleged are all based on an exclusively federal statutory and

regulatory set of requirements which include no “requirement, which is different from, or in addition to, any requirement applicable under” the Act and regulations promulgated thereunder.²¹ As such, the claims set forth herein contain requirements that are parallel to the Act and regulations promulgated thereunder and not preempted.

140. As a direct and proximate result of Defendant violations of one or more of these federal statutory and regulatory standards of care, the Cartiva implant implanted in Plaintiff, failed and such failure directly caused and/or contributed to the severe and permanent injuries sustained and endured by Plaintiff as defined in 21 C.F.R. § 803.3.

141. As a direct and proximate result, Plaintiff endured pain and suffering, including, but not limited to failure of the SCI, migration of the implant with swelling and pain, bone loss, loss of mobility which will require additional fusion surgeries and she has incurred significant medical expenses in the past and will incur additional medical expenses in the future; physical pain and suffering, both past and future; mental anguish and emotional distress, both past and future, including, but not limited to, annoyance and aggravation.

COUNT IV
(Common Law Product Liability and Negligence)

142. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

143. The SCI and corresponding Cartiva instruments used on Plaintiff on August 3, 2017 were designed, manufactured and distributed by Defendant and placed into the stream of

²¹ “We concluded that federal manufacturing and labeling requirements applicable across the board to almost all medical devices did not pre-empt the common-law claims of negligence and strict liability at issue in *Lohr. Riegel v. Medtronic, Inc.*, 552 U.S. 312, 322 (2008).

interstate commerce by Defendant. Said components were defective in design and/or manufacture. Said defects existed when the components left the hands of Defendant making the components unreasonably dangerous beyond the contemplation of the ordinary user.

144. Defendant further failed to provide appropriate warnings regarding the potential dangers associated with the use of said components, including warnings regarding the risk of migration and shrinkage of the SCI, such as was experienced by Plaintiff.

145. As a direct and proximate result of the design and/or manufacturing defects, failure to warn and breach of express and implied warranties related to Defendant's SCI and corresponding instruments designed, manufactured, distributed, sold and/or placed into the stream of commerce by the Defendant, Plaintiff suffered severe and permanent injuries, including, but not limited to, scarring and disfigurement, pain and suffering and has required additional and debilitating surgeries and has incurred significant medical expenses in the past and will incur additional medical expenses in the future; physical pain and suffering, both past and future; mental anguish and emotional distress, both past and future, including, but not limited to, annoyance and aggravation; and has suffered damages in an amount in excess of Seventy Five Thousand Dollars (\$75,000.00).

COUNT V
(Breach of Express Warranty)

146. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

147. Under Maryland Law, Maryland Commercial Law Code Annotated § 2-313, Defendant expressly warranted, as described above and herein, directly to the Plaintiff that the

Cartiva SCI was safe and effective for use when it was not. Defendant, through its own statements, expressly warranted that the Cartiva SCI was safe and effective and that the Cartiva SCI when distributed would conform to that express affirmation, and Plaintiff relied on those express affirmations in her decision to use the Cartiva SCI.

148. Defendant knew that the Cartiva implant had problems, including but not limited to shrinkage and migration out of joint space into the bone. Defendant advertised Cartiva implants as a non-invasive procedure, designed to quickly restore toe mobility with a simple procedure. None of Defendant's advertising, marketing, or informational materials to the Plaintiff, mentioned that Cartiva had the ability to cause a condition that results in a permanent disfigurement to the body that can only be resolved through invasive surgeries resulting in the opposite effect of the device's advertised purpose.

149. Plaintiff relied on the skill and judgment of the Defendant that the device was adequately tested and rendered safe to use for its intended purpose.

150. Plaintiff became interested in and underwent the SCI implant procedure based on the Defendant's representation about the procedure.

151. Because of the innate defective nature of the SCI, Plaintiff and the individuals performing the SCI procedure on Plaintiff, through the use of reasonable care, could not have discovered the defective nature of the Cartiva device or its perceived dangers.

152. As the direct and proximate result of Defendant's conduct, Plaintiff sustained serious injuries that were directly caused by the defective, unsafe, and unreasonably dangerous Cartiva implant that could not safely be used for the purpose for which it was marketed, advertised, promoted and intended.

153. As the direct and proximate result of Defendant's wrongful conduct, Plaintiff

suffered and continues to suffer economic losses, emotional distress, permanent disfigurement, physical pain, mental anguish, diminished enjoyment of life and future medical expenses.

COUNT VI
(Breach of Implied Warranty)

154. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

155. At all times herein mentioned, Defendant manufactured, compounded, portrayed, distributed, recommended, merchandised, advertised, promoted and sold its SCI and instruments.

156. At the time Defendant marketed, sold, and distributed its SCI and instruments to be used on Plaintiff, Defendant knew of the use for which its SCI was intended and impliedly warranted the product to be of merchantable quality and safe and fit for such use.

