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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Wesley Davis and Betty Davis Plaintiffs, vs. Actavis Pharma, Inc., Watson Laboratories, Inc., Actavis, Inc., and Physicians Total Care, Inc., Defendants.	Case No.: **COMPLAINT AND DEMAND FOR JURY TRIAL**

COMPLAINT

Now come Plaintiffs, Wesley Davis and Betty Davis, by and through the undersigned counsel, and for their Complaint hereby aver and state:

NATURE OF THE ACTION

1. This is an action for damages suffered by Plaintiffs and caused by Defendants' prescription medication known as Androderm. Plaintiff Wesley Davis used Androderm and Plaintiffs allege the product was unreasonably unsafe and caused Mr. Davis to suffer a massive stroke. Plaintiffs allege this caused profound, permanent damage to Mr. Davis' physical health, that it subjected him to pain and suffering, that it caused them extensive medical expenses, and that it caused Mrs. Davis a loss of consortium. Plaintiffs also request punitive damages.

PARTIES

2. Plaintiffs are citizens and residents of Slingerlands, New York.

3. According to filings with the FDA, Androderm is manufactured by Defendant Watson Laboratories, Inc., is distributed by Watson Pharma, Inc., and, in certain doses, is labeled by Defendant Physicians Total Care, Inc. On information and belief, Defendant Actavis, Inc. is the parent company of Defendant Actavis Pharma, Inc. and Defendant Watson Laboratories, Inc.

4. Watson Pharma, Inc. changed its name in 2013 to Actavis Pharma, Inc.

5. Defendant Actavis Pharma, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business and its headquarters in New Jersey. Actavis Pharma, Inc. can be served by delivering the citation to its registered agent for service: Actavis Pharma, Inc., c/o The Corporation Trust Company of Nevada, 311 S. Division St., Carson City, NV 89703.

6. Defendant Watson Laboratories, Inc. is a corporation organized and existing under the laws of the State of Nevada with its principal place of business and its headquarters in New Jersey. Watson Laboratories, Inc. can be served by delivering the citation to its registered agent

for service: Watson Laboratories, Inc., c/o The Corporation Trust Company of Nevada, 311 S. Division St., Carson City, NV 89703..

7. Defendant Actavis, Inc. is a corporation organized and existing under the laws of the State of Nevada with its principal place of business and its headquarters in New Jersey. Actavis, Inc. can be served by delivering the citation to its registered agent for service: Actavis, Inc., c/o The Corporation Trust Company of Nevada, 311 S. Division St., Carson City, NV 89703.

8. Defendant Physicians Total Care, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business and its headquarters in Oklahoma. Physicians Total Care, Inc. can be served by delivering the citation to its registered agent for service: Physicians Total Care, Inc., c/o National Corporate Research, Ltd., 1833 S. Morgan Road, Oklahoma City, OK 73128.

9. Defendants engaged in the business of designing, licensing, manufacturing, testing, advertising, warranting, distributing, supplying, selling, and introducing into the stream of commerce products known as Androderm. Defendants sold and marketed Androderm in Nevada, in New York, and throughout the United States.

10. The officers and directors of Defendants participated in, authorized, and directed the production and promotion of Androderm when they knew, or with the exercise of reasonable care should have known, of the hazards and dangerous propensities of said product and thereby actively participated in the tortious conduct which resulted in the injuries suffered by Plaintiff herein.

JURISDICTION AND VENUE

11. Plaintiffs are citizens of New York.

12. On information and belief, Defendant Actavis Pharma, Inc. (fka Watson Pharma, Inc.) is a citizen of Delaware and New Jersey.

13. On information and belief, Defendant Watson Laboratories, Inc. is a citizen of Nevada and New Jersey.

14. On information and belief, Defendant Actavis, Inc. is a citizen of Nevada and New Jersey.

15. On information and belief, Defendant Physicians Total Care, Inc. is a citizen of Oklahoma.

16. The amount in controversy exceeds $75,000, exclusive of interest and costs.

17. Complete diversity exists between the parties and the amount in controversy exceeds the threshold, so this Court has jurisdiction. 28 U.S.C. § 1332.

18. Defendants are located in this district, are residents of this district, have facilities in this district, and marketed their products in this district, including direct-to-consumer marketing, communication with and marketing to physicians, and sale of Androderm and its other products in this district. Therefore, venue is proper in this district under 28 U.S.C. § 1391(b)(1) and 1391(d).

FACTS

Testosterone Overview

19. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

20. Testosterone is the primary androgenic hormone responsible for normal growth, development of the male sex organs, and maintenance of secondary sex characteristics. The

hormone plays a role in sperm production, fat distribution, maintenance of muscle strength and mass, and sex drive.

21. In men, testosterone levels normally begin a gradual decline after the age of thirty.

22. Hypogonadism is a specific and recognized condition of the endocrine system, which in men may involve the diminished production or nonproduction of testosterone.

