IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: DEPUY ORTHOPAEDICS, INC. PINNACLE HIP IMPLANT PRODUCTS LIABILITY LITIGATION	§	MDL Docket No.
This Order Relates To:	§	
Andrews – 3:15-cv-03484-K	§	
Davis – 3:15-cv-01767-K	§	3:11-MD-2244-K
Metzler – 3:12-cv-02066-K	§	
Rodriguez – 3:13-cv-3938-K	§	
Standerfer – 3:14-cv-01730-K	§	
Weiser – 3:13-cv-03631-K	§	

ORDER DENYING DEFENDANTS' MOTION FOR NEW TRIALS ON ALL ISSUES

Before the Court is Defendants' Motion for New Trials on All Issues ("Defendants' Motion"). Having considered Defendants' Motion [*Andrews*, 3:15-cv-03484-K, Doc. 297; *Davis*, 3:15-cv-01767-K, Doc. 291; *Metzler*, 3:12-cv-02066-K, Doc. 287; *Rodriguez*, 3:13-cv-3938-K, Doc. 286; *Standerfer*, 3:14-cv-01730-K, Doc. 283; *Weiser*, 3:13-cv-03631-K, Doc. 285], Plaintiffs' Response [*Andrews*, 3:15-cv-03484-K, Doc. 340; *Davis*, 3:15-cv-01767-K, Doc. 300; *Metzler*, 3:12-cv-02066-K, Doc. 296; *Rodriguez*, 3:13-cv-3938-K, Doc. 295; *Standerfer*, 3:14-cv-01730-K, Doc. 292; *Weiser*, 3:13-cv-03631-K, Doc. 294], and Defendants' Reply [*Andrews*, 3:15-cv-03484-K, Doc. 341; *Davis*, 3:15-cv-01767-K, Doc. 301; *Metzler*, 3:12-cv-02066-K, Doc. 297; *Rodriguez*, 3:13-cv-3938-K, Doc. 296; *Standerfer*, 3:14-cv-01730-K, Doc.

293; *Weiser*, 3:13-cv-03631-K, Doc. 295] Defendants' Motion is **DENIED** for the reasons set forth below.

I. Background

Pursuant to 28 U.S.C. § 1407, the United States Judicial Panel on Multidistrict Litigation ordered coordinated or consolidated pretrial proceedings in this Court of all actions involving the Pinnacle Acetabular Cup System hip implants ("Pinnacle Device") manufactured by DePuy Orthopaedics, Inc. ("DePuy"). The DePuy Pinnacle multidistrict litigation ("MDL") involves the design, development, manufacture, and distribution of the Pinnacle Device. The Pinnacle Device is used to replace diseased hip joints and was intended to provide patients with pain-free natural motion over a longer period of time than other hip replacement devices. Presently there are over nine thousand cases in this MDL involving Pinnacle Devices made with sockets lined with metal, ceramic, or polyethylene.

Defendants and Plaintiffs, represented here by the Plaintiffs' Executive Committee, agreed to a bellwether trial process, in which the Court would try representative cases in the Northern District of Texas to allow juries to assess the claims, assess the procedure for trying them, and illustrate how the parties could value the cases. In September and October 2014, the Court held the first bellwether trial, involving a Montana plaintiff and her husband [No. 3:12-cv-04975-K] (the "*Paoli*" bellwether). The Court held a second bellwether trial in January through March 2016, consolidating five cases brought by Texas plaintiffs [*Aoki* – 3:13-cv-

1071-K; *Christopher* – 3:14-cv-1994-K; *Greer* – 3:12-cv-1672-K; *Klusmann* – 3:11-cv-2800-K; *Peterson* – 3:11-cv-1941-K] (collectively, the "*Aoki*" bellwether). On September 20, 2016, the Court consolidated for trial the six California cases (collectively, the "*Andrews*" bellwether) subject to this Order. The trial was held from October 3, 2016, to November 30, 2016. On December 1, 2016, the jury found for each Plaintiff and returned a verdict of $1.04 billion in the aggregate, consisting of $28,361,648.17 in compensatory damages to the six Plaintiffs who were implanted with Pinnacle Devices, $4 million in compensatory damages to the spouses of four of the Plaintiffs, $1,008,000,000 in punitive damages to the six Plaintiffs, and $1 million in punitive damages to the four spouses. The Court reduced the punitive damages awarded against Depuy and Johnson & Johnson and entered the Final Judgment on January 3, 2017.

Defendants' Motion asserts that Defendants are entitled to new trials on both liability and damages because: (1) consolidation of the six cases in the *Andrews* bellwether resulted in juror confusion and unfair prejudice; (2) the Court admitted inadmissible and unfairly prejudicial evidence; (3) the jury's compensatory damages awards are excessive; and (4) the jury's punitive damages awards are excessive and unconstitutional. The Court addresses each of Defendants' grounds in turn.

II. Legal Standard

Under Rule 59(a), the Court may grant a new trial "for any reason for which a new trial has heretofore been granted in an action at law in federal court." Fed. R.

Civ. P. 59(a)(1)(A). New trials may be granted where "the verdict is against the weight of the evidence, the damages awarded are excessive, the trial was unfair, or prejudicial error was committed in its course," *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 613 (5th Cir. 1985) (citations omitted). A party seeking a new trial bears the burden of showing that "prejudicial error has crept into the record or that substantial justice has not been done." *Streber v. Hunter*, 221 F.3d 701, 736 (5th Cir. 2000) (quoting *Sibley v. Lemaire*, 184 F.3d 481, 487 (5th Cir. 1999)). Whether to grant or deny a motion for new trial is within the sound discretion of the district court, and its decision will not be disturbed absent an abuse of discretion. *Id.* (citations omitted); *see also DP Sols., Inc. v. Rollins, Inc.*, 353 F.3d 421, 431 (5th Cir. 2003); *Pryor v. Trane Co.*, 138 F.3d 1024, 1026 (5th Cir. 1998).

III. Analysis

A. *The Court's Consolidation Order*

Defendants assert that consolidation of the six cases in the *Andrews* bellwether was improper and that it ultimately led to juror confusion and undue prejudice. They argue that such confusion is evidenced by the jury deliberating for less than a day after a two month trial, a $1.04 billion verdict against Defendants, and the similarity of many of Plaintiffs' individual damages awards. Defendants' consolidation argument fails.

Consolidation was proper under Federal Rule of Civil Procedure 42(a), under which the Court has broad discretion in determining whether to consolidate cases.

Order Consolidating Bellwether Cases for Trial [No. 3:11-md-2244-K (Doc. No. 84)]; *see, e.g.*, *Bottazzi v. Petroleum Helicopters, Inc.*, 664 F.2d 49, 50 (5th Cir. 1981); *see also Ctr. For Biological Diversity, Inc. v. BP Am. Prod. Co.*, 704 F.3d 413, 432 (5th Cir. 2013) (citation omitted) ("The trial court's managerial power is especially strong and flexible in matters of consolidation."). Rule 42 permits the consolidation of cases where, as here, they "involve a common question of law or fact." Fed. R. Civ. P. 42(a)(1)-(2). The Judicial Panel on Multidistrict Litigation noted the actions in this MDL "share factual questions as to whether [the Pinnacle Device] was defectively designed and/or manufactured, and whether [D]efendants failed to provide adequate warnings concerning the device." [No. 3:11-md-2244-K (Doc. No. 1)]. In the *Andrews* bellwether cases, the Pinnacle Devices at issue underwent similar testing, manufacturing, and marketing, each Plaintiff and their physicians were provided with similar warnings regarding the Pinnacle Device, each Plaintiff experienced similar implantation procedures, each Plaintiff experienced similar complications, and each Plaintiff's case was subject to California law. [No. 3:15-cv-3484-K, Dkt. 84 at 4]. These prevailing common issues support consolidation of these and future bellwether cases in this MDL.

Second, contrary to Defendants' assertions, the length of the jury's deliberations, the aggregate amount of the verdict, and the similarity of many of the Plaintiffs' damages awards do not demonstrate that consolidation caused jury confusion or prejudicial error. While Defendants contend the short duration of