157. Defendant impliedly represented and warranted to the users of its Cartiva devices and/or their physicians, and/or healthcare providers, and/or the FDA that its SCIs were safe and of merchantable quality and fit for the ordinary purpose for which said products were to be used.

158. Said representations and warranties aforementioned were false, misleading, and inaccurate in that its SCIs were not reasonably safe, improper, not of merchantable quality, and defective.

159. Plaintiff and/or members of the medical community and/or healthcare professionals did rely on said implied warranties of merchantability and fitness for a particular use and purpose.

160. Plaintiff and/or her physicians and/or healthcare professionals reasonably relied upon the skill and judgment of Defendant as to whether its SCIs were of merchantable quality and safe and fit for its intended use.

161. Defendant's SCIs were injected into the stream of commerce by Defendant in a defective, unsafe, and inherently dangerous condition and the products and materials were expected to and did reach users, handlers, and persons coming into contact with said products without substantial change in the condition in which they were sold.

162. Defendant herein breached the aforesaid implied warranties, as its SCIs were neither merchantable nor fit for their intended purposes and uses.

163. By reason of the foregoing, Plaintiff has experienced and continues to experience, serious and dangerous side effects including but not limited to, mobility problems and disability, as well as other severe and personal injuries which are permanent and lasting in nature, physical pain and mental anguish, including diminished enjoyment of life, as well as the need for lifelong medical treatment, monitoring and/or medications.

164. As a result of the foregoing acts and omissions Plaintiff requires and/or will require more health care and services and did incur medical, health, incidental and related expenses. Plaintiff is informed and believes and further alleges that Plaintiff will in the future be required to obtain further medical and/or hospital care, attention, and services.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant on each count set forth herein as follows:

- a. All available compensatory damages for the described losses with respect to each cause of action;

- b. Past and future medical expenses, as well as the cost associated with past and future life care;
- c. Past and future lost wages and loss of earning capacity;
- d. Past and future emotional distress.
- e. Consequential damages;
- f. All available non-economic damages, including without limitation pain, suffering, and loss of enjoyment of life;
- g. Disgorgement of profits obtained through unjust enrichment;
- h. Restitution;
- i. Punitive damages with respect to each cause of action;
- j. Treble damages for Defendant's violations of the Act;
- k. Reasonable attorneys' fees where recoverable;
- l. Costs of this action;
- m. Pre-judgment and all other interest recoverable; and
- n. Such other additional, further, and general relief as Plaintiff may be entitled to in law or in equity as justice so requires.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues raised in this Complaint.

Respectfully submitted,

JENNER LAW, P.C.

/s/ Robert K. Jenner

Robert K. Jenner (Bar No. 04165)

3600 Clipper Mill Road, Ste. 240

Baltimore, Maryland 21211

Phone: (410) 413-2155

Fax: (410) 982-0122

rjenner@jennerlawfirm.com

Alex C. Davis (*pro hac vice pending*)

ALEX DAVIS LAW OFFICE, PSC

445 Baxter Avenue, Suite 275

Louisville, Kentucky 40204

Phone: (502) 882-6000

Fax: (502) 587-2007

alex@acdavislaw.com

Attorneys for the Plaintiff

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

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

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

DEFENDANTS

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

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

Attorneys (If Known)

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

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

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

- PTF DEF Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 310 Airplane, etc.

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, 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):

Brief description of cause:

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: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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
Melissa Hyatt
(b) County of Residence of First Listed Plaintiff Baltimore
(c) Attorneys (Firm Name, Address, and Telephone Number)
Robert K. Jenner
Jenner Law, P.C.
3600 Clipper Mill Road Suite 240

DEFENDANTS
Cartiva, Inc.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State [X] 1 [] 1
Citizen of Another State [] 2 [] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [X] 5
Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes categories like Personal Injury, Real Property, Civil Rights, Prisoner Petitions, Habeas Corpus, etc.

V. ORIGIN (Place an "X" in One Box Only)
[X] 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
Brief description of cause:
defective medical device implant resulting in personal injury

VII. REQUESTED IN COMPLAINT:
[] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 75001
CHECK YES only if demanded in complaint:
JURY DEMAND: [X] Yes [] No

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

DATE 1/22/2026 SIGNATURE OF ATTORNEY OF RECORD /s/ Robert K. Jenner

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

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Maryland

Melissa Hyatt

Plaintiff(s)

v.

Cartiva, Inc.

Defendant(s)

Civil Action No. 1:26-cv-00293

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Cartiva, Inc.
6120 Windward Parkway, Suite 220
Alpharetta, Georgia 30005

A lawsuit has been filed against you.

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

Robert K. Jenner
Jenner Law, P.C.
3600 Clipper Mill Rd., Suite 240
Baltimore, MD 21211

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

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:26-cv-00293

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: