

Ramon Rossi Lopez, Bar No. 86361  
Matthew Ramon Lopez, Bar No. 263134  
Amorina Patrice Lopez, Bar No. 278002

**LOPEZ McHUGH LLP**

100 Bayview Circle, Suite 5600

Newport Beach, CA 92660

Telephone: (949) 737-1501

Facsimile: (949) 737-1504

[rlopez@lopezmchugh.com](mailto:rlopez@lopezmchugh.com)

[mlopez@lopezmchugh.com](mailto:mlopez@lopezmchugh.com)

[alopez@lopezmchugh.com](mailto:alopez@lopezmchugh.com)

Attorneys for Plaintiff, AUBREY ISOM

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

AUBREY ISOM,

Plaintiff,

vs.

PFIZER, INC.; and DOES 1 through 100,  
inclusive,

Defendant.

) Case No.:

) Judge:

) Department:

**SACV13 - 01250 CJC (JPRx)**

**COMPLAINT**

1. NEGLIGENCE
2. STRICT PRODUCT LIABILITY –  
FAILURE TO WARN
3. BREACH OF IMPLIED  
WARRANTY
4. BREACH OF EXPRESS  
WARRANTY
5. DECEIT BY CONCEALMENT –  
*CIVIL CODE* §§ 1709, 1710
6. FRAUD BY CONCEALMENT
7. NEGLIGENT  
MISREPRESENTATION
8. VIOLATION OF *BUSINESS AND  
PROFESSIONS CODE* § 17200.
9. VIOLATION OF *BUSINESS AND  
PROFESSIONS CODE* § 17500.
10. VIOLATION OF *CIVIL CODE* §  
1750

COMES NOW, Plaintiff, AUBREY ISOM, by and through her attorneys, Lopez McHugh LLP,  
and for her causes of action, hereby sues the Defendant, Pfizer Inc., and alleges as follows:

2013 AUG 15 PM 2:48  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
SANTA ANA

FILED

**GENERAL ALLEGATIONS**

1  
2 1. This is an action for damages suffered by Plaintiff as a proximate result of  
3 Defendant's negligent and wrongful conduct in connection with the design, testing, and labeling, of  
4 LIPITOR (also known chemically as ATORVASTATIN CALCIUM).

5 2. Plaintiff's injuries, like those striking thousands of similarly situated victims across  
6 the country, were avoidable. LIPITOR has been implicated in a national epidemic of type 2 diabetes  
7 in women taking LIPITOR. In August of 2011, the FDA requested that Pfizer make labeling changes  
8 for Lipitor based upon the FDA's comprehensive review, including clinical trial data. The label  
9 change required Defendant to warn of the changes in blood sugar levels when taking LIPITOR.  
10 Defective design, inadequate warnings, and inadequate instructions led to serious patient  
11 complications, including type 2 diabetes, as happened to Plaintiff.

12 3. Even though Defendant knew of the risks for several years, medical providers were  
13 unaware that the use of LIPITOR caused type 2 diabetes in female patients. As a result, thousands  
14 of women taking LIPITOR were unaware that the drug was affecting their blood sugar levels. Even  
15 when Defendant finally began disclosing some of this information, it refused to protect patients. For  
16 example, when Defendant finally changed its label in February of 2012, the warning it issued was  
17 extremely vague and in no direct terms did it warn that consumption of LIPITOR could lead to the  
18 development of type 2 diabetes.

19 4. According to the Centers for Disease Control ("CDC"), diabetes is the seventh  
20 leading cause of death in the United States. People with diabetes can experience numerous serious  
21 and deadly complications, including heart disease and stroke, blindness, chronic kidney disease, and  
22 amputations. The risk for stroke is two to four times higher among people with diabetes. Adults with  
23 diabetes have heart disease death rates about two to four times higher than adults without diabetes.  
24 Diabetes is the leading cause of new cases of blindness among adults ages 20-74, and is also the  
25 leading cause of kidney failure.

26 5. The development of type 2 diabetes is preventable with the proper monitoring of  
27 blood sugar levels. As such, the development of type 2 diabetes in patients taking LIPITOR was also  
28 preventable and resulted directly from Defendant's refusal to conduct proper safety studies; follow

1 up alarming safety signals; suppression of information revealing life-threatening risks; wanton  
2 failure to provide adequate instructions; and willful misrepresentations concerning the nature and  
3 safety of its product. The conduct and product defects complained of herein were substantial factors  
4 in bringing about the Plaintiff's injuries, and a reasonably foreseeable consequence of Defendant's  
5 conduct and product defects.

6 **PARTIES**

7 6. At all times herein mentioned, Plaintiff was and is a citizen and resident of Orange  
8 County, California. Plaintiff was prescribed and ingested LIPITOR and suffered physical, including  
9 diabetes, and other injury as a result of LIPITOR and Defendant's conduct as alleged herein.

10 7. Defendant Pfizer, Inc. ("Defendant" or "Pfizer") is a Delaware corporation, with its  
11 principal place of business in New York, New York.

12 8. The true names and capacities of those Defendants designated as DOES 1 through 100,  
13 whether individual, corporate, associate or otherwise, are unknown to Plaintiff at the time of filing this  
14 Complaint and Plaintiff, therefore, sues said Defendants by such fictitious names and will ask leave of  
15 Court to amend this Complaint to show their true names or capacities when the same have been  
16 ascertained. Plaintiff is informed and believes, and thereon alleges, that each of the DOE Defendants is,  
17 in some manner, responsible for the events and happenings herein set forth and proximately caused  
18 injury and damages to the Plaintiff as herein alleged.

19 **JURISDICTION AND VENUE**

20 9. This Court has jurisdiction over Defendant and this action pursuant to 28 U.S.C. § 1332  
21 because there is complete diversity of citizenship between Plaintiff and Defendant.

22 10. The amount in controversy between Plaintiff and Defendant exceeds \$75,000, exclusive  
23 of interest and cost.

24 11. This Court has personal jurisdiction over Defendant by:

- 25 a. Virtue of Pfizer transacting business within California;  
26 b. Pfizer contracting to supply LIPITOR to distributors and retailers for resale to  
27 physicians hospitals, pharmacies, and medical practitioners;  
28 c. Pfizer, producing, manufacturing, distributing, advertising, promoting, supplying, and

1 selling LIPITOR to distributors and retailers for resale to physicians, hospitals,  
2 pharmacies, and medical practitioners with the reasonable expectation that LIPITOR  
3 would be used or consumed in California and are/were so used and consumed by  
4 patients including Plaintiff; and

5 d. Pfizer's commission of a tortious act in California.

6 12. Venue is proper within this district pursuant to 28 U.S.C. § 1391 because Plaintiff resides  
7 in this district and because a substantial part of the acts and/or omissions giving rise to these claims  
8 occurred within this district. Plaintiff, Aubrey Isom, purchased the Defendant's pharmaceutical drug,  
9 Lipitor, in Orange County, California, and ingested LIPITOR at her home in the city of Anaheim,  
10 Orange County, California.

11 **FACTUAL ALLEGATIONS**

12 13. LIPITOR is prescribed to reduce the amount of cholesterol and other fatty substances  
13 in the blood. LIPITOR is an HMG-CoA reductase inhibitor and a member of the drug class known  
14 as statins.