deliberations indicates jury confusion, the short deliberations equally indicate that the jury found the evidence clearly favored a finding for Plaintiffs. *See generally Consorti v. Armstrong World Indus., Inc.*, 72 F.3d 1003, 1007 (2d Cir. 1995), *vacated on other grounds*, *Consorti v. Owens-Corning Fiberglas Corp.*, 518 U.S. 1031 (1996) ("[N]o logic supports the proposition that the incremental addition of similar cases will reduce the jury's ability to understand and resolve the issues placed before it . . . . Quite to the contrary, if a jury spends many weeks, or many months, considering numerous [consolidated] cases . . . that jury is likely to develop a far deeper understanding of the issues than a jury whose exposure to those complicated questions is brief, and requires answering only a single set of questions."); *Wordtech Sys., Inc. v. Integrated Network Sols., Inc.*, No. 2:04-cv-01971-MCE-EFB, 2009 WL 113771, at *2 (E.D. Cal. Jan. 15, 2009) ("[T]he evidence presented at trial overwhelmingly favored a finding for Plaintiff, as evidenced by the relatively short deliberations required for the jury to reach a unanimous verdict on all causes of action."). And, in order to alleviate any concerns of jury confusion, the Court instructed the jury that:

> There are six separate cases, involving ten plaintiffs. You must give separate consideration to each claim and each party in each case. Although there are ten plaintiffs, it does not follow that if one is successful as to a particular claim, the others should prevail on that claim, too. You must decide each plaintiff's case solely on the evidence that applies to that plaintiff.

Tr. Vol. 31 17:15-21. Given this precautionary instruction and the absence of evidence showing the jury did not consider each claim individually, the Court finds the length of the jury's deliberations does not evidence jury confusion or unfair prejudice.

Similarly, the jury's $1.04 billion verdict no more confirms that the jury was confused and unfairly prejudiced by consolidation than it does that the jury was fairly persuaded by evidence that Defendants deceitfully marketed the Pinnacle Device, particularly since the overwhelming majority of the damages award was comprised of punitive, and not compensatory, damages. *Cf. Cain v. Armstrong World Indus.*, 785 F. Supp. 1448, 1451-54 (S.D. Ala. 1992) (granting a new trial because it deemed the jury's *compensatory* damages were excessive). The largest compensatory damages award to an individual plaintiff in the *Andrews* bellwether was $6,061,415.45, which is a fraction of the amount of compensatory damages awarded in a recent, single-plaintiff case involving Depuy's similar ASR XL metal-on-metal hip implant. *See Kransky v. Depuy Orthopaedics, Inc.*, No. B249576, 2016 WL 3960033, at *3-4 (Cal. Ct. App. July 21, 2016) (holding the "trial court did not abuse its discretion in ruling that the [$8.3 million compensatory damages award] 'does not shock the conscience' or 'appear driven by passion or prejudice'").

The jury's verdict is also not condemned, as Defendants contend, simply because the "jury used the same exact figure for each category of compensatory damages for each plaintiff who was implanted with one Pinnacle device and used

another for the two plaintiffs who were implanted with two devices." Defs.' Mot. at 7. While Defendants assert that *Cain* and *Alexander v. City of Jackson*, No. 3:04-cv-614 HTW-LRA, 2008 WL 907658, at *1-4 (S.D. Miss. Mar. 31, 2008) instruct that similarities between damages awards are evidence of confusion and unfair prejudice, the Court finds the Fifth Circuit's decision in *Caldarera v. E. Airlines, Inc.* persuasive. 705 F.2d 778, 781 (5th Cir. 1983). In *Caldarera*, a father sued for loss of consortium based on the deaths of his mother, wife and son from a plane crash, and his surviving son sued for loss of consortium of his mother. *Id.* at 783-84. The jury awarded both of them an identical $937,500 in damages "even though the elements of damages sought by the respective plaintiffs differed." *Id.* at 781-83. The Fifth Circuit refused to "condemn the verdict as defective on its face" and order a new trial simply because the two plaintiffs received equal damages awards. *Id.* at 782-83; *see also Caudle v. District of Columbia*, 804 F. Supp. 2d 32, 58-59 (D.D.C.), *rev'd on other grounds*, 707 F.3d 354 (D.C. Cir. 2013) (denying defendant's motion for remittitur and holding $200,000 damages awards to two plaintiffs and $225,000 awards to two other plaintiffs "suggest[ed] individualized consideration," not improper considerations, even though plaintiffs "experience[ed] different harms"). Here, too, the jury's verdict cannot be condemned on its face simply because it awards a similar amount of damages to the four Plaintiffs who were implanted with one Pinnacle Device and a different amount to the two Plaintiffs who were implanted with two Pinnacle Devices. The Court finds the consistent damages awards reflect the similarities in the

cases chosen for consolidation rather than unfairness or prejudicial error. *See Consorti*, 72 F.3d at 1007 ("When numerous claims are tried before a single jury, that jury will recognize that an important part of its chore is to scale the relative seriousness of the various plaintiffs' injuries and to see to it that their respective awards are consistent with that scaling.").