23. The average testosterone levels for most men range from 300 to 1,000 nanograms per deciliter of blood (ng/dl). However, testosterone levels can fluctuate greatly depending on many factors, including sleep, time of day, and medication. Resultantly, many men who fall into the hypogonadal range one day will have normal testosterone levels the next.

Androderm Background

24. Defendants are and at all relevant times have been engaged in the business of formulating, designing, manufacturing, licensing, testing, advertising, marketing, warranting, selling, and distributing a testosterone product called Androderm. As part of their business, Defendants introduce Androderm into the stream of commerce.

25. Androderm is a patch gel containing 2, 2.5, 4, or 5 mg of testosterone, applied to the stomach, arms, back or thighs and enters the body through transdermal absorption.

26. Regardless of the name under which Defendants marketed, sold, and distributed the drug, all of its forms were and are, for all purposes relevant to Plaintiffs' claims, chemically and pharmacologically identical, except to the extent Defendants varied the dosage and intensity

27. In 1994, when Theratech, Inc., the original manufacturer of Androderm, asked for FDA approval of Androderm, hypogonadism was considered to be a relatively uncommon condition among American men.

28. After the FDA approved Androderm in 1995, Defendants and other testosterone supplement manufacturers engaged in media campaigns to convince men who were experiencing the typical effects of the aging process that they were suffering from low testosterone, which could be treated with testosterone supplements, including Androderm. The marketing campaign consisted of advertisements, promotional literature placed in healthcare providers' offices and distributed to potential Androderm users, and online media including Defendants' website for Androderm: www.myandroderm.com.

29. Defendants coordinated a massive advertising campaign designed to convince men they suffer from low testosterone and Androderm was the solution. Defendants orchestrated a national disease awareness media blitz that purported to educate male consumers about the signs of low testosterone. The marketing campaign consisted of television advertisements, promotional literature placed in healthcare providers' offices and distributed to potential Androderm users, and online media including the unbranded website "myandroderm.com."

30. "myandroderm.com" includes, among other things, a list of potential "symptoms" of low testosterone:

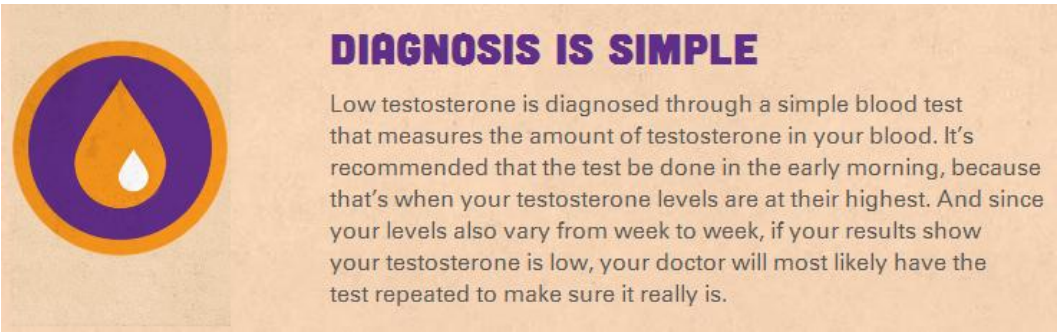
SYMPTOMS, EXPECTED AND NOT

When you think of low testosterone, you probably think—and rightly so—that its symptoms are sexual. Actually, though, that's only the beginning. As you see from the list below, there are other physical and emotional aspects as well. A lot of the time, these symptoms are considered part of "normal aging."

PHYSICAL	EMOTIONAL	SEXUAL
Hot flashes	Depressed mood	Diminished sexual desire
Decreased lean muscle mass	Emotional "ups and downs"	Inability to achieve or maintain an erection
Enlarged breasts	Mental "fuzziness"/ forgetfulness	Difficulty having an orgasm
Loss of body hair	Irritability	Decreased performance
Decreased strength	Decreased energy	Fewer nighttime and morning erections
Anemia (low red blood cell count)		
Frailty		
Tiring easily		
Increased body fat		
Sleep disturbances		

Low Testosterone. http://www.myandroderm.com/low_testosterone.aspx#Symptoms.

31. Defendants promised men a quick blood test could determine if they needed Androderm:



Low Testosterone. http://www.myandroderm.com/low_testosterone.aspx#Diagnosis.

32. As a whole, Defendants' marketing efforts endeavor to convince men that symptoms associated with other conditions (such as aging, diabetes, etc.) may be caused by low testosterone and encourage men to discuss testosterone replacement therapy with their doctors if they experienced any of the "symptoms" of low testosterone. These "symptoms" include listlessness, increased body fat, and moodiness—all general symptoms that are often a result of aging, weight gain, or lifestyle choices, rather than low testosterone.