15 14. Parke-Davis Pharmaceutical Research, a division of Warner-Lambert Company,  
16 obtained approval from the Food and Drug Administration ("FDA") to market LIPITOR on  
17 December 17, 1996. Warner-Lambert entered into a co-marketing agreement with Pfizer to sell  
18 Lipitor, and thereafter those companies began distributing and selling Lipitor throughout the United  
19 States in 1997. On June 19, 2000, Pfizer acquired Warner-Lambert and all rights to Lipitor.

20 15. Despite its knowledge of data indicating that LIPITOR use is causally related to the  
21 development of type 2 diabetes and/or blood glucose levels diagnostic for type 2 diabetes, Pfizer  
22 promoted and marketed LIPITOR as safe and effective for persons such as Plaintiff throughout the  
23 United States.

24 16. On August 11, 2011, the Division of Metabolism and Endocrinology Products of the  
25 FDA requested that Defendant make labeling changes for Lipitor based upon the FDA's  
26 comprehensive review, including clinical trial data.

27 17. In February 2012, Pfizer complied with the FDA's request and added the following  
28 language to its Warnings and Precautions Section: "Increases in HbA1c and fasting serum glucose

1 levels have been reported with HMG-CoA reductase inhibitors, including LIPITOR.”

2 18. Prior to the February 2012 change, LIPITOR’s label had never warned patients of any  
3 potential relation between changes in blood sugar levels and taking LIPITOR.

4 19. Despite the February 2012 label change, that warns in the most obtuse terms of a  
5 potential elevation of blood sugar, LIPITOR’s label continues to fail to warn consumers or their  
6 physicians directly of the serious risk of developing type 2 diabetes per se.

7 20. At all times material hereto, Defendant knew or should have known that the risks of  
8 LIPITOR included the severe and life-threatening complications of type 2 diabetes.

9 21. At all times material hereto, Defendant, by and through its agents, servants, and/or  
10 employees, negligently, recklessly and/or carelessly marketed, distributed, and/or sold LIPITOR  
11 without adequate instructions or warnings of LIPITOR’s serious side effects and unreasonably  
12 dangerous risks.

13 22. Plaintiff Aubrey Isom was prescribed LIPITOR by her physician in Orange County  
14 and used it as directed beginning in or around 2006.

15 23. Plaintiff was prescribed LIPITOR to lower her levels of low-density lipoprotein  
16 (“LDL”) and as a preventive measure to decrease her risk of developing cardiovascular disease  
17 (“CVD”).

18 24. Plaintiff agreed to initiate LIPITOR treatment in an effort to reduce her risk of  
19 developing heart disease. She relied on claims made by Pfizer that LIPITOR was clinically proven  
20 to reduce her risk of developing heart disease.

21 25. Approximately one year after she began treatment with LIPITOR, Plaintiff was  
22 diagnosed with type 2 diabetes in or around 2007.

23 26. As a result, for the rest of her life, Plaintiff must undergo regular testing of her blood  
24 glucose levels, adhere to a restrictive diabetic diet, maintain an exercise regimen, and take  
25 medication to control her diabetes. Plaintiff is now also at a markedly increased risk of heart  
26 disease and blindness as well as further complications with her diabetes, including neuropathy and  
27 kidney disease as a result of her diabetes.

28 27. Had Defendant properly disclosed the risks associated with LIPITOR, Plaintiff would

1 have avoided the risk of diabetes by either not using LIPITOR at all or by closely monitoring her  
2 blood glucose levels to see if the drug was adversely affecting her metabolism.

3 28. As alleged herein, as a direct and proximate result of Defendant's negligent conduct,  
4 and the unreasonably dangerous and defective characteristics of the drug LIPITOR, Plaintiff  
5 suffered severe and permanent physical and emotional injuries, including, but not limited to, type 2  
6 diabetes. Plaintiff has incurred losses and damages including pain and suffering, emotional distress,  
7 loss of enjoyment of life; has suffered economic loss, including loss of income and incurring  
8 significant expenses for medical care and treatment. Plaintiff will continue to incur such losses,  
9 damages, and expenses in the future.

10 29. Plaintiff did not discover, nor did she have any reason to discover her diabetes was a  
11 result of her use of LIPITOR and/or the wrongful conduct of Defendant, as set forth herein, until within  
12 two years of the filing of this complaint.

13 **FIRST CAUSE OF ACTION**

14 **NEGLIGENCE**

15 30. Plaintiff hereby incorporates by reference as if fully set forth herein, each and every  
16 allegation contained in the foregoing paragraphs.

17 31. At all times material hereto, Defendant had a duty to exercise reasonable care, and  
18 comply with the existing standards of care, in the design, development, manufacture, testing,  
19 inspection, packaging, promotion, marketing, distribution, labeling, and/or sale of LIPITOR to  
20 consumers.

21 32. Defendant breached its duty of reasonable care to Plaintiff, and failed to comply with  
22 existing standards of care, in that it negligently promoted, marketed, distributed, and labeled  
23 LIPITOR, and was otherwise negligent:

- 24 a. In its design, development, research, manufacture, monitoring, testing, packaging,  
25 promotion, marketing, sale, and/or distribution of LIPITOR;  
26 b. In its failure to warn or instruct, and/or adequately warn users of LIPITOR,  
27 including Plaintiff herein, of LIPITOR's dangerous and defective characteristics;  
28 c. In its design, development, implementation, administration, supervision, and/or

1 monitoring of clinical trials for LIPITOR;

- 2 d. In its promotion of LIPITOR in an overly aggressive, deceitful, and fraudulent  
3 manner, despite evidence as to the product's defective and dangerous  
4 characteristics due to its propensity to cause diabetes;
- 5 e. In representing that LIPITOR was safe for its intended use when, in fact, the  
6 product was unsafe for its intended use;
- 7 f. In failing to perform appropriate pre-market testing of LIPITOR;
- 8 g. In failing to perform appropriate post-market surveillance of LIPITOR;
- 9 h. In failing to adequately and properly test LIPITOR before and after placing it on  
10 the market;
- 11 i. In failing to conduct sufficient testing on LIPITOR which, if properly performed,  
12 would have shown that LIPITOR had the serious side effect of causing type 2  
13 diabetes;
- 14 j. In failing to adequately warn Plaintiff and her healthcare providers that the use of  
15 LIPITOR carried a risk of developing type 2 diabetes and that patients' blood  
16 glucose should be closely monitored;
- 17 k. In failing to provide adequate post-marketing warnings or instructions after  
18 Defendant knew or should have known of the significant risk of diabetes  
19 associated with the use of LIPITOR; and
- 20 l. In failing to adequately and timely inform Plaintiff and the healthcare industry of  
21 the risk of serious personal injury, namely type 2 diabetes, from LIPITOR  
22 ingestion as described herein.

23 33. Plaintiff's injuries and damages alleged herein were and are the direct and proximate  
24 result of the Defendant's negligence.

25 34. Had the Defendant exercised ordinary care, and complied with the then existing  
26 standards of care, Plaintiff would not have been injured.

27 35. Defendant knew or should have known that consumers, such as Plaintiff herein,  
28 would foreseeably suffer injury as a result of Defendant's failure to exercise reasonable and



1 ordinary care.

2 36. As a direct and proximate result of Defendant's carelessness and negligence, Plaintiff  
3 suffered severe and permanent physical and emotional injuries, including, but not limited to, type 2  
4 diabetes, as described with particularity, above. Plaintiff has endured pain, suffering, and loss of  
5 enjoyment of life, has suffered economic loss, including loss of income and incurring significant  
6 expenses for medical care and treatment. Plaintiff will continue to incur such expenses in the future.

