IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
____ DIVISION

STATE OF ARKANSAS, *ex rel.* LESLIE RUTLEDGE, ATTORNEY GENERAL	)	
	)	Case No. _____
Plaintiff,	)	
v.	)	
C. R. BARD, INC.	)	
Defendant.	)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

NOW COMES the Plaintiff, the State of Arkansas, and brings this action against Defendant C.R. Bard, Inc. for violating the Arkansas Deceptive Trade Practices Act (ADTPA), Ark. Code Ann. §§ 4-88-101, *et seq.*,, and states as follows:

The Parties

1. Plaintiff, the State of Arkansas, is charged with, among other things, enforcing and seeking redress for violations of Arkansas consumer protection laws, including the Arkansas Deceptive Trade Practices Act.

2. Defendant C.R. Bard, Inc. ("C.R. Bard") is a New Jersey company and wholly-owned

subsidiary of Becton, Dickinson and Company ("Becton"). C.R. Bard and its parent company, Becton, have their principal place of business and executive offices located at 1 Becton Drive, Franklin Lakes, New Jersey 07417.

3. At all times relevant hereto, Defendant C.R. Bard transacted business in the State of Arkansas and nationwide by marketing, promoting, advertising, offering for sale, selling, and distributing transvaginal surgical mesh devices, and that business is governed by the ADTPA.

Jurisdiction and Venue

4. This Court has jurisdiction over the Defendant pursuant to Ark. Code Ann. § 4-88-104 because Defendant C.R. Bard has transacted business within the State of Arkansas at all times relevant to the Complaint.

5. Venue for this action properly lies in Faulkner County, Arkansas, pursuant to Ark. Code Ann. § 4-88-104 and § 16-60-104(1)(B) because Defendant C.R. Bard has carried on regular business in all counties of the State of Arkansas, including Faulkner County, or some of the transactions upon which this action is based occurred in Faulkner County.

Background

6. "Surgical Mesh," as used in this Complaint, is a medical device that contains synthetic, multi-strand, knitted, or woven mesh that is intended to be implanted in the pelvic floor to treat stress urinary incontinence ("SUI") and/or pelvic organ prolapse ("POP") and that is sold or marketed in the United States.

7. SUI and POP are common conditions that pose lifestyle limitations and are not life-threatening.

8. SUI is a leakage of urine during episodes of physical activity that increase abdominal pressure, such as coughing, sneezing, laughing, or exercising. SUI can happen when pelvic tissues and muscles supporting the bladder and urethra become weak and allow the neck of the bladder to descend during bursts of physical activity, and the descent can prevent the urethra from working properly to control the flow of urine. SUI can also result when the sphincter muscle that controls the urethra weakens and is not able to stop the flow of urine under normal circumstances and with an increase in abdominal pressure.

9. POP happens when the tissue and muscles of the pelvic floor fail to support the pelvic organs resulting in the drop of the pelvic organs from their normal position. Not all women with POP have symptoms, while some experience pelvic discomfort or pain, pressure, and other symptoms.

10. In addition to addressing symptoms, such as wearing absorbent pads, there are a variety of non-surgical and surgical treatment options to address SUI and POP. Non-surgical options for SUI include pelvic floor exercises, pessaries, transurethral bulking agents, and behavior modifications. Surgery for SUI can be done through the vagina or abdomen to provide support for the urethra or bladder neck with either stitches alone, tissue removed from other parts of the body, tissue from another person, or with material such as surgical mesh, which is permanently implanted. Non-surgical options for POP include pelvic floor exercises and pessaries. Surgery for POP can be done through the vagina or abdomen using stitches alone or with the addition of surgical mesh.

11. C.R. Bard marketed and sold Surgical Mesh devices to be implanted transvaginally for the treatment of POP for approximately 5 years or more and for the treatment of SUI for approximately ten years or more.

12. The Food and Drug Administration (FDA) applies different levels of scrutiny to medical devices before approving or clearing them for sale.

13. The most rigorous level of scrutiny is the premarket approval (PMA) process, which requires a manufacturer to submit detailed information to the FDA regarding the safety and effectiveness of its device.

14. The 510(k) review is a much less rigorous process than the PMA review process. Under this process, a manufacturer is exempt from the PMA process and instead provides premarket notification to the FDA that a medical device is "substantially equivalent" to a legally marketed device. While PMA approval results in a finding of safety and effectiveness based on the manufacturer's submission and any other information before the FDA, 510(k) clearance occurs after a finding of substantial equivalence to a legally marketed device. The 510(k) process is focused on equivalence, not safety.

15. C.R. Bard's SUI and POP Surgical Mesh devices entered the market under the 510(k) review process. C.R. Bard marketed and sold Surgical Mesh devices without adequate testing.

C.R. Bard's Course of Conduct

16. In marketing Surgical Mesh devices, C.R. Bard misrepresented and failed to disclose the full range of risks and complications associated with the devices, including misrepresenting the risks of Surgical Mesh as compared with the risks of other surgeries or surgically implantable materials.