Defendants' motion for a new trial based on its claim that consolidation caused prejudicial error is denied.

B. ***The Allegedly Inflammatory Evidence***

Defendants also assert they are entitled to new trials because the Court improperly admitted certain pieces of evidence, including: (1) evidence linking the Pinnacle Device to cancer and the risk of ongoing metal poisoning; (2) an email (the "RCH email") (PLT-1222) containing allegedly inflammatory and irrelevant language; and (3) a deferred prosecution agreement from 2007 between DePuy and the government regarding allegations that DePuy inappropriately compensated doctors to promote its products in violation of federal law (the "2007 DPA" or the "DPA"). Defendants raised these objections before and during trial, and each time, the Court denied them. It was within the Court's discretion to admit this evidence, and Defendants' objections are again overruled. *See Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 141 (1997) (holding a district court's evidentiary rulings are reviewed for an abuse of discretion).

1. References to Cancer

Defendants allege that "Plaintiffs' counsel repeatedly prejudiced defendants by introducing irrelevant, speculative, and highly inflammatory evidence and argument that plaintiffs face a risk of cancer and death as a result of having once had metal-on-metal hip implants." Defs.' Mot. at 13. The evidence presented and testimony elicited by both sides in this case shows that Plaintiffs may now be or may have at one time been at risk for developing cancer and/or developing other systemic injuries due to their Pinnacle Device implants. It can hardly be said that the evidence tending to prove or disprove such a risk is irrelevant to the case. The evidence may be prejudicial, but "virtually all evidence is prejudicial; otherwise it would not be material;" in order to be inadmissible, "[t]he prejudice must be 'unfair.'" *Brazos River Auth. v. GE Ionics, Inc.*, 469 F.3d 416, 427 (5th Cir. 2006) (citation omitted). Because Defendants have not provided any evidence that the probative value of this relevant evidence is substantially outweighed by the risk of unfair prejudice, the evidence is admissible. *See* Fed. R. Evid. 403.

2. The RCH email

Defendants assert that they are entitled to a new trial because the RCH email was irrelevant and prejudicial. The RCH email, a conversation between DePuy employees Steve Corbett and Paul Berman, concerns the design of and risks posed by the aSphere head hip component and contains a profane phrase. Defendants argue that because the RCH email concerns the aSphere head, which was only implanted

into Plaintiff Davis, and Plaintiffs did not present evidence that the aSphere played any role in causing Ms. Davis's injuries, the RCH email is irrelevant. This argument ignores the fact that the RCH email evidences Defendants' general marketing and sales culture, which, at the very least, is relevant to Plaintiffs' claims of Failure to Warn. There is no evidence that the email's probative value is substantially outweighed by any risk of unfair prejudice or juror confusion simply because it includes a profane phrase. *See* Fed. R. Evid. 403.

3. The 2007 DPA

Defendants object to the admission of the 2007 DPA based on Rules 401, 403, 408, and 410, and assert that the Court's decision to admit the 2007 DPA and references thereto entitled them to a new trial. The 2007 DPA includes the DPA itself (PLT-00104, PLT-03416) which includes an attached affidavit and criminal complaint, and the "Final First Quarterly Report of the Monitor for DePuy Orthopaedics, Inc." (PLT-00049; the "Monitor Report"). The Monitor Report is one in a series of quarterly reports composed by an independent corporate monitor, appointed by the U.S. Attorney's Office pursuant to the DPA, to monitor Depuy's compliance with federal laws regarding payments to medical professionals. The Monitor Report describes Defendants' marketing practices with respect to fee-for-service consultants, product design consultants, key opinion leaders, and other types of payments to physicians. *See* PLT-00049-00031; PLT-00049-00100-01. A few examples of such practices include gearing training sessions to heavily lean toward

selling DePuy products, sponsoring clinical research to influence surgeon opinions, and using educational grants and charitable contributions to disseminate marketing materials. PLT-00049-00033; PLT-00049-00060; PLT-00049-00071. This evidence is relevant because it tends to prove methods by which Defendants influenced physicians to use and promote their products through activities other than direct marketing or payment. There is also no evidence that the 2007 DPA's probative value is substantially outweighed by any risk of unfair prejudice or juror confusion. The DPA and the Monitor Report were admissible under Rules 401 and 403.