7 **SECOND CAUSE OF ACTION**

8 **STRICT PRODUCT LIABILITY – FAILURE TO WARN**

9 37. Plaintiff hereby incorporates by reference as if fully set forth herein, each and every  
10 allegation contained in the foregoing paragraphs.

11 38. At all times relevant to this action, Defendant engaged in the business of designing,  
12 manufacturing, testing, marketing, labeling and placing into the stream of commerce LIPITOR for sale  
13 to, and use by, members of the public.

14 39. At all times relevant to this action, the dangerous propensities of LIPITOR were known  
15 to Defendant or were reasonably and scientifically knowable to them, through appropriate research and  
16 testing by known methods, at the time they distributed, supplied, or sold their respective product, and  
17 not known to ordinary physicians who would be expected to prescribe LIPITOR for their patients.

18 40. The LIPITOR manufactured and distributed by Defendant reached Plaintiff without  
19 substantial change and was ingested as directed for its intended purposes.

20 41. Plaintiff could not have discovered any defect in LIPITOR through the exercise of care.

21 42. Defendant, as the manufacturer of pharmaceutical products, including LIPITOR, is  
22 held to the level of knowledge of an expert in the field.

23 43. Defendant marketed LIPITOR in multiple ways, including but not limited to direct-to-  
24 consumer advertisements, which were misleading in that Defendant overstated the safety and efficacy of  
25 LIPITOR and understated its risks.

26 44. The LIPITOR was defective and unreasonably dangerous in that the labeling was  
27 insufficient to adequately warn physicians of the risk of patients developing type 2 diabetes.

28 45. As a direct and proximate result of the actions and inactions of the Defendant as set forth



1 above, Plaintiff was exposed to LIPITOR and suffered personal injuries, economic and non-economic  
2 damages including pain and suffering.

3 46. Defendant's actions and omissions as identified in this Complaint show that Defendant  
4 acted maliciously and/or intentionally disregarded Plaintiff's rights so as to warrant the imposition of  
5 punitive damages.

6 47. Defendant's conduct in continuing to market, sell and distribute LIPTOR after obtaining  
7 knowledge they were failing and not performing as represented and intended, showed complete  
8 indifference to or a conscious disregard for the safety of others justifying an award of additional  
9 damages for aggravating circumstances in such a sum which will serve to deter Defendant and others  
10 from similar conduct in the future.

11 **THIRD CAUSE OF ACTION**

12 **BREACH OF IMPLIED WARRANTY**

13 48. Plaintiff hereby incorporates by reference as if fully set forth herein, each and every  
14 allegation contained in the foregoing paragraphs.

15 49. At all times mentioned herein, Defendant manufactured, compounded, packaged,  
16 distributed, recommended, merchandised, advertised, promoted, supplied, and sold LIPITOR, and prior  
17 to the time that it was prescribed to Plaintiff, Defendant impliedly warranted to Plaintiff that LIPITOR  
18 was of merchantable quality and safe and fit for the use for which it was intended.

19 50. Plaintiff, individually and through her prescribing physicians, reasonably relied upon the  
20 skill, superior knowledge, and judgment of Defendant.

21 51. Plaintiff was prescribed, purchased, and used LIPITOR for its intended purpose.

22 52. Due to Defendant's wrongful conduct as alleged herein, Plaintiff could not have known  
23 about the nature of the risks and side effects associated with LIPITOR until after she had been injured by  
24 its use.

25 53. Contrary to Defendant's implied warranty for LIPITOR, LIPITOR was not of  
26 merchantable quality, and it was neither safe nor fit for its intended uses and purposes, as alleged herein.

27 54. As a direct and proximate result of Defendant's carelessness and negligence, Plaintiff  
28 suffered severe and permanent physical and emotional injuries, including, but not limited to, type 2

1 diabetes, as described with particularity, above. Plaintiff has endured pain, suffering, and loss of  
2 enjoyment of life, has suffered economic loss, including loss of income and incurring significant  
3 expenses for medical care and treatment. Plaintiff will continue to incur such expenses in the future.

4 **FOURTH CAUSE OF ACTION**

5 **BREACH OF EXPRESS WARRANTY**

6 55. Plaintiff hereby incorporates by reference as if fully set forth herein, each and every  
7 allegation contained in the foregoing paragraphs.

8 56. Defendant expressly warranted, through their direct-to-consumer marketing, label, and  
9 sales representatives, that LIPITOR was a safe and effective prescription medicine for the prevention of,  
10 and to help control, CVD. The safety and efficacy of LIPITOR constitute a material fact in connection  
11 with the marketing, promotion, and sale of LIPITOR.

12 57. LIPITOR manufactured and sold by Defendant did not conform to these express  
13 representations because it was not safe and effective for its intended use, and instead caused serious  
14 injury, in the form of the development of type 2 diabetes, to consumers, including Plaintiff, when taken  
15 in recommended dosages.

16 58. As a direct and proximate result of Defendant's breach of warranty, Plaintiff has suffered  
17 harm, damages, and economic loss, and will continue to suffer such harm, damages and economic loss  
18 in the future.

19 59. Defendant's actions and omissions as identified in this Complaint demonstrate malicious  
20 actions and/or intentional disregard of Plaintiff's rights so as to warrant the imposition of punitive  
21 damages.

22 **FIFTH CAUSE OF ACTION**

23 **DECEIT BY CONCEALMENT IN VIOLATION OF CIVIL CODE §§ 1709, 1710**

24 60. Plaintiff hereby incorporates by reference as if fully set forth herein, each and every  
25 allegation contained in the foregoing paragraphs.

26 61. California *Civil Code* § 1709 provides that one who willfully deceives another with intent  
27 to induce her to alter her position to her injury or risk is liable for any damages that she thereby suffers.

28 62. California *Civil Code* § 1710 provides, in part, that a deceit, within the meaning of §

1 1709, is the suggestion, as a fact, of that which is not true, by one who does not believe it to be true; the  
2 assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be  
3 true; or the suppression of fact, by one who is found to disclose it, or who gives information of other  
4 facts which are likely to mislead for want of communication of that fact.

5 63. Defendant, from the time that LIPITOR was first tested, studied, researched, evaluated,  
6 endorsed, manufactured, marketed and distributed, and up to the present, willfully deceived Plaintiff,  
7 Plaintiff's prescribing physicians and healthcare providers, the medical, scientific, pharmaceutical and  
8 healthcare communities, and the public in general, by suggesting to some or all of them untrue facts  
9 about their product that they did not believe to be true or had no reasonable ground for believing them  
10 to be true, and by concealing from them the true facts concerning LIPITOR, which the Defendant had a  
11 duty to disclose.

12 64. At the time LIPITOR was manufactured, distributed, and sold to Plaintiff, the Defendant  
13 was in a unique position of knowledge, which was not possessed by Plaintiff or Plaintiff's physicians,  
14 concerning the safety and effectiveness of LIPITOR, and thereby held a position of superiority over  
15 Plaintiff and Plaintiff's physicians.

16 65. Through its unique knowledge and expertise regarding the defective nature of LIPITOR,  
17 and through its marketing statements to physicians and patients in advertisements, promotional  
18 materials, labels and other communications as herein alleged, Defendant professed to Plaintiff's  
19 physicians that Pfizer was in possession of facts demonstrating that LIPITOR was safe and effective for  
20 its intended use and was not defective, when in fact it was not, and in fact Defendant possessed  
21 information they did not disclose that they had a duty to disclose to ensure such physicians were not  
22 misled.

