

JUDGE BUCHWALD

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

02278

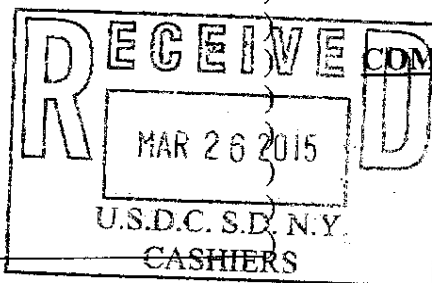
RON ROSENWEIN, Individually and on)
behalf of the Estate of Lloyd Rosenwein,)
)
Plaintiff,)

CASE NO.:

v.

PFIZER, INC.

Defendant.



COMPLAINT AND DEMAND
FOR JURY TRIAL

COPY

CIVIL ACTION COMPLAINT

1. This is an action for personal injuries and damages suffered by Plaintiff, as an individually, and as a representative of the decedent, as a direct and proximate result of Pfizer's negligent and wrongful conduct in connection with the design, development, manufacture, testing, packaging, promoting, marketing, distribution, labeling, and/or sale of sildenafil citrate tablets sold under the brand name Viagra® ("Viagra").

PARTIES

2. Plaintiff's decedent, Lloyd Alan Rosenwein, was born on April 20, 1947 and died on October 19, 2012. At all times relevant to this action, he was an adult resident and citizen of the State of California.

3. Plaintiff, Ron Rosenwein, as Administrator of the Estate of Lloyd Alan Rosenwein, is an adult citizen residing at 1435 Crestview Court, Los Angeles, California.

4. Defendant, Pfizer, Inc., is a corporation organized and existing under the laws of the State of Delaware. Defendant maintains its principal place of business at 235 East 42nd Street, New York, New York 10017.

5. At all times mentioned herein, Defendant engaged in interstate commerce, including commerce within this judicial district, in the advertisement, promotion, distribution, and sale of Viagra.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Defendant and this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiff and Defendant and because the amount in controversy between Plaintiff and Defendant exceeds \$75,000.00, exclusive of interest and cost.

7. This court has personal jurisdiction over this Defendant because Defendant maintains significant contacts with this judicial district by virtue of conducting business within the district.

8. Venue is proper within this district and division pursuant to 28 U.S.C. § 1391, as Plaintiff resides in this district. Furthermore, Defendant marketed, advertised, and distributed Viagra in this judicial district, thereby receiving substantial financial benefit and profits from the dangerous product in this district.

FACTUAL BACKGROUND

A. Facts Regarding Pfizer and Viagra

9. On March 27, 1998, the U.S. Food and Drug Administration approved a new drug application ("NDA") from Pfizer Pharmaceuticals Production Corporation Limited for the manufacture and sale of sildenafil citrate.

10. Sildenafil citrate, sold under the brand name Viagra, is an oral tablet prescribed to men with erectile dysfunction.

11. Erectile dysfunction is the medical designation for a condition in which a man cannot get or maintain an erection sufficient for satisfactory sexual activity. Since reaching and maintaining an erection involves the brain, nerves, hormones, and blood vessels, any condition that interferes with any of these functional areas of the body may be causally related to an individual's erectile dysfunction. These problems become more common with age, but erectile dysfunction can affect a man at any age.

12. Viagra treats erectile dysfunction by inhibiting the secretion of phosphodiesterase type 5 ("PDE5"), an enzyme responsible for the degradation of cyclic guanosine monophosphate ("cGMP"). When the cGMP is not degraded by the PDE5, smooth muscles in the corpus cavernosum relax; this, in turn, permits an inflow of blood to the corpus cavernosum, creating an erection.

13. The National Institutes of Health estimate that erectile dysfunction affects as many as thirty million men in the United States.¹

14. Since Viagra's FDA approval in 1998, Pfizer has engaged in a continuous, expensive and aggressive advertising campaign to market Viagra to men worldwide as a symbol of regaining and enhancing one's virility.

15. Pfizer has engaged in increasingly aggressive marketing techniques and strategies to promote the use of Viagra in the face of increasing pharmaceutical competition. By means of demonstration, a 2004 article in *The Chicago Tribune* cited industry reports stating that Pfizer spent "tens of millions of dollars each month on direct-to-consumer advertising []."²

¹ NIH Consensus Development Panel on Impotence (July 7, 1993).

² Bruce Japsen, *Viagra's 2 Rivals Grab Market Share In A Year*, CHICAGO TRIBUNE, Sept. 23, 2004, available at http://articles.chicagotribune.com/2004-09-23/business/0409230283_1_v Viagra-erectile-levitra.