33. Defendants have sought, through marketing, to greatly broaden the definition and diagnosis of hypogonadism to include the normal maladies of aging, such as decreased libido, decreased energy, weight gain, and mood issues.

34. Defendants have also sought to convince primary care physicians that low testosterone levels are widely under-diagnosed, and that typical conditions associated with normal aging are actually caused by low testosterone levels and solvable with prescription testosterone.

35. Under a guise of running a disease awareness campaign, Defendants promote their product Androderm as an easy-to-use and safe topical testosterone replacement therapy.

36. Defendants try to capitalize on the extensive marketing done by other testosterone makers by billing Androderm as the topical testosterone solution least likely to transmit dangerous testosterone to unwitting victims, such as people the user hugs or shakes hands with.

37. Testosterone replacement therapy has been available for years and was previously used in limited ways and in cases of genuine need. Now, via their marketing efforts, Defendants convinced millions of men to pursue testosterone replacement therapy to combat the normal signs of aging rather than true hypogonadism.

38. Defendants successfully created a robust and previously nonexistent market for their drug. The marketing campaign was successful in creating the belief by consumers and physicians that low testosterone affected a large number of men in the United States and that Androderm is safe for human use, even though Defendants knew or should have known this to be false, and even though Defendants had no reasonable grounds to believe them to be true.

39. Plaintiffs, consumers, and physicians relied on Defendants' promises that Androderm is safe and effective. What consumers received, however, were not safe drugs, but a product which causes life-threatening injuries, including heart attacks, stroke, and thrombotic events.

40. Androderm's 2011 sales exceeded $87 million, making it one of the biggest selling androgen drug in the United States. Thanks to Defendants' and their competitors' marketing efforts, sales of testosterone replacement therapies have more than doubled since 2006, and are expected to triple to $5 billion by 2017, according to forecasts by Global Industry Analysts. Shannon Pettypiece, *Are Testosterone Drugs the Next Viagra?*, May 10, 2012, BLOOMBERG BUSINESSWEEK, http://www.businessweek.com/articles/2012-05-10/are-testosterone-drugs-the-next-viagra.

41. Nevertheless, Defendants knew or should have known that Androderm was not effective, that it was defective, and that it was unreasonably dangerous for its intended use.

42. A New England Journal of Medicine Study entitled "Adverse Events Associated with Testosterone Administration" was discontinued after an exceedingly high number of men in the testosterone group were suffered adverse events.

43. In November 2013, a JAMA study was released entitled "Association of Testosterone Therapy with Mortality, Myocardial Infarction, and Stroke in Men with Low Testosterone Levels" which correlated testosterone therapy with a 30% increase in the risk of death, heart attack, and stroke.

44. In January 2014, a study was released in PLOS ONE entitled "Increased Risk of Non-Fatal Myocardial Infarction Following Testosterone Therapy Prescription in Men" which indicated testosterone use doubled the risk of heart attacks in men over sixty five years old and men younger than sixty five with a previous diagnosis of heart disease.

45. In some patient populations, Androderm use may increase the incidence of myocardial infarctions and death by over 500%.

46. In addition, Androderm has been linked to several severe and life changing medical disorders in both users and those who come into physical contact with users or the unwashed clothes of someone who used Androderm. Patients exposed to Androderm may experience enlarged prostates and increased serum prostate-specific antigen levels.

47. Defendants purposefully downplayed, understated, and ignored the health hazards and risks associated with using Androderm. Defendants deceived potential Androderm users by relaying positive information through the press, including testimonials from athletes, and

manipulating hypogonadism statistics to suggest widespread disease prevalence, while downplaying Androderm's known adverse and serious health effects.

48. Defendants concealed material, relevant information from potential Androderm users and inappropriately minimized user and prescriber concern regarding the safety of Androderm.

49. In the warnings Defendants give in their commercials, online, and print advertisements, Defendants fail to mention the true risk of cardiac or stroke side effects and falsely represent they adequately tested Androderm for all likely side effects.

50. Defendants also abrogated and ignored their duty to further test Androderm and to follow up on multiple concerns raised by various studies.

51. As evidence of deleterious side effects mounts, the FDA recently announced it is investigating the risk of heart attack, stroke, and death correlated with Androderm and other testosterone products. FDA evaluating risk of stroke, heart attack and death with FDA-approved testosterone products, http://www.fda.gov/Drugs/DrugSafety/ucm383904.htm.

52. Yet, long before, Defendants knew or should have known they had a duty to warn doctors and patients that Androderm is associated with higher instances of heart attack, stroke, and death.

53. Plaintiff and countless victims of Androderm used Androderm as intended and in a foreseeable manner. Androderm, however, is a defective product; it is unreasonably dangerous in light of its nature and intended use. The defects existed when the products left Defendants' control and are the proximate cause of Plaintiffs' and countless other patients' injuries.

54. Defendants knew or should have known of the dangerous condition of Androderm, but failed to adequately warn or instruct physicians and consumers of the risks, dangers, and proper uses of the drug.