17. C.R. Bard misrepresented the safety of its Surgical Mesh by misrepresenting the risks of its Surgical Mesh, thereby making false and/or misleading representations about its risks.

18. C.R. Bard also made material omissions when it failed to disclose the risks of its Surgical

Mesh.

19. C.R. Bard misrepresented and/or failed to adequately disclose serious risks and complications of one or more of its Surgical Mesh products, including the following:

a. a lifelong risk of erosion;

b. chronic pain;

c. vaginal shortening;

d. dyspareunia (pain with intercourse);

e. chronic foreign body reaction;

f. tissue contraction;

g. urge and de novo incontinence;

h. infection and inflammation; and

i. vaginal scarring.

20. C.R. Bard misrepresented or failed to disclose to doctors and patients that complications for one or more of its Surgical Mesh devices may persist as a permanent condition after surgical intervention or other treatment. C.R. Bard's Surgical Mesh products are intended to be permanent implants and were designed for integration into the body and tissue ingrowth, making them difficult, if not impossible, to surgically remove. C.R. Bard misrepresented or failed to disclose that removal of one or more of its Surgical Mesh devices may not be possible, and that additional surgeries may not resolve complications.

21. Throughout its marketing of Surgical Mesh, C.R. Bard continually failed to disclose risks and complications it knew to be inherent in the devices and/or misrepresented those inherent risks and complications as caused by physician error, surgical technique, or perioperative risks.

22. In 2008, the FDA issued a Public Health Notification to inform doctors and patients about serious complications associated with surgical mesh placed through the vagina to treat POP and SUI. In 2011, the FDA issued a Safety Communication to inform doctors and patients that serious complications associated with surgical mesh for the transvaginal repair of POP are not rare, and that a systematic review of published literature showed that transvaginal POP repair with mesh does not improve symptomatic results or quality of life over traditional non-mesh repair and that mesh used in transvaginal POP repair introduces risks not present in traditional non-mesh surgery for POP repair.

23. In 2012, the FDA ordered post-market surveillance studies by manufacturers of surgical mesh to address specific safety and effectiveness concerns related to surgical mesh used for the transvaginal repair of POP. That same year, C.R. Bard ceased marketing transvaginal POP Surgical Mesh products. In 2016, the FDA issued final orders to reclassify transvaginal POP devices as Class III (high risk) devices and to require manufacturers to submit a PMA application to support the safety and effectiveness of surgical mesh for the transvaginal repair of POP in order to continue marketing the devices.

24. C.R. Bard discontinued sales of all transvaginal mesh devices for the treatment of SUI in 2016.

Violation of the Arkansas Deceptive Trade Practices Act (ADTPA)

25. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs 1 through 24 as if they were set out at length herein.

26. In the course of marketing, promoting, selling, and distributing Surgical Mesh products,

C.R. Bard, Inc. made false statements about, misrepresented, and/or made other representations about the risks of Surgical Mesh products that had the effect, capacity, or tendency, of deceiving or misleading consumers. Pursuant to Ark. Code. Ann. § 4-88-107(a)(1), such false statements and misrepresentations constitute unfair or deceptive trade practices that are prohibited by law.

27. In the course of marketing, promoting, selling, and distributing Surgical Mesh products, C.R. Bard, Inc. has made representations concerning the characteristics, uses, benefits, and/or qualities of Surgical Mesh products that they did not have. Pursuant to Ark. Code. Ann. § 4-88-107(a)(1), such false statements and misrepresentations constitute unfair or deceptive trade practices that are prohibited by law.

28. Defendant C.R. Bard, Inc. made material omissions concerning the risks and complications associated with Surgical Mesh products, and those material omissions had the effect, capacity, or tendency of deceiving consumers. Pursuant to Ark. Code Ann. § 4-88-108(2), such false statements and misrepresentations constitute unfair or deceptive trade practices that are prohibited by law.

29. The acts or practices described herein occurred in trade or commerce of "goods" as defined in the State of Arkansas.

30. These acts or practices affected the public interest because they impacted numerous Arkansas consumers.

Prayer for Relief

31. WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter an Order:

a. Adjudging and decreeing that Defendant has engaged in the acts or practices complained of herein, and that such constitute unfair and/or deceptive acts or practices in violation of Ark. Code Ann. §§ 4-88-107 and -108;

b. Issuing a permanent injunction prohibiting Defendant, its agents, servants, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair or deceptive trade practices in the marketing, promotion, selling and distributing of Defendant's Surgical Mesh devices;

c. Ordering Defendant to pay civil penalties in the amount of up to $10,000 for each and every violation of the ADTPA;

d. Ordering Defendant to pay all costs and reasonable attorney's fees for the prosecution and investigation of this action, as provided by of Ark. Code Ann. § 4-88-113(a)(3) of the ADTPA;

e. Ordering Defendant to provide monetary restitution to consumers impacted by the acts and practices detailed above;

f. Ordering such other and further relief as the Court may deem just and proper.

Dated: September 24, 2020.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General
State of Arkansas

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