The DPA and Monitor Report were also properly admitted under Rules 408 and 410. Rule 408 prohibits evidence of a prior settlement or of statements made during settlement negotiations for purposes of proving the validity of the claim being litigated. *See* Fed. R. Evid. 408; *Cf. Lyondell Chem. Co. v. Occidental Chem. Corp.*, 608 F.3d 284, 298 (5th Cir. 2010) (holding certain reports inadmissible under Rule 408 because they were "created for use in negotiations regarding the 'claim' . . . being litigated"). Rule 410 precludes admission of evidence of "a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea." Fed. R. Evid. 410(4). Here, the 2007 DPA involved different claims and different questions of liability—whether Defendants had bribed physicians in violation of a criminal statute—than those posed in this MDL. Their admission in the *Andrews* bellwether was therefore not precluded by Rule 408. Additionally, the 2007 DPA and the Monitor Report are neither plea agreements nor

statements made during plea negotiations. They are merely an agreement to defer prosecution, absent any admission or inference of guilt, and an evaluation of Defendants' subsequent compliance with the federal laws it was suspected of violating. *See* PLT-00104-00018. Their admission during trial was not precluded by Rule 410.

Defendants' motion for new trials based on the admission of the above pieces of evidence is denied.

C. *Plaintiffs' Compensatory Damages*

Defendants assert that they are entitled to remittitur, or alternatively to new trials, because the compensatory damages awards are excessive and certain portions of them are unsupported by the evidence. The Court disagrees.

"Unless the evidence is of such quality and weight that reasonable and impartial jurors could not arrive at such a verdict, the findings of the jury must be upheld." *Childs v. Wal-Mart Stores, Inc.*, 96 F.3d 1444, 1996 WL 512202, at *1 (5th Cir. 1996) (citing *Ham Marine, Inc. v. Dresser Indus., Inc.*, 72 F.3d 454, 459 (5th Cir. 1995)). The Fifth Circuit has "repeatedly held that a jury's award is not to be disturbed unless it is so large as to 'shock the judicial conscience,' indicate 'bias, passion, prejudice, corruption, or other improper motive' on the part of the jury, or is 'contrary to all reason.'" *Id.* (citation omitted). Because non-economic damages are "to a large degree not susceptible to monetary quantification," the jury has "especially broad leeway" when awarding them. *Seidman v. Am. Airlines, Inc.*, 923 F.2d 1134,

1141 (5th Cir. 1991) (citation omitted). Where the district court concludes that the damages awards are excessive, it can determine the value of a remitted damages award by looking to recent cases applying the relevant law in order to determine "the *greatest* amount that they have awarded for similar injuries." *Id.* (citation omitted).

Here, the Court finds that the jury's damages awards were neither "contrary to all reason" nor so excessive as to shock the Court's conscience or indicate "bias, prejudice, corruption or other improper motive." The Court therefore need not apply the maximum recovery rule. The basis for Defendants' argument is that the compensatory damages exceed those allowed in recent similar cases and should thus be remitted pursuant to the "maximum recovery" rule. The Court again notes that the California Court of Appeals recently affirmed an award of $8.3 million in compensatory damages, including $8 million in non-economic damages, in a single plaintiff trial relating to another of Depuy's metal-on-metal hip implants. *Kransky*, 2016 WL 3960033 at *4 (applying Montana substantive law to the case but California's standard of review when affirming the damages award as reasonable). The compensatory damages here are only one-half to three-quarters of the amount awarded in *Kransky*.

The Court also finds that Plaintiffs presented evidence sufficient to support all of the jury's damages awards, and none of the jury's damages awards were "against the great weight" of evidence. *See Seidman*, 923 F.2d at 1140 (citation omitted) (stating a motion for a new trial based on a claim of excessive damages "should not be

granted unless the verdict is against the great weight, not merely the preponderance, of the evidence"). Defendants' motion for a new trial on the grounds that the jury's compensatory damages awards were excessive is denied.