55. Defendants over-promoted Androderm for their own profit.

56. Defendants have breached their duty of reasonable care and their express and implied warranties, and have made affirmative misrepresentations as well as misrepresentations by omission, all in connection with the design, testing, manufacture, marketing, and/or labeling of Androderm.

57. As a direct and proximate result of the acts and omissions of Defendants, patients have suffered heart attacks, atrial fibrillation, blood clots, strokes, pulmonary embolisms, deep vein thromboses, death, early-onset puberty, sexual side effects in men and women, and a variety of other deleterious side effects.

58. As a direct and proximate result of Defendants' acts and/or omissions, victims of Androderm, such as Plaintiffs, have:

a. suffered severe and permanent injuries, which they will be forced to endure for the remainder of their lives;

b. suffered physical impairment and disfigurement;

c. suffered physical pain and suffering;

d. suffered mental pain and suffering;

e. suffered loss of enjoyment of life;

f. incurred substantial costs for medical care in the past, and will, in reasonable medical probability, incur substantial costs for medical care in the future;

g. suffered a loss of earnings and of future earning capacity;

h. suffered losses of consortium; and,

i. incurred attorneys' fees and expenses of litigation related to this action.

CASE-SPECIFIC ALLEGATIONS

59. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

60. Based on Defendants' and their competitors' marketing efforts, Plaintiff Wesley Davis asked his doctor if the woes of aging he was feeling were because he had low testosterone. His doctor prescribed Androderm.

61. As a result of his use of Androderm, Plaintiff Wesley Davis suffered a massive stroke. On the morning of April 20, 2011, Plaintiff Betty Davis woke up and found her husband Mr. Davis in distress. He could not talk. He looked scared but could not form words. At one point, he burst in to laughter.

62. Mrs. Davis called 911 and the responding paramedics transported Mr. Davis to St. Peter's Hospital.

63. Mr. Davis remained hospitalized for a week. For months that followed, he had speech therapy to try to regain his ability to speak. He never fully recovered his ability to speak, though, and, particularly when tired or nervous, he is now unable to verbalize.

64. Mr. Davis' memory has been badly damaged by the stroke and he has not recovered many of his memories.

65. Mr. Davis suffers permanent and ongoing effects of the stroke caused by Androderm.

66. Had Plaintiffs known of Androderm's deleterious and potentially catastrophic side effects and that it raised the likelihood of causing heart attacks, strokes, thrombotic events, and even death, they would not have taken the product or would have limited the dose and monitored carefully for specific health concerns.

67. As a direct and proximate result of the acts of and/or omissions by Defendants, Plaintiffs have suffered the following injuries and damages:

a. bodily injury, disfigurement, conscious pain, suffering, mental anguish, mental suffering, embarrassment, shame, loss of enjoyment of life, shortened life expectancy, loss of association, loss of earnings, loss of profits, and loss of salary;

b. reasonable and necessary expenses for the medical treatment rendered to Plaintiffs in the past and that will be medically probable in the future;

c. permanent impairment;

d. future economic damages, including lost wages, increased risk of future health events, related co-morbidities, and increased risk of shortened lifespan; and

e. costs of this suit.

EQUITABLE TOLLING

68. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

69. The events giving rise to Plaintiffs' claim occurred within the statutory period. Nonetheless, should a Court find otherwise, Plaintiffs' claim is nonetheless valid because the statute of limitations was tolled:

a. Defendants failed to disclose a known defect and affirmatively misrepresented that Androderm was safe for its intended use. Further, Defendants actively concealed the true risks associated with the use of Androderm.

b. Plaintiffs, the public at large, and/or the prescribing physicians had no knowledge that Defendants were engaged in the wrongdoing alleged herein.

c. Because of Defendants' concealment of and misrepresentations regarding the true risks associated with Androderm, Plaintiffs, the general public, and/or the prescribing physicians could not have reasonably discovered Defendants' wrongdoing or the relationship between Androderm and the heart attacks, atrial fibrillation, blood clots, strokes, pulmonary embolisms, deep vein thromboses, death, early-onset puberty, sexual side effects in men and women, and a variety of other deleterious side effects.

d. As alleged herein, Defendants' fraudulent misrepresentations, fraudulent omissions, reckless misrepresentations, reckless omissions, negligent misrepresentations, and negligent omissions tolled the running of any statute of limitations.

70. Therefore, Plaintiffs timely filed this action.

CAUSES OF ACTION

COUNT I
DEFECTIVE DESIGN

71. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

72. At all times relevant, Defendants had a duty to manufacture, test, market, advertise, label, distribute, and sell Androderm so that it was reasonably safe for its foreseeable use.

73. Due to design defects, at the time Androderm left the control of Defendants and was sold, it contained one or more conditions that rendered it defective and unreasonably dangerous in light of its nature and intended use.