16. Pfizer has also been criticized by regulators, physicians and consumer groups for its attempts to target younger men in their advertising. Doctors and federal regulators stated that “such ads sen[t] a confusing message to patients who might really benefit from the drug.”³

17. In its 2013 Annual Report, Pfizer states that it accumulated revenue exceeding \$1,800,000,000 from worldwide sales of Viagra. This statistic is particularly significant in light of the fact that Pfizer lost exclusivity of Viagra throughout Europe in 2013, which in itself led to a drop in profits from the previous calendar year.

18. Viagra holds approximately 45% of the U.S. market share for erectile dysfunction medications.⁴

19. Pfizer estimates that Viagra has been prescribed to more than 35 million men worldwide.⁵ In 2012 alone, physicians wrote approximately eight million prescriptions for Viagra.⁶

B. Facts Regarding Viagra’s Link to Melanoma

20. Unbeknownst to most Viagra users, and not mentioned in the slew of advertising proliferated by Pfizer, recent studies have shown that the cellular activity providing the mechanism of action for Viagra may also be associated with the development and/or exacerbation of melanoma.

21. The American Cancer Society states that melanoma is “the most serious type of skin cancer.”⁷

³ Bruce Japsen, *Toned-Down Advertising Credited for Viagra Gains*, CHICAGO TRIBUNE, Feb. 8, 2007, available at http://articles.chicagotribune.com/2007-02-08/business/0702080063_1_viagra-erectile-pfizer-spokesman.

⁴ Jacque Wilson, *Viagra: The Little Blue Pill That Could*, CNN, Mar. 27, 2013, available at: <http://www.cnn.com/2013/03/27/health/viagra-anniversary-timeline/index.html>.

⁵ Hilary Stout, *Viagra: The Thrill That Was*, N.Y. TIMES, June 5, 2011, available at: <http://query.nytimes.com/gst/fullpage.html?res=9B06E3DF173FF936A35755C0A9679D8B63>.

⁶ Wilson, *supra* note 4.

22. According to the National Cancer Institute, part of the National Institutes of Health, melanoma is more likely than other skin cancers to spread to other parts of the body, thereby causing further tissue damage and complicating the potential for effective treatment and eradication of the cancerous cells.⁸

23. Several studies have linked the mechanism of action for Viagra to cell mutation cultivating melanomagenesis, or the creation of melanocytes which develop into melanoma.

24. A study published in 2011 found that treatment with Viagra can promote melanoma cell invasion.⁹ Specifically, by inhibiting PDE5, Viagra mimics an effect of gene activation and therefore may potentially function as a trigger for the creation of melanoma cells.

25. A 2012 study published in the *Journal of Cell Biochemistry* also found that PDE5 inhibitors were shown to promote melanin synthesis,¹⁰ which may exacerbate melanoma development.¹¹

26. On April 7, 2014, an original study (“the JAMA study”) was published on the website for the *Journal of the American Medical Association Internal Medicine* which, in light of the previous studies, sought to examine the direct relationship between sildenafil use and

⁷ American Cancer Society, *Skin Cancer Facts*, last revised March 19, 2014, available at: <http://www.cancer.org/cancer/cancercauses/sunanduvexposure/skin-cancer-facts>.

⁸ National Cancer Institute, *Types of Skin Cancer*, last updated Jan. 11, 2011, available at: <http://www.cancer.gov/cancertopics/wyntk/skin/page4>.

⁹ I. Aozarena, et al., *Oncogenic BRAF Induces Melanoma Cell Invasion by Downregulating The cGMP-Specific Phosphodiesterase PDE5A*, 19 *CANCER CELL* 45 (2011).

¹⁰ X Zhang, et al., *PDE5 Inhibitor Promotes Melanin Synthesis Through the PKG Pathway in B16 Melanoma Cells*, 113 *J. CELL BIOCHEM.* 2738 (2012).

¹¹ F.P. Noonan, et al., *Melanoma Induction by Ultraviolet A But Not Ultraviolet B Radiation Requires Melanin Pigment*, 3 *NATURE COMMUNICATIONS* 884 (2012).

melanoma development in men in the United States.¹² The JAMA study was published in the journal's June 2014 edition.

27. Among 25,848 participants, the JAMA study reported that recent sildenafil users at baseline had a significantly elevated risk of invasive melanoma, with a "hazard ratio" of 1.84; in other words, the study participants who had recently used sildenafil exhibited an 84% increase in risk of developing or encouraging invasive melanoma.¹³

28. Despite these significant findings, Pfizer has made no efforts in its ubiquitous Viagra advertisements to warn users about the potential risk of developing melanoma that has been scientifically linked to its drug.

29. At all times relevant to this lawsuit, Pfizer engaged in the business of researching, licensing, designing, formulating, compounding, testing, manufacturing, producing, processing, assembling, inspecting, distributing, marketing, labeling, promoting, packaging and/or advertising for sale or selling the prescription drug Viagra for use among the general public.

