

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DANIEL B. DELEON, SR.; and ELENA
DELEON,

Plaintiffs,

v.

Case No. 6:17-cv-1801-Orl-37TBS

DEPUY SPINE, LLC,

Defendant.

ORDER

This cause is before the Court on consideration of Defendant's Motion to Dismiss Plaintiffs' Complaint (Doc. 3 ("MTD")). On **October 21, 2016**, Plaintiffs Daniel B. DeLeon, Sr. ("**DeLeon**") and Elena DeLeon ("**Spouse**") initiated this action against Defendant DePuy Spine, LLC in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida ("**State Court**"). (Doc. 2.) Alleging that DeLeon suffered grievous physical injury after "undergoing an anterior cervical laminectomy . . . , in which [defective] cervical plating components designed and manufactured by [Defendant] were implanted in his spine," Plaintiffs assert seven claims against Defendant for design and manufacturing defects, failure to warn, negligence, gross negligence, breach of implied warranty, and loss of consortium. (*See id.*)

After Plaintiffs perfected service of process on May 3, 2017 (Doc. 1-5, pp. 22, 25), the Defendant filed the MTD. (Doc. 3.) Several months later, Defendant removed the action to this Court (Doc. 1), and then filed an Amended Memorandum of Law in Support

of its MTD. (Doc. 6 (“**Memo**”).) Just before the deadline to file a response to the Memo, Plaintiff requested leave to file an Amended Complaint to “correct alleged deficiencies.”¹ (Doc. 12 (“**MTA**”).) U.S. Magistrate Judge Thomas B. Smith denied the MTA without prejudice because Plaintiff failed to comply with the requirements of Local Rule 3.01(g). (Doc. 13.) Upon review, the Court finds that the MTD is due to be granted as unopposed. Although this action has been pending for more than a year, the Court also finds that Plaintiffs should be accorded the opportunity to amend their initial Complaint.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant’s Motion to Dismiss Plaintiffs’ Complaint (Doc. 3) is **GRANTED**.
2. The Complaint (Doc. 2) is **DISMISSED WITHOUT PREJUDICE**.
3. Plaintiff is granted leave to file an Amended Complaint on or before **Monday, December 11, 2017**.

DONE AND ORDERED in Orlando, Florida, this 29th day of November, 2017.




ROY B. DALTON JR.
United States District Judge

Copies to:

¹ Plaintiff did not file a response to the Memo or the MTD in this Court, and no response to the MTD appears in the State Court record. (See Docs. 1-5, 1-6.)

Counsel of Record