23 66. Defendant knew or had no reasonable ground to believe the truth of their representations  
24 to Plaintiff's physicians. Such representations were made to induce the purchase of LIPITOR, and  
25 Plaintiff and Plaintiff's physicians relied upon those statements when purchasing and administering  
26 LIPITOR.

27 67. Defendant took unconscionable advantage of its dominant position of knowledge with  
28 regard to Plaintiff and Plaintiff's physicians and engaged in constructive fraud in their relationship.

68. Plaintiff and Plaintiff's physicians reasonably relied on these misrepresentations and misleading facts.

69. Defendant intentionally concealed and suppressed the true facts concerning LIPITOR with the intent to defraud the Plaintiff, Plaintiff's prescribing physicians and healthcare providers, the medical, scientific, pharmaceutical and healthcare communities, and the public in general, in that Defendant knew that the physicians and healthcare providers would not have prescribed LIPITOR, and Plaintiff would not have used LIPITOR if Plaintiff had known the true facts concerning the dangers of Lipitor and its connection in causing diabetes.

70. As a result of the foregoing fraudulent and deceitful conduct by Defendant, and each of them, Plaintiff was caused to suffer the herein described injuries and damages.

## **SIXTH CAUSE OF ACTION**

## FRAUD BY CONCEALMENT

71. Plaintiff hereby incorporates by reference as if fully set forth herein, each and every allegation contained in the foregoing paragraphs.

72. At all times mentioned in this Complaint, Defendant had the duty and obligation to disclose to Plaintiff and to Plaintiff's physicians, the true facts concerning LIPITOR, that is, that LIPITOR was dangerous and defective, and likely to cause serious health consequences to users, including the injuries as described in this Complaint.

73. Defendant represented to Plaintiff, her prescribing physicians, and the healthcare industry that LIPITOR was a safe and effective product while fraudulently, intentionally, and/or negligently concealing material information, including adverse information, regarding the safety and effectiveness of LIPITOR.

74. As studies have shown, LIPITOR is not safe and is causally related to the development of type 2 diabetes and/or blood glucose levels diagnostic for type 2 diabetes.

75. Representations that LIPITOR is safe and effective are material as consumers and medical providers rely on these representations from drug manufacturers in prescribing, purchasing and using their products.

76. Defendant made representations regarding the safety and effectiveness of LIPITOR while

1 concurrently actively concealing adverse information when Defendant knew and/or showed a reckless  
2 disregard of its truth, that LIPITOR had defects, dangers, and characteristics that were other than what  
3 Defendant had represented to Plaintiff and the healthcare industry generally. Specifically, Defendant  
4 actively concealed from Plaintiff, her prescribing physicians, the health care industry, and the  
5 consuming public that:

- 6 a. Since at least 1996 Defendant and/or its predecessors were in possession of data  
7 demonstrating that LIPITOR increases the risk of type 2 diabetes and the risk of  
8 increased blood glucose to levels diagnostic for type 2 diabetes;
- 9 b. There had been insufficient studies by Defendant and/or its predecessors regarding  
10 the safety and efficacy of LIPITOR in women before and after its product launch;
- 11 c. LIPITOR was not fully and adequately tested by Defendant and/or its predecessor for  
12 the risk of developing type 2 diabetes; and
- 13 d. Testing and studies by other entities as reported in the scientific literature has shown  
14 that the use of LIPITOR increases the risk of type 2 diabetes.

15 77. The representations made by Pfizer that LIPITOR was a safe and effective product and/or  
16 active concealment alleged were perpetuated directly and/or indirectly by Defendant.

17 78. Defendant knew and/or showed a reckless disregard of its truth that these representations  
18 were false, and it made the representations with the intent or purpose of deceiving Plaintiff, her  
19 prescribing physicians, and the healthcare industry.

20 79. Defendant made these false representations with the intent or purpose that Plaintiff, her  
21 prescribing physicians, and the healthcare industry would rely on them, leading to the use of LIPITOR  
22 by Plaintiff as well as the general public.

23 80. At all times herein mentioned, neither Plaintiff nor her physicians were aware of the  
24 falsity of the statements being made by Defendant and believed them to be true. Had they been aware of  
25 said facts, her physicians would not have prescribed and Plaintiff would not have used LIPITOR.

26 81. Plaintiff relied on and/or was induced by Defendant's representations and/or active  
27 concealment and relied on the absence of safety information which Defendant did suppress, conceal, or  
28 fail to disclose in purchasing and using LIPITOR.



1 product as safer as and more effective than other types of statin alternatives, and understated the risk of  
2 elevated blood sugar levels and diabetes associated with LIPITOR.

3 90. The aforementioned misrepresentations were untrue and misleading.

4 91. Defendant knew or should have known that these representations were false and made the  
5 representations with the intent that Plaintiff's prescribing physicians would rely on them, leading to the  
6 use of LIPITOR.

7 92. In willfully supplying the false information, Defendant negligently failed to exercise  
8 reasonable care in obtaining or communicating information to Plaintiff's physicians.

9 93. At the time of Defendant's fraudulent misrepresentations, Plaintiff's prescribing  
10 physicians were unaware of the falsity of the statements being made and believed them to be true.  
11 Plaintiff's prescribing physicians justifiably relied on and/or were induced by the misrepresentations  
12 and/or active concealment, and relied on the absence of safety information, which Defendant did  
13 suppress, conceal or failed to disclose, to Plaintiff's detriment.

14 94. The false information obtained and communicated by Defendant to Plaintiff's physicians  
15 was material and upon which Plaintiff and the medical community justifiably relied in good faith to their  
16 detriment.

17 95. As a direct and proximate result of the negligent misrepresentations of Defendant,  
18 Plaintiff has suffered personal injuries, economic and non-economic damages, including pain and  
19 suffering.

20 96. Defendant's actions and omissions as identified in this Complaint demonstrate malicious  
21 actions and/or intentional disregard of Plaintiff's rights so as to warrant the imposition of punitive  
22 damages.

23 **EIGHTH CAUSE OF ACTION**

24 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**

25 97. Plaintiff hereby incorporates by reference as if fully set forth herein, each and every  
26 allegation contained in the foregoing paragraphs.

27 98. Defendant has a statutory duty to refrain from unfair or deceptive acts or practices in the  
28 design, development, manufacture, promotion and sale of the defective leads.



1           99. Had the Defendant not engaged in the deceptive conduct described herein, Plaintiff  
2 would not have purchased and/or paid for LIPITOR, and would not have incurred related medical costs  
3 and injury.

4           100. Defendant engaged in wrongful conduct while at the same time obtaining, under false  
5 pretenses, substantial sums of money from Plaintiff for the defective LIPITOR that would not have been  
6 paid had Defendant not engaged in unfair and deceptive conduct.

7           101. Plaintiff was injured by the cumulative and indivisible nature of Defendant's conduct.  
8 The cumulative effect of Defendant's conduct directed at patients, physicians and consumers was to  
9 create demand for and sell LIPITOR. Each aspect of Defendant's conduct combined to artificially  
10 create sales of LIPITOR.