30. For the duration of these efforts, Pfizer directed its advertising efforts to consumers located across the nation, including consumers in the State of New York. These advertising efforts have resulted in sales of Viagra across the State of New York.

31. At all times mentioned in this Complaint, Pfizer's officers and directors participated in, authorized, and directed the production and aggressive promotion of Viagra when they knew, or with the exercise of reasonable care should have known, of the risk of developing melanoma associated with Viagra use. In doing so, these officers and directors actively

¹² Wen-Qing Li, Abrar A. Qureshi, Kathleen C. Robinson, & Jiali Han, *Sildenafil Use and Increased Risk of Incident Melanoma in U.S. Men: A Prospective Cohort Study*, 174 JAMA INTERNAL MEDICINE 964 (2014).

¹³ *Id.*

participated in the tortious conduct which resulted in the injuries suffered by many Viagra users, including Plaintiff's decedent.

32. Pfizer purposefully downplayed, understated and outright ignored the melanoma-related health hazards and risks associated with using Viagra. Pfizer also deceived potential Viagra users by relaying positive information through the press, including testimonials from retired, popular U.S. politicians, while downplaying known adverse and serious health effects.

33. Pfizer concealed material information related to melanoma development from potential Viagra users.

34. In particular, in the warnings the company includes in its commercials, online and print advertisements, Pfizer fail to mention any potential risk for melanoma development and/or exacerbation associated with Viagra use.

35. As a result of Pfizer's advertising and marketing, and representations about its product, men in the United States pervasively seek out prescriptions for Viagra. If Plaintiff's decedent had known the risks and dangers associated with taking Viagra, Plaintiff's decedent would have elected not to take Viagra and, consequently, would not have been subject to its serious side effects.

C. Facts Regarding Plaintiff's Decedent

36. Plaintiff's decedent began pharmaceutical treatment for erectile dysfunction in 2011, when his physician recommended that he begin taking Viagra.

37. Plaintiff's decedent continued to fill his Viagra prescriptions and take the drug regularly until at least September of 2012.

38. On October 19, 2012, Plaintiff's decedent passed away.

39. During his autopsy, which was performed at UCLA, Plaintiff's decedent was posthumously diagnosed with Stage IV melanoma after an examination revealed the presence of melanoma in his lungs.

40. Had Pfizer properly disclosed the melanoma-related risks associated with Viagra, Plaintiff's decedent would have avoided the risk of developing melanoma by not using Viagra at all; severely limiting the dosage and length of its use; and/or more closely monitoring the degree to which the Viagra was adversely affecting his health.

41. As a direct, proximate, and legal result of Pfizer's negligence and wrongful conduct, and the unreasonably dangerous and defective characteristics of the drug Viagra, Plaintiff's decedent passed away. As a result, Plaintiff seeks actual and punitive damages from Pfizer on behalf of Plaintiff's decedent, and also seeks damages as an individual for loss of consortium and for such other damages as to which he may be entitled by law.

CAUSES OF ACTION

COUNT I **Negligence**

42. Plaintiff adopts and incorporates by reference all of the above allegations, and further avers as follows:

43. At all times relevant hereto, Pfizer had a duty to properly manufacture, design, formulate, compound, test, produce, process, assemble, inspect, research, distribute, market, label, package, distribute, prepare for use, sell, prescribe and adequately warn of the risks and dangers associated with the use of Viagra.

44. At all times relevant hereto, Pfizer manufactured, designed, formulated, distributed, compounded, produced, processed, assembled, inspected, distributed, marketed, labeled, packaged, prepared for use and sold Viagra while disregarding the fact that the

foreseeable harm presented by the drug greatly outweighed the benefits it provided to users like Plaintiff's decedent.

45. At all times relevant hereto, Pfizer failed to adequately test for and warn of the risks and dangers associated with the use of Viagra.

46. Despite the fact that Pfizer knew or should have known that Viagra caused unreasonably dangerous side effects, Pfizer continued to aggressively market Viagra to consumers, including Plaintiff's decedent, when there were safer alternative methods of treating erectile dysfunction than taking Viagra.

47. Pfizer knew or should have known that consumers such as Plaintiff's decedent would foreseeably suffer injury as a result of the company's failure to exercise ordinary care while developing, marketing, and/or selling Viagra.

48. As a direct and proximate result of the negligence committed by Pfizer, Plaintiff's decedent suffered serious injury, harm, damages, economic and non-economic loss, and ultimately death; and the Plaintiff, as an individual, suffered damages including both economic and non-economic losses, including but not limited to obligations to pay for medical services, funeral and other expenses, other damages, and loss of consortium.

COUNT II **Strict Liability**

49. Plaintiff adopts and incorporates by reference all of the above allegations, and further avers as follows:

50. Viagra was designed, manufactured, marketed, promoted, sold and introduced into the stream of interstate commerce by Pfizer.