74. The Androderm manufactured and/or supplied by Defendants and to which Plaintiffs were exposed was defective in design, and/or formulation in that when it left the hands of

Defendants, the foreseeable risks (particularly risks of heart attack, stroke, and death) exceeded the benefits associated with the design and/or formulation of this product.

75. The Androderm manufactured and/or supplied by Defendants was defective in design and/or formulation in that it was more dangerous than an ordinary consumer would expect when used in its intended or reasonably foreseeable manner.

76. The dangers presented by Androderm are so great that reasonable health care professionals would not prescribe its use if they knew of the risks.

77. The dangers presented by Androderm are so great that reasonable consumers—such as Plaintiffs—would not use Androderm if they knew of the risks.

78. At all times, Plaintiffs used Androderm in the manner intended, recommended, or reasonably foreseeable by Defendants, particularly based on Androderm's indications and/or Defendants' marketing of Androderm.

79. There were and are no other reasonable, secondary causes of Plaintiffs' injuries and damages other than the use of Androderm.

80. Defendants are strictly liable for injuries resulting from the defective design of their product.

81. As a direct and proximate result of Defendants' wrongful actions, Plaintiff Wesley Davis suffered a massive stroke and continues to suffer from the extensive damage the stroke caused him, including ongoing memory loss, diminished mental function, and diminished ability to speak.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, statutory, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems appropriate.

COUNT II
FAILURE TO WARN

82. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

83. The Androderm marketed, sold, and supplied by Defendants and to which Plaintiffs were exposed was defective in its marketing and labeling in that Defendants knew or should have known of its dangers and risks, but failed to adequately warn or instruct Plaintiffs, physicians, consumers, and the general public of the nature and extent of those risks.

84. The Androderm marketed, sold, and supplied by Defendants and to which Plaintiffs were exposed was defective in its marketing and labeling in that Defendants knew of should have known of its dangers, as well as knew the means for reducing or eliminating those dangers and risks, but failed to adequately warn or instruct Plaintiffs, physicians, consumers, and the general public of those risks or means of reducing or eliminating the risks.

85. The Androderm marketed, sold, and supplied by Defendants was defective in marketing in that Defendants represented to the public that the product was safe and had qualities that it, in fact, did not have.

86. Had Plaintiffs known of Androderm's potential for causing deleterious, permanent damage, they would not have taken Androderm.

87. Defendants are strictly liable for injuries resulting from their failure to warn.

88. As a direct and proximate result of Defendants' wrongful actions, Plaintiff Wesley Davis suffered a massive stroke and continues to suffer from the extensive damage the stroke caused him, including ongoing memory loss, diminished mental function, and diminished ability to speak.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, statutory, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems appropriate.

COUNT III
MANUFACTURING DEFECT

89. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

90. At all times relevant, Defendants had a duty to manufacture, test, market, advertise, label, distribute, and sell Androderm so that it was reasonably safe for its foreseeable use.

91. Due to manufacturing defects, at the time Androderm left the control of Defendants and was sold, it contained one or more conditions that rendered it defective and unreasonably dangerous in light of its nature and intended use.

92. The Androderm manufactured and/or distributed by Defendants was defective in that it caused heart attacks, strokes, and death in those who used it.

93. The Androderm manufactured and/or distributed by Defendants contained manufacturing defects that rendered it more dangerous than an ordinary consumer would expect when used in its intended or reasonably foreseeable manner.

94. The dangers presented by Androderm are so great that reasonable health care professionals would not prescribe its use.

95. At all times, Plaintiffs used Androderm in the manner intended, recommended, or reasonably foreseeable by Defendants, particularly based on Androderm's indications and/or Defendants' marketing of Androderm.

96. There were and are no other reasonable, secondary causes of Plaintiffs' injuries and damages other than the use of Androderm.

97. Defendants are strictly liable for injuries resulting from their manufacturing defects.

98. As a direct and proximate result of Defendants' wrongful actions, Plaintiff Wesley Davis suffered a massive stroke and continues to suffer from the extensive damage the stroke caused him, including ongoing memory loss, diminished mental function, and diminished ability to speak.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, statutory, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems appropriate.

COUNT IV
FAILURE TO TEST

99. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

100. At all times relevant, Defendants had a duty to test Androderm so that it was reasonably safe for its foreseeable use.

101. Defendants failed to properly test Androderm to discover its potential for causing deleterious, permanent, and profound effects such as heart attacks, strokes, and death.

102. The dangers presented by Androderm are so great that reasonable health care professionals would not prescribe its if they knew of the risks.

103. Defendants are strictly liable for injuries resulting from their failure to test.

104. As a direct and proximate result of Defendants' wrongful actions, Plaintiff Wesley Davis suffered a massive stroke and continues to suffer from the extensive damage the stroke caused

him, including ongoing memory loss, diminished mental function, and diminished ability to speak.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, statutory, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems appropriate.