11           102. Defendant is liable to Plaintiff for all general, special and injunctive relief to which  
12 Plaintiff is entitled by law. Under statutes enacted in California to protect consumers against unfair,  
13 deceptive, fraudulent and unconscionable trade and business practices and false advertising, Plaintiff is a  
14 consumer who purchased LIPITOR pursuant to a consumer transaction for personal use and is,  
15 therefore, subject to protection under such legislation.

16           103. Under statutes enacted in California to protect consumers against unfair, deceptive,  
17 fraudulent and unconscionable trade and business practices and false advertising, Defendant is the  
18 supplier, manufacturer, advertiser, and seller, who is subject to liability under such legislation for unfair,  
19 deceptive, fraudulent and unconscionable consumer sales practices.

20           104. Defendant violated the statutes enacted in California to protect consumers against unfair,  
21 deceptive, fraudulent and unconscionable trade and business practices and false advertising, by  
22 knowingly and falsely representing that the leads were fit to be used for the purpose for which they were  
23 intended, when in fact the leads were defective and dangerous, and by other acts alleged herein. These  
24 representations were made in uniform promotional materials.

25           105. The actions and omissions of Defendant alleged herein are uncured or incurable  
26 deceptive acts under the statutes enacted in California to protect consumers against unfair, deceptive,  
27 fraudulent and unconscionable trade and business practices and false advertising.

28           106. Defendant had actual knowledge of the defective and dangerous condition of LIPITOR,

1 and failed to take any action to cure such defective and dangerous conditions.

2 107. Plaintiff and the medical community relied upon Defendant's misrepresentations and  
3 omissions in determining how to treat Plaintiff for prevention of CVD and to help lower her cholesterol  
4 levels, whether it be through diet and exercise, or the use of a statin medication, such as LIPITOR.

5 108. Defendant's deceptive, unconscionable or fraudulent representations and material  
6 omissions to patients, physicians and consumers, including Plaintiff, constituted unfair and deceptive  
7 acts and practices in violation of *Business and Professions Code* § 17200.

8 109. By reason of the unlawful acts engaged in by Defendant, and as a direct and proximate  
9 result thereof, Plaintiff has suffered ascertainable loss and damages.

10 110. As a direct and proximate result of Defendant's violations of *Business and Professions*  
11 *Code* § 17200, Plaintiff has sustained economic losses and other damages and is entitled to statutory,  
12 compensatory, injunctive and declaratory relief in an amount to be proven at trial.

13 111. Plaintiff, pursuant to *Business and Professions Code* § 17203, seeks an order of this  
14 Court compelling the Defendant to provide restitution, and to disgorge the monies collected and profits  
15 realized by the Defendant, and each of them, as a result of their unfair business practices, and injunctive  
16 relief calling for the Defendant, and each of them, to forever cease and desist such unfair business  
17 practices in the future.

18 **NINTH CAUSE OF ACTION**

19 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17500**

20 112. Plaintiff hereby incorporates by reference as if fully set forth herein, each and every  
21 allegation contained in the foregoing paragraphs.

22 113. Plaintiff brings this cause of action pursuant to California *Business & Professions Code* §  
23 17500.

24 114. *Business & Professions Code* § 17500 provides that it is unlawful for any person, firm,  
25 corporation or association to dispose of property or perform services, or to induce the public to enter into  
26 any obligation relating thereto, through the use of untrue or misleading statements.

27 115. At all times herein alleged Defendant have committed acts of disseminating untrue and  
28 misleading statements as defined by *Business & Professions Code* § 17500 by engaging in the following

1 acts and practices with intent to induce members of the public to purchase and use Defendant's LIPITOR  
2 products:

- 3 a. Representing that LIPITOR was safe, fit, and effective for human use, knowing that said  
4 representations were false, and concealing that LIPITOR had a serious propensity to  
5 cause injuries to users;
- 6 b. Engaging in advertising programs designed to create the image, impression and belief by  
7 consumers and physicians that LIPITOR was safer than other regimens to treat CVD and  
8 high cholesterol, even though the Defendant knew this to be false, and even though the  
9 Defendant had no reasonable grounds to believe this to be true;
- 10 c. Purposely downplaying and understating the health hazards and risks associated with  
11 LIPITOR;
- 12 d. Issuing promotional literature and commercials deceiving potential users of LIPITOR by  
13 relaying positive information, including testimonials from satisfied users, and  
14 manipulating statistics to suggest widespread acceptability and safety, while downplaying  
15 the known adverse and serious health effects and concealing material relevant  
16 information regarding the safety and efficacy of LIPITOR; and
- 17 e. Engaging in a practice undertaking unlawful, unfair, or fraudulent acts by refraining from  
18 taking any action that would provide prescribing physicians with appropriate information  
19 and protect patients who use LIPITOR, including Plaintiff, such as failing to engage in  
20 proper pharmacovigilance, signal detection and follow up, review of the literature,  
21 regulatory review, updating labels and timely and properly implementing label changes  
22 and conducting proper research, tests and studies to ensure the continued safety of  
23 LIPITOR, and taking appropriate action to disseminate to prescribing physicians and  
24 healthcare providers appropriate and permitted product information and labels concerning  
25 safety issues and safe prescribing practices for LIPITOR.

26 116. The foregoing practices constitute false and misleading advertising within the meaning of  
27 *Business & Professions Code* § 17500.

28 117. The acts of untrue and misleading statements by Defendant described herein above

1 present a continuing threat to members of the public in that the acts alleged herein are continuous and  
2 ongoing, and the public will continue to suffer the harm alleged herein.

3 118. As a result of their conduct described above, Defendant has been and will be unjustly  
4 enriched. Specifically, Defendant has been unjustly enriched by receipt of billions of dollars in ill-  
5 gotten gains from the sale and prescription of LIPITOR in California, sold in large part as a result of the  
6 acts and omissions described herein.

7 119. Pursuant to *Business & Professions Code* § 17535, Plaintiffs seeks an order of this Court  
8 compelling the Defendant to provide restitution and injunctive relief calling for Defendant to cease  
9 unfair business practices in the future.

10 120. Plaintiff seeks restitution of the monies collected by Defendant and other injunctive relief  
11 to cease such false and misleading advertising in the future.

12 **TENTH CAUSE OF ACTION**

13 **VIOLATIONS OF CIVIL CODE § 1750**

14 121. Plaintiff hereby incorporates by reference as if fully set forth herein, each and every  
15 allegation contained in the foregoing paragraphs.

16 122. Plaintiff is informed and believes and thereon alleges that Defendant, by the acts and  
17 misconduct alleged herein, violated the Consumers Legal Remedies Act, California *Civil Code* §§ 1750  
18 *et. seq.* ("CLRA").

19 123. Plaintiff hereby seeks injunctive relief as appropriate against Defendant for ITS  
20 violations of *Civil Code* §§ 1750 *et. seq.* The CLRA applies to Defendant's actions and conduct  
21 described herein because it extends to transactions which are intended to result, or which have resulted,  
22 in the sale of goods to consumers.

23 124. Plaintiff was a "consumer" within the meaning of *Civil Code* § 1761(d).

24 125. Defendant has violated, and continues to violate, the CLRA in representing that LIPITOR  
25 has characteristics and benefits which it does not have, in violation of *Civil Code* § 1770(a)(5).