D. *The Jury's Punitive Damages Awards*

The jury awarded each Plaintiff punitive damages of $84 million against Defendant Depuy Orthopaedics, Inc., and $84 million against Johnson & Johnson. Recognizing that "constitutional considerations limit the amount a plaintiff may recover in punitive damages," and "single-digit [ratios between punitive and compensatory damages] are more likely to comport with due process," *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003), the Court reduced these awards as to each Plaintiff so that Depuy and Johnson & Johnson each owed punitive damages in an amount equal to nine-times the amount of compensatory damages awarded to that Plaintiff. Defendants assert that the reduced punitive damages awards are still excessive and unconstitutional and should be further reduced to no higher than a 1:1 ratio to the compensatory damages. The Court disagrees.

The three factors set forth by the Supreme Court for consideration of whether a punitive damages award violates constitutional due process are: (1) "the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award;" (2) "the differences between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases;" and (3) "the degree of reprehensibility of the defendant's misconduct." *Id.* at 418 (2003). The

degree of reprehensibility of the defendant's conduct is the most important consideration. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575 (1996). To determine the reprehensibility of a defendant's conduct, a reviewing court considers whether: (1) "the harm caused was physical as opposed to economic;" (2) "the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others;" (3) "the target of the conduct had financial vulnerability;" (4) "the conduct involved repeated actions or was an isolated incident;" and (5) "the harm was the result of intentional malice, trickery, or deceit, or mere accident." *State Farm*, 538 U.S. at 419 (citation omitted). Additionally, where compensatory damages are considered by the court to be "substantial," a lesser ratio between compensatory and punitive damages may reach the outermost limit of due process. *Id.*

Of all the cases cited by Defendants in support of their premise that a $1 million compensatory damages award is "substantial," only *State Farm* is controlling in the Fifth Circuit. In *State Farm*, the plaintiff suffered no physical harm, and the Court determined that the $1 million compensatory damages award for a year and a half of emotional distress was "substantial." *See id.* at 426. Such a determination is hardly comparable to the case at bar, in which there is evidence that Plaintiffs have suffered and will continue to suffer physical pain and emotional distress for the remainder of their lives. The Court therefore applies the three guideposts enumerated by the Supreme Court in order to determine whether the punitive damages in this case must be further reduced.

As to the first guidepost, the Court has already acknowledged that the jury's original award of punitive damages was excessively disparate from the actual harm suffered by Plaintiffs and has already reduced the punitive damages awards to account for this factor. While there are no existing civil penalties in place relevant to the second guidepost, the $84 million settlement payment Depuy made as part of the 2007 DPA serves as a helpful reference for the Court in determining the proper amount of punitive damages. *See id.* at 428 (noting that criminal penalties can serve as a guidepost in the punitive damages analysis). Finally, four of reprehensibility factors listed in *State Farm* are present in this case. Defendants' conduct, as alleged by Plaintiffs and supported in the record, caused physical harm to Plaintiffs, evinced an indifference to the health and safety of Plaintiffs and others, was not isolated to a single occurrence, and was not the result of mere accident. The Court's previous reduction of the punitive damages to a single-digit ratio therefore comports with due process.

Finally, the Court rejects Defendants' argument that the punitive damages awards are unconstitutional because each punitive award was entered separately against both Depuy and Johnson & Johnson even though they are not both going to pay the full amount of compensatory damages for which they are jointly and severally liable. The constitution imposes limits on the amount of punitive damages that can be imposed because "[e]lementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that

will subject him to punishment, but also of the severity of the penalty that a State may impose." *State Farm*, 538 U.S. at 417 (citations omitted). While Depuy and Johnson & Johnson will not both pay the full amount of compensatory damages, either one could possibly pay the entire amount of compensatory damages itself, as they are jointly and severally liable. Both Defendants were on notice that they could individually have been liable for the full amount of compensatory damages and were thus on notice that they could be made to pay punitive damages at a 9:1 ratio of the full amount of compensatory damages. Therefore, the Court's current reduction of the jury's punitive damages awards comports with constitutional due process. The Defendants motion for a new trial or remittitur of punitive damages based on their claim that they are unconstitutionally excessive is therefore denied.

Defendants' Motion is denied.

SO ORDERED.

Signed June 28th, 2017

Ed Kinkeade

ED KINKEADE
UNITED STATES DISTRICT JUDGE