COUNT V
NEGLIGENCE

105. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

106. Defendants owed Plaintiffs and all consumers a duty of reasonable care in how they designed Androderm, manufactured Androderm, tested Androderm, and warned of Androderm's dangers.

107. Defendants breached their duty of care by designing, manufacturing, testing, and labeling Androderm in a manner that was dangerous to those who used it.

108. A reasonable manufacturer would or should have known that Androderm's risks are unreasonably greater than necessary and/or than other similar products.

109. The dangers presented by Androderm are so great that reasonable health care professionals would not prescribe its use if they knew of the risks.

110. As a direct and proximate result of Defendants' wrongful actions, Plaintiff Wesley Davis suffered a massive stroke and continues to suffer from the extensive damage the stroke caused him, including ongoing memory loss, diminished mental function, and diminished ability to speak.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, statutory, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems appropriate.

COUNT VI
GROSS NEGLIGENCE

111. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

112. Defendants owed Plaintiffs and all consumers a duty of reasonable care in how they designed Androderm, manufactured Androderm, tested Androderm, and warned of Androderm's dangers.

113. Defendants breached their duty of care by designing, manufacturing, testing, and labeling Androderm in a manner that was dangerous to those who used it.

114. A reasonable manufacturer would or should have known that Androderm's risks are unreasonably greater than necessary and/or than other similar products.

115. Defendants consciously and voluntarily disregarded the risks to Plaintiffs and consumers in how they designed, manufactured, tested, and marketed Androderm, particularly in that they suppressed or failed to disclose Androderm's risk of causing heart attacks, strokes, and death.

116. Defendants knew or should have known of Androderm's high instance of heart attack, stroke, and/or death, so its breaches were wanton and willful and evince Defendants' blatant, callous, and indifferent conduct towards Plaintiffs and consumers in general.

117. As a direct and proximate result of Defendants' wrongful actions, Plaintiff Wesley Davis suffered a massive stroke and continues to suffer from the extensive damage the stroke caused

him, including ongoing memory loss, diminished mental function, and diminished ability to speak.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, statutory, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems appropriate.

COUNT VII
FRAUD BY CONCEALMENT

118. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

119. Defendants had a duty to disclose certain concealed facts, which include those dangers of which they knew, particularly those dangers so grave they could cause heart attacks, strokes, and death.

120. Defendants disclosed some limited facts about Androderm's contraindications, but did not include those grave dangers that form the basis of this suit. This partial disclosure created a duty to fully disclose all Androderm's dangers to avoid misleading Plaintiffs and the public.

121. On information and belief, Defendants knew Androderm had the potential to cause heart attacks, strokes, and death and concealed this.

122. If Plaintiffs had known of the information Defendants fraudulently concealed, they would not have taken Androderm.

123. As a direct and proximate result of Defendants' wrongful actions, Plaintiff Wesley Davis suffered a massive stroke and continues to suffer from the extensive damage the stroke caused him, including ongoing memory loss, diminished mental function, and diminished ability to speak.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, statutory, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems appropriate.

COUNT VIII
FRAUDULENT MISREPRESENTATION

124. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

125. Defendants had a duty to accurately represent certain material facts, which include those dangers of which they knew, particularly that Androderm could cause heart attacks, strokes, and/or death.

126. Through their silence and through their statements, Defendants misrepresented Androderm's safety to Plaintiff and the general public by failing to indicate it could cause grave harm.

127. Defendants knew or should have known Androderm had the potential to cause profound injury such as heart attacks, strokes, and even death.

128. If Plaintiffs had known of the information Defendants fraudulently misrepresented, they would not have taken Androderm.

129. As a direct and proximate result of Defendants' wrongful actions, Plaintiff Wesley Davis suffered a massive stroke and continues to suffer from the extensive damage the stroke caused him, including ongoing memory loss, diminished mental function, and diminished ability to speak.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, statutory, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems appropriate.

COUNT IX
NEGLIGENT MISREPRESENTATION

130. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

131. Defendants had a duty to accurately represent certain material facts, which include those dangers of which they knew, particularly those dangers so grave they could cause heart attacks, strokes, and/or death.

132. Through their silence on the issue and through their statements, Defendants misrepresented Androderm's safety to Plaintiff and the general public by failing to indicate it causes heart attacks, strokes, and/or death.

133. Defendants knew or should have known Androderm had the potential to cause profound injury such as heart attacks, strokes, and even death.

134. If Plaintiffs had known of the information Defendants misrepresented, they would not have taken Androderm.

135. As a direct and proximate result of Defendants' wrongful actions, Plaintiff Wesley Davis suffered a massive stroke and continues to suffer from the extensive damage the stroke caused him, including ongoing memory loss, diminished mental function, and diminished ability to speak.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, statutory, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems appropriate.