26 126. At all times herein alleged Defendant have committed acts of disseminating untrue and  
27 misleading statements as defined by *Civil Code* § 1770, by engaging in the following acts and practices  
28 with intent to induce members of the public to purchase and use LIPITOR:

- a. Representing that LIPITOR is safe, fit, and effective for human use, knowing that said representations were false, and concealing that LIPITOR had a serious propensity to cause injuries to users;
- b. Engaging in advertising programs designed to create the image, impression and belief by consumers and physicians that LIPITOR is safer than other regimens to treat CVD and high cholesterol, even though the Defendant knew this to be false, and even though the Defendant had no reasonable grounds to believe this to be true;
- c. Purposely downplaying and understating the health hazards and risks associated with LIPITOR;
- d. Issuing promotional literature and commercials deceiving potential users of LIPITOR by relaying positive information, including testimonials from satisfied users, and manipulating statistics to suggest widespread acceptability or safety, while downplaying the known adverse and serious health effects and concealing material relevant information regarding the safety and efficacy of LIPITOR; and
- e. Engaging in a practice undertaking unlawful, unfair or fraudulent acts by refraining from taking any action that would provide prescribing physicians with appropriate information and protect patients who use their products, including Plaintiff, such as failing to engage in proper pharmacovigilance, signal detection and follow up, review of the literature, regulatory review, updating labels and timely and properly implementing label changes and conducting proper research, tests and studies to ensure the continued safety of LIPITOR, and taking appropriate action to disseminate to prescribing physicians and healthcare providers appropriate and permitted product information and labels concerning safety issues and safe prescribing practices for LIPITOR.

127. The foregoing practices constitute false and misleading advertising and representations within the meaning of *Civil Code* § 1770. The acts of untrue and misleading statements by Defendant described herein present a continuing threat to members of the public and individual consumers in that the acts alleged herein are continuous and ongoing, and the public and individual consumers will continue to suffer harm as alleged herein. Unless Defendant is enjoined from continuing to engage in

1 these violations of the CLRA, Plaintiff and other consumers will continue to be harmed by the wrongful  
2 actions and conduct of Defendant.

3 128. Pursuant to California *Civil Code* § 1780, Plaintiff seeks an order of this Court for  
4 injunctive relief calling for Defendant to cease such deceptive business practices in the future.

5 **PUNITIVE DAMAGES ALLEGATIONS**

6 129. Plaintiff hereby incorporates by reference as if fully set forth herein, each and every  
7 allegation contained in the foregoing paragraphs.

8 130. At all times material hereto, Defendant knew or should have known that LIPITOR was  
9 inherently dangerous with respect to the risk of type 2 diabetes.

10 131. At all times material hereto, Defendant attempted to misrepresent and did knowingly  
11 misrepresent facts concerning the safety of LIPITOR.

12 132. Defendant's misrepresentations included knowingly withholding material information  
13 from the medical community and the public, including Plaintiff, concerning the safety of LIPITOR. The  
14 defendant's conduct was willful, wanton, and undertaken with a disregard for the Plaintiff's rights.

15 133. At all times material hereto, Defendant knew and recklessly disregarded the fact that  
16 LIPITOR causes the chronic illness type 2 diabetes.

17 134. Notwithstanding the foregoing, Defendant continued to market LIPITOR aggressively to  
18 consumers, including Plaintiff herein, without disclosing the aforesaid side effect.

19 135. Defendant knew of LIPITOR's lack of warnings regarding the risk of diabetes, but it  
20 intentionally concealed and/or recklessly failed to disclose that risk and continued to market, distribute,  
21 and sell LIPITOR without said warnings so as to maximize sales and profits at the expense of the health  
22 and safety of the public, including Plaintiff herein, in conscious and/or negligent disregard of the  
23 foreseeable harm caused by LIPITOR.

24 136. Defendant's intentional and/or reckless failure to disclose information deprived Plaintiff  
25 of necessary information to enable her to weigh the true risks of using LIPITOR against its benefits.

26 137. As a direct and proximate result of Defendant's willful, wanton, careless, reckless,  
27 conscious, and deliberate disregard for the rights and safety of its consumers, Plaintiff suffered severe  
28 and permanent physical and emotional injuries, including, but not limited to, type 2 diabetes. Plaintiff

1 has endured pain, suffering, and loss of enjoyment of life, has suffered economic loss, including loss of  
 2 income and incurring significant expenses for medical care and treatment. Plaintiff will continue to incur  
 3 such expenses in the future. Plaintiff's injuries and damages are permanent and will continue into the  
 4 future.

5 138. Defendant's aforesaid conduct was committed with knowing, conscious, careless,  
 6 reckless, willful, wanton, and deliberate disregard for the rights and safety of consumers, including  
 7 Plaintiff, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish Defendant  
 8 and deter it from similar conduct in the future.

### 9 **PRAYER FOR DAMAGES**

10 **WHEREFORE**, Plaintiff AUBREY ISOM prays for relief on the entire Complaint as follows:

#### 11 **AS TO THE FIRST CAUSE OF ACTION FOR NEGLIGENCE:**

- 12 1. General damages according to proof at the time of trial;
- 13 2. Medical and other special damages, past, present and future, according to proof at the  
 14 time of trial;
- 15 3. Loss of earnings and loss of earnings capacity, according to proof at the time of trial;
- 16 4. For medical monitoring according to proof;
- 17 5. For pre-judgment and post-judgment interest as followed by the laws of the state of  
 18 California;
- 19 6. Costs of suit incurred herein; and
- 20 7. For such other and further relief as the Court may deem just and proper.

#### 21 **AS TO THE SECOND CAUSE OF ACTION FOR STRICT PRODUCT LIABILITY –** 22 **FAILURE TO WARN:**

- 23 1. General damages according to proof at the time of trial;
- 24 2. Medical and other special damages, past, present and future, according to proof at the  
 25 time of trial;
- 26 3. Loss of earnings and loss of earnings capacity, according to proof at the time of trial;
- 27 4. For medical monitoring according to proof;
- 28 5. For pre-judgment and post-judgment interest as followed by the laws of the state of



1 California;

2 6. Punitive and exemplary damages;

3 7. Costs of suit incurred herein; and

4 8. For such other and further relief as the Court may deem just and proper.

5 **AS TO THE THIRD CAUSE OF ACTION FOR BREACH OF IMPLIED WARRANTY:**

6 1. General damages according to proof at the time of trial;

7 2. Medical and other special damages, past, present and future, according to proof at the  
8 time of trial;

9 3. Loss of earnings and loss of earnings capacity, according to proof at the time of trial;

10 4. For medical monitoring according to proof;

11 5. For pre-judgment and post-judgment interest as followed by the laws of the state of  
12 California;

13 6. Costs of suit incurred herein; and

14 7. For such other and further relief as the Court may deem just and proper.

15 **AS TO THE FOURTH CAUSE OF ACTION FOR BREACH OF EXPRESS**  
16 **WARRANTY:**

17 1. General damages according to proof at the time of trial;

18 2. Medical and other special damages according to proof at the time of trial;

19 3. Loss of earnings and loss of earnings capacity, according to proof at the time of trial;

20 4. For pre-judgment and post-judgment interest as followed by the laws of the State of  
21 California;

22 5. Costs of suit incurred herein; and

23 6. For such other and further relief as the Court may deem just and proper.