COUNT X
BREACH OF EXPRESS WARRANTY

136. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

137. Through their advertising, statements to the medical community, statements to the general public, marketing, and labeling, Defendants created express warranties that Androderm was safe and effective. In particular, these statements include:

a. television commercials designed to convince men suffering the normal effects of aging that they had a particular and diagnosable condition and that Androderm would solve that;

b. websites, such as MyAndroderm.com, designed to convince men that a low testosterone is the cause of their otherwise normal signs of aging;

c. statements designed to convince men they needed the testosterone therapy provided by Androderm; and

d. statements designed to reassure men Androderm was safe and effective.

138. At the time they made these warranties, Defendants had knowledge or should have had knowledge that Androderm was not as safe or effective as its warranties promised.

139. Androderm does not conform to the express warranties created by Defendants in that it is dangerous and less effective than promised.

140. Plaintiffs relied on Defendants' warranties when deciding to take Androderm and would not have taken Androderm if they knew the warranties were false and the product was actually profoundly dangerous.

141. As a direct and proximate result of Defendants' wrongful actions, Plaintiff Wesley Davis suffered a massive stroke and continues to suffer from the extensive damage the stroke caused him, including ongoing memory loss, diminished mental function, and diminished ability to speak.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, statutory, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems appropriate.

COUNT XI
BREACH OF IMPLIED WARRANTY

142. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

143. By selling Androderm, Defendants impliedly warranted the product was merchantable, including: that Androderm would pass without objection in the trade; that it would be of average quality; that it would be fit for its ordinary purpose and use; that it would be packaged and labeled properly; and that it would conform to the promises made in the marketing, packaging, and labeling of the product.

144. Androderm is dangerous and less effective than promised. As such, it would not pass without objection in the trade, is not of average quality (particularly when compared with other medications and solution for middle age lethargy, mood swings, and erectile dysfunction), is not fit for its ordinary purpose and use as a prescription drug, was not labeled in a way to warn

consumers of its grave dangers, and did not conform to is marketing, packaging, and labeling promises of being safe for consumption.

145. At the time they sold Androderm, Defendants had knowledge or should have had knowledge that Androderm was not merchantable.

146. Plaintiffs relied on Defendants' warranties when deciding to take Androderm and would not have taken Androderm if they knew the product was not merchantable and was actually profoundly dangerous.

147. As a direct and proximate result of Defendants' wrongful actions, Plaintiff Wesley Davis suffered a massive stroke and continues to suffer from the extensive damage the stroke caused him, including ongoing memory loss, diminished mental function, and diminished ability to speak.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, statutory, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems appropriate.

COUNT XII
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

148. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

149. In ignoring Androderm's risks and not disclosing Androderm's risk of causing heart attacks, strokes, and even death, Defendants acted in an extreme and outrageous manner.

150. Defendants should have known and/or did know that their conduct could cause and would cause emotional distress to men who took Androderm and suffered a heart attack, suffered a stroke, and/or died and to the victim's loved ones.

151. Androderm's dangers caused a risk of illness and bodily harm to Plaintiffs and actually did cause illness and bodily harm to Plaintiffs.

152. Defendants intentionally caused, or recklessly disregarded the risks of causing, the emotional distress associated with having a myocardial infarction.

153. Plaintiffs have suffered severe emotional distress from finding out that Plaintiff's massive stroke was preventable, that it was caused by Androderm, and that the massive stroke caused lifelong and permanent effects, including damage to Mr. Wesley's brain, his memory, and his ability to speak.

154. Defendants' outrageous conduct in not disclosing Androderm's risks is the actual and proximate cause of Plaintiffs' distress.

155. As a direct and proximate result of Defendants' wrongful actions, Plaintiffs have suffered emotional distress.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, statutory, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems appropriate.

COUNT XIII
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

156. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

157. Defendants owed a duty to act with reasonable care in the design, manufacturing, and marketing/labeling of Androderm.

158. Defendants breached their duties by releasing to the public a product that was inherently dangerous and by not warning of the product's risks.

159. Defendants should have known and/or did know that their conduct could cause and would cause emotional distress to people who took Androderm and suffered a heart attack, stroke, and/or death as a result.

160. Androderm's dangers caused a risk of illness and bodily harm to Plaintiffs and actually did cause illness and bodily harm to Plaintiffs.

161. Defendants' breaches caused Plaintiffs' massive stroke and the resultant, lifelong damage associated with that.

162. Plaintiff's condition caused emotional distress in both Plaintiffs. Therefore, as a direct and proximate result of Defendants' wrongful actions and breaches, Plaintiffs suffered emotional distress.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, statutory, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems appropriate.

COUNT XIV
LOSS OF CONSORTIUM

163. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

164. As a direct and proximate result of Defendants' wrongful actions, Plaintiff Wesley Davis suffered a massive stroke, has sustained permanent damage to his brain, has sustained massive damage to his memory, and has sustained massive damage to his ability to speak.