24 **AS TO THE FIFTH CAUSE OF ACTION FOR DECEIT BY CONCEALMENT IN**  
25 **VIOLATION OF *CIVIL CODE* §§ 1709, 1710:**

26 1. General damages according to proof at the time of trial;

27 2. Medical and other special damages, past, present and future, according to proof at the  
28 time of trial;

3. Loss of earnings and loss of earnings capacity, according to proof at the time of trial;
4. For medical monitoring according to proof;
5. For pre-judgment and post-judgment interest as followed by the laws of the state of California;
6. Punitive and exemplary damages;
7. Costs of suit incurred herein; and
8. For such other and further relief as the Court may deem just and proper.

**AS TO THE SIXTH CAUSE OF ACTION FOR FRAUD BY CONCEALMENT:**

1. General damages according to proof at the time of trial;
2. Medical and other special damages, past, present and future, according to proof at the time of trial;
3. Loss of earnings and loss of earnings capacity, according to proof at the time of trial;
4. For medical monitoring according to proof;
5. For pre-judgment and post-judgment interest as followed by the laws of the state of California;
6. Punitive and exemplary damages;
7. Costs of suit incurred herein; and
8. For such other and further relief as the Court may deem just and proper.

**AS TO THE SEVENTH CAUSE OF ACTION FOR NEGLIGENT  
MISREPRESENTATION:**

1. General damages according to proof at the time of trial;
2. Medical and other special damages, past, present and future, according to proof at the time of trial;
3. Loss of earnings and loss of earnings capacity, according to proof at the time of trial;
4. For medical monitoring according to proof;
5. For pre-judgment and post-judgment interest as followed by the laws of the state of California;
6. Costs of suit incurred herein; and

1           7.       For such other and further relief as the Court may deem just and proper.

2           **AS TO THE EIGHTH CAUSE OF ACTION FOR VIOLATION OF *BUSINESS AND***  
3 ***PROFESSIONS CODE §§ 17200, et seq.:***

4           1.       For injunctive relief, forever enjoining defendants from the acts of unfair competition and  
5 untrue and misleading business practices, and ordering defendants to pay restitution to Plaintiffs all  
6 funds acquired by means of any act or practice declared by this Court to be in violation of *Business and*  
7 *Professions Code §§ 17200, et seq.*, unlawful or fraudulent, or to constitute unfair competition or untrue  
8 or misleading advertising;

9           2.       For disgorgement of Defendant's profits;

10          3.       For exemplary and punitive damages in an amount to be proven at trial;

11          4.       For attorneys' fees, according to proof;

12          5.       For such other and further relief as the Court deems just and proper.

13           **AS TO THE NINTH CAUSE OF ACTION FOR VIOLATION OF *BUSINESS AND***  
14 ***PROFESSIONS CODE §§ 17500, et seq.:***

15          1.       For injunctive relief, forever enjoining defendant from the acts of unfair competition and  
16 untrue and misleading business practices, and ordering defendant to pay restitution to Plaintiffs all funds  
17 acquired by means of any act or practice declared by this Court to be in violation of *Business and*  
18 *Professions Code §§ 17500, et seq.*, unlawful or fraudulent, or to constitute unfair competition or untrue  
19 or misleading advertising;

20          2.       For disgorgement of Defendant's profits;

21          3.       For exemplary and punitive damages in an amount to be proven at trial;

22          4.       For attorneys' fees, according to proof;

23          5.       For such other and further relief as the Court deems just and proper.

24           **AS TO THE TENTH CAUSE OF ACTION FOR VIOLATION OF *CIVIL CODE § 1750, et***  
25 ***seq.:***

26          1.       For injunctive relief, forever enjoining defendant from the acts of unfair competition and  
27 untrue and misleading business practices, and ordering defendants to pay restitution to Plaintiffs all  
28 funds acquired by means of any act or practice declared by this Court to be in violation of *Civil Code §§*

1 1750, *et seq.*, unlawful or fraudulent, or to constitute unfair competition or untrue or misleading  
2 advertising;

3 2. For disgorgement of Defendant's profits;

4 3. For exemplary and punitive damages in an amount to be proven at trial;

5 4. For attorneys' fees, according to proof;

6 For such other and further relief as the Court deems just and proper.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff AUBREY ISOM demands a jury trial and all causes of action and issues so triable.

9  
10 DATED August 15, 2013

LOPEZ McHUGH LLP

11  
12  
13 By: 

Ramon Rossi Lopez

Matthew Ramon Lopez

Amorina Patrice Lopez

14  
15  
16 Attorneys for Plaintiff, AUBREY ISOM  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

|   |   |
|---|---|
| <b>I. (a) PLAINTIFFS</b> ( Check box if you are representing yourself <input type="checkbox"/> )<br><br>AUBREY ISOM   | <b>DEFENDANTS</b> ( Check box if you are representing yourself <input type="checkbox"/> )<br><br>PFIZER, INC.; and DOES 1 through 100, inclusive, |
| (b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)<br>Ramon Rossi Lopez, Bar No. 86361, Matthew Ramon Lopez, Bar No. 263134,<br>Amorina Patrice Lopez, Bar No. 278002<br>Lopez McHugh LLP<br>100 Bayview Circle, Ste. 5600, Newport Beach, CA 92660, (949) 737-1501 | (b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  |

  

| <b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)<br><br><div style="display: flex; justify-content: space-between;"> <div style="width:48%;"> <input type="checkbox"/> 1. U.S. Government Plaintiff         </div> <div style="width:48%;"> <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party)         </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width:48%;"> <input type="checkbox"/> 2. U.S. Government Defendant         </div> <div style="width:48%;"> <input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)         </div> </div> | <b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> -For Diversity Cases Only<br>(Place an X in one box for plaintiff and one for defendant) <table style="width:100%; font-size: small;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table> |                            | PTF   | DEF                        |                                       | PTF | DEF | Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
|---|--|----------------------------|---|----------------------------|---------------------------------------|-----|-----|-----------------------|---------------------------------------|----------------------------|---|----------------------------|----------------------------|--------------------------|----------------------------|----------------------------|---|----------------------------|---------------------------------------|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
|   | PTF  | DEF                        |   | PTF                        | DEF                                   |     |     |                       |                                       |                            |   |                            |                            |                          |                            |                            |   |                            |                                       |   |                            |                            |                |                            |                            |
| Citizen of This State   | <input checked="" type="checkbox"/> 1  | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |     |     |                       |                                       |                            |   |                            |                            |                          |                            |                            |   |                            |                                       |   |                            |                            |                |                            |                            |
| Citizen of Another State  | <input type="checkbox"/> 2   | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |     |     |                       |                                       |                            |   |                            |                            |                          |                            |                            |   |                            |                                       |   |                            |                            |                |                            |                            |
| Citizen or Subject of a Foreign Country   | <input type="checkbox"/> 3   | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |     |     |                       |                                       |                            |   |                            |                            |                          |                            |                            |   |                            |                                       |   |                            |                            |                |                            |                            |

  

|   |   |
|---|---|
| <b>IV. ORIGIN</b> (Place an X in one box only.)<br><input checked="" type="checkbox"/> 1. Original Proceeding <input type="checkbox"/> 2. Removed from State Court <input type="checkbox"/> 3. Remanded from Appellate Court <input type="checkbox"/> 4. Reinstated or Reopened | <input type="checkbox"/> 5. Transferred from Another District (Specify) <input type="checkbox"/> 6. Multi-District Litigation |
|---|---|

  

**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

**CLASS ACTION under F.R.Cv.P. 23:** ☐ Yes ☒ No      **MONEY DEMANDED IN COMPLAINT:** \$ \_\_\_\_\_

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

**VII. NATURE OF SUIT** (Place an X in one box only).

| OTHER STATUTES   | CONTRACT   | REAL PROPERTY CONT.   | IMMIGRATION  | PRISONER PETITIONS   | PROPERTY RIGHTS  |
|--|--|---|--|--|--|
| <input type="checkbox"/> 375 False Claims Act  | <input type="checkbox"/> 110 Insurance   | <input type="checkbox"/> 240 Torts to Land  | <input type="checkbox"/> 462 Naturalization Application            | <input type="checkbox"/> 463 Alien Detainee                              | <input type="checkbox"/> 820 Copyrights                          |
| <input type="checkbox"/> 400 State Reapportionment                                     | <input type="checkbox"/> 120 Marine  | <input type="checkbox"/> 245 Tort Product Liability                                       | <input type="checkbox"/> 465 Other Immigration Actions             | <input type="checkbox"/> 510 Motions to Vacate Sentence                  | <input type="checkbox"/> 830 Patent                              |
| <input type="checkbox"/> 410 Antitrust   | <input type="checkbox"/> 130 Miller Act  | <input type="checkbox"/> 290 All Other Real Property                                      |  | <input type="checkbox"/> 530 General                                     | <input type="checkbox"/> 840 Trademark                           |
| <input type="checkbox"/> 430 Banks and Banking   | <input type="checkbox"/> 140 Negotiable Instrument                             |   |  | <input type="checkbox"/> 535 Death Penalty                               |  |
| <input type="checkbox"/> 450 Commerce/ICC Rates/Etc.                                   | <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <b>TORTS</b>  | <b>PERSONAL PROPERTY</b>   | <input type="checkbox"/> 540 Mandamus/Other                              | <b>SOCIAL SECURITY</b>   |
| <input type="checkbox"/> 460 Deportation   | <input type="checkbox"/> 151 Medicare Act                                      | <input type="checkbox"/> 310 Airplane   | <input type="checkbox"/> 370 Other Fraud                           | <input type="checkbox"/> 550 Civil Rights                                | <input type="checkbox"/> 861 HIA (1395ff)                        |
| <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.                       | <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)   | <input type="checkbox"/> 315 Airplane Product Liability                                   | <input type="checkbox"/> 371 Truth in Lending                      | <input type="checkbox"/> 555 Prison Condition                            | <input type="checkbox"/> 862 Black Lung (923)                    |
| <input type="checkbox"/> 480 Consumer Credit   | <input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits          | <input type="checkbox"/> 320 Assault, Libel & Slander                                     | <input type="checkbox"/> 380 Other Personal Property Damage        | <input type="checkbox"/> 560 Civil Detainee Conditions of Confinement    | <input type="checkbox"/> 863 DIWC/DIWW (405 (g))                 |
| <input type="checkbox"/> 490 Cable/Sat TV  | <input type="checkbox"/> 160 Stockholders' Suits                               | <input type="checkbox"/> 330 Fed. Employers' Liability                                    | <input type="checkbox"/> 385 Property Damage Product Liability     | <b>FORFEITURE/PENALTY</b>  | <input type="checkbox"/> 864 SSID Title XVI                      |
| <input type="checkbox"/> 850 Securities/Commodities/Exchange                           | <input type="checkbox"/> 190 Other Contract                                    | <input type="checkbox"/> 340 Marine   | <b>BANKRUPTCY</b>  | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 865 RSI (405 (g))                       |
| <input type="checkbox"/> 890 Other Statutory Actions                                   | <input type="checkbox"/> 195 Contract Product Liability                        | <input type="checkbox"/> 345 Marine Product Liability                                     | <input type="checkbox"/> 422 Appeal 28 USC 158                     | <input type="checkbox"/> 690 Other                                       | <b>FEDERAL TAX SUITS</b>   |
| <input type="checkbox"/> 891 Agricultural Acts   | <input type="checkbox"/> 196 Franchise   | <input type="checkbox"/> 350 Motor Vehicle  | <input type="checkbox"/> 423 Withdrawal 28 USC 157                 |  | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) |
| <input type="checkbox"/> 893 Environmental Matters                                     |  | <input type="checkbox"/> 355 Motor Vehicle Product Liability                              | <b>CIVIL RIGHTS</b>  | <b>LABOR</b>   | <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609         |
| <input type="checkbox"/> 895 Freedom of Info. Act                                      |  | <input type="checkbox"/> 360 Other Personal Injury  | <input type="checkbox"/> 440 Other Civil Rights                    | <input type="checkbox"/> 710 Fair Labor Standards Act                    |  |
| <input type="checkbox"/> 896 Arbitration   |  | <input type="checkbox"/> 362 Personal Injury-Med Malpractice                              | <input type="checkbox"/> 441 Voting                                | <input type="checkbox"/> 720 Labor/Mgmt. Relations                       |  |
|  | <b>REAL PROPERTY</b>   | <input type="checkbox"/> 365 Personal Injury-Product Liability                            | <input type="checkbox"/> 442 Employment                            | <input type="checkbox"/> 740 Railway Labor Act                           |  |
| <input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision | <input type="checkbox"/> 210 Land Condemnation                                 | <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability | <input type="checkbox"/> 443 Housing/Accommodations                | <input type="checkbox"/> 751 Family and Medical Leave Act                |  |
|  | <input type="checkbox"/> 220 Foreclosure                                       | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability                   | <input type="checkbox"/> 445 American with Disabilities-Employment | <input type="checkbox"/> 790 Other Labor Litigation                      |  |
| <input type="checkbox"/> 950 Constitutionality of State Statutes                       | <input type="checkbox"/> 230 Rent Lease & Ejectment                            |   | <input type="checkbox"/> 446 American with Disabilities-Other      | <input type="checkbox"/> 791 Employee Ret. Inc. Security Act             |  |
|  |  |   | <input type="checkbox"/> 448 Education                             |  |  |

FOR OFFICE USE ONLY: Case Number: **SACV13-01250-CJC (JPRx)**

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

## UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

## CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

## Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

## IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

|                           |   |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| Orange County, CA         |   |

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

|                           |   |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
|                           | New York, NY  |

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.  
**NOTE: In land condemnation cases, use the location of the tract of land involved.**

|                           |   |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| Orange County, CA         |   |

\*Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): Mattew R. Fick DATE: August 15, 2013

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

## Nature of Suit Code Abbreviation

## Substantive Statement of Cause of Action

|     |      |  |
|-----|------|--|
| 861 | HIA  | All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b)) |
| 862 | BL   | All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)  |
| 863 | DIWC | All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))  |
| 863 | DIWW | All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))   |
| 864 | SSID | All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.  |
| 865 | RSI  | All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))   |

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Cormac J. Carney and the assigned Magistrate Judge is Jean P. Rosenbluth.

The case number on all documents filed with the Court should read as follows:

SACV13-01250 CJC (JPRx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

August 15, 2013

Date

By D. Lagman  
Deputy Clerk

---

---

NOTICE TO COUNSEL

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

**Subsequent documents must be filed at the following location:**

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Western Division<br>312 N. Spring Street, G-8<br>Los Angeles, CA 90012 | <input type="checkbox"/> Southern Division<br>411 West Fourth St., Ste 1053<br>Santa Ana, CA 92701 | <input type="checkbox"/> Eastern Division<br>3470 Twelfth Street, Room 134<br>Riverside, CA 92501 |
|---|--|---|

**Failure to file at the proper location will result in your documents being returned to you.**