165. Plaintiff Wesley Davis' illnesses have diminished or deprived Plaintiff Betty Davis of Mr. Davis' services, companionship, and society and will likely continue to cause diminishment

or deprivation of Mr. Davis' services, companionship, and society for the remainder of their lives.

166. Defendants' wrongful actions directly and proximately caused the loss of services, companionship, and society.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, statutory, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems appropriate.

PUNITIVE DAMAGES ALLEGATIONS

167. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

168. The acts, conduct, and omissions of Defendants, as alleged throughout this Complaint were willful and malicious. Defendants committed these acts with a conscious disregard for the rights of Plaintiff and other Androderm users and for the primary purpose of increasing Defendants' profits from the sale and distribution of Androderm. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages against Defendants in an amount appropriate to punish and make an example of Defendants.

169. Prior to the manufacturing, sale, and distribution of Androderm, Defendants knew that Androderm was in a defective condition as previously described herein and knew that those who were prescribed the medication would experience and did experience severe physical, mental, and emotional injuries.

170. Further, Defendants, through their officers, directors, managers, and agents, knew that the medication presented a substantial and unreasonable risk of harm to the public, including

Plaintiff and as such, Defendants unreasonably subjected consumers of said drugs to risk of injury or death from using Androderm.

171. Despite their knowledge, Defendants, acting through their officers, directors, and managing agents for the purpose of enhancing Defendants' profits, knowingly and deliberately failed to remedy the known defects in Androderm and failed to warn the public, including Plaintiffs, of the extreme risk of injury created by Androderm's inherent defects. Defendants and their agents, officers, and directors intentionally proceeded with the manufacturing, sale, distribution, and marketing of Androderm knowing these actions would expose consumers, such as Plaintiffs, to serious danger. Defendants did this to advance their pecuniary interests and profits.

172. Defendants' conduct was despicable and so contemptible that it would be looked down upon and despised by ordinary decent people, and was carried on by Defendants with willful and conscious disregard for the safety of Plaintiffs, entitling Plaintiffs to exemplary damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

A. For an award of compensatory damages, including damages against Defendants for pain and suffering, medical and hospital expenses, loss of income, loss of consortium, and other damages according to proof at trial in excess of the Court's jurisdictional minimum;

B. For consequential damages in excess of the Court's jurisdictional minimum;

C. For full refund of all purchase costs Plaintiff paid for testosterone;

D. For an award of punitive or exemplary damages against Defendants in excess of the Court's jurisdictional minimum;

E. For reasonable attorneys' fees and costs;

F. For pre-judgment interest and post-judgment interest; and

G. For such further and other relief the court deems just, equitable, and proper.

Dated: April 18, 2014

Respectfully Submitted,

/s/ Don Springmeyer
Don Springmeyer (NV Bar# 1021)
WOLF RIFKIN SHAPIRO SCHULMAN RABKIN, LLP
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Email: michelle@toledolaw.com
Email: jim@toledolaw.com

Counsel for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all triable issues.

/s/ Don Springmeyer
Don Springmeyer (NV Bar# 1021)

JS 44 (Rev. 3/13)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Wesley Davis & Betty Davis

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

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

Wold Rifkin Shapiro Schulman Rabkin, LLP
3556 East Russell Rd, Second Floor
Las Vegas, NV 89120
(702) 341-5300

DEFENDANTS

Actavis Pharma, Inc.; Watson Laboratories, Inc.; Actavis, Inc. and Physicians Total Care, Inc.

County of Residence of First Listed Defendant Morris Cty, NJ
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys *(If Known)*

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

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

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	1	1	Incorporated *or* Principal Place of Business In This State	4	☑ 4
Citizen of Another State	☑ 2	2	Incorporated *and* Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ■ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities Employment
- ☐ 446 Amer. w/Disabilities Other
- ☐ 448 Education

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee (Prisoner Petition)
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

(Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

28 USC Sec 1332 - This action involves a pharmaceutical claim arising out of the use of Androderm.

VII. Previous Bankruptcy Matters

(For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.

VIII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ 75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☑ Yes ☐ No

IX. RELATED CASE(S) IF ANY

(See instructions): JUDGE Miranda M. Du DOCKET NUMBER 2:14-cv-00453-MMD-VCF

X. This case (check one box) ☐ **Is not a refiling of a previously dismissed action** ☐ is a refiling of case number _____ previously dismissed by Judge _____

DATE 4/18/14

SIGNATURE OF ATTORNEY OF RECORD /s/ Don Springmeyer

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Previous Bankruptcy Matters For nature of suit 422 and 423 enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this court. Use a separate attachment if necessary.

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

IX. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

X. Refiling Information. Place an "X" in one of the two boxes indicating if the case is or is not a refilling of a previously dismissed action. If it is a refiling of a previously dismissed action, insert the case number and judge.

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