58. The melanoma-related risks associated with Viagra rendered Viagra unreasonably dangerous, or far more dangerous than a reasonably prudent consumer or healthcare provider would expect when such a product was used in an intended and/or foreseeable manner.

59. As Pfizer chose to distribute Viagra without adequate warnings as to the product's dangers and defects, Pfizer's conduct shows a reckless disregard for the safety of individuals ingesting Viagra, such as Plaintiff's decedent.

60. One or more of Viagra's defective conditions played a substantial role in causing Plaintiff's decedent's death.

61. As a direct and proximate result of one or more of Pfizer's wrongful acts or omissions, Plaintiff's decedent suffered serious injury, harm, damages, economic and non-economic loss, and ultimately death; and the Plaintiff, as an individual, suffered damages including both economic and non-economic losses, including but not limited to obligations to pay for medical services, funeral and other expenses, other damages, and loss of consortium.

COUNT III
Breach of Implied Warranty

62. Plaintiff adopts and incorporates by reference all of the above allegations, and further avers as follows:

63. Plaintiff's decedent used Viagra in substantially the same condition it was in when it left the control of Pfizer. If any changes or modifications were made to the product after it left the custody and control of Pfizer, such changes or modifications were foreseeable by Pfizer.

64. Prior to the time that Plaintiff's decedent used Viagra, Pfizer implicitly warranted to Plaintiff's decedent and his healthcare providers that Viagra was of merchantable quality, safe to use, and fit for the use for which it was intended.

65. Plaintiff's decedent was and is unskilled in the research, design and manufacture of erectile dysfunction medications, and therefore reasonably relied entirely on the skill, judgment and implied warranty of Pfizer in deciding to use Viagra.

66. Viagra was neither safe for its intended use nor of merchantable quality, as had been implicitly warranted by Pfizer, in that Viagra has dangerous propensities when used as intended and will cause severe injuries to users.

67. Specifically, the ingestion of Viagra significantly increases the user's risk of developing melanoma and/or exacerbating cancer-related conditions already present in the user's cellular composition.

68. As a direct and proximate result of the breach of warranty committed by Pfizer, Plaintiff's decedent suffered serious injury, harm, damages, economic and non-economic loss, and ultimately death and the Plaintiff, as an individual, suffered damages including both economic and non-economic losses, including but not limited to obligations to pay for medical services, funeral and other expenses, other damages, and loss of consortium.

COUNT IV
Breach of Express Warranty

69. Plaintiff adopts and incorporates by reference all of the above allegations, and further avers as follows:

70. At all times relevant hereto, Pfizer expressly represented and warranted to Plaintiff's decedent and his healthcare providers, by and through statements made by Pfizer or their authorized agents or sales representatives, orally and in publications, package inserts and other written materials intended for physicians, medical patients and the general public, that Viagra is safe, effective, and proper for its intended use.

71. The warranties expressly made by Pfizer through its marketing and labeling were false in that Viagra is unsafe and unfit for its intended use

72. Plaintiff's decedent relied on the skill, judgment, representations, and express warranties of Pfizer in deciding to purchase and use Viagra.

73. As a direct and proximate result of the breach of warranty committed by Pfizer, Plaintiff's decedent suffered serious injury, harm, damages, economic and non-economic loss, and ultimately death; and the Plaintiff, as an individual, suffered damages including both economic and non-economic losses, including but not limited to obligations to pay for medical services, funeral and other expenses, other damages, and loss of consortium.

COUNT V
Fraud

74. Plaintiff adopts and incorporates by reference all of the above allegations, and further avers as follows:

75. At all times relevant hereto, Pfizer conducted a sales and marketing campaign to promote the sale of Viagra and willfully deceive Plaintiff's decedent, his healthcare providers, and the general public as to the benefits, health risks, and consequences of using Viagra.

76. While conducting its sales and marketing campaign, Pfizer knew that Viagra is neither safe nor fit for human consumption; that using Viagra is hazardous to health; and that Viagra has a propensity to cause serious injuries, such as those suffered by Plaintiff's decedent.

77. From the time the company first marketed and distributed Viagra until the present, Pfizer willfully deceived Plaintiff's decedent by concealing from him, his healthcare providers, and the general public the risks and dangers concerning the use of Viagra.

78. Pfizer intentionally concealed and suppressed the facts concerning Viagra's melanoma-related risks with the intent to defraud potential consumers, as Pfizer knew that

healthcare providers would not prescribe Viagra, and consumers like Plaintiff's decedent would not use Viagra, if they were aware of the dangers posed by using Viagra.

79. As a direct and proximate result of the breach of warranty committed by Pfizer, Plaintiff's decedent suffered serious injury, harm, damages, economic and non-economic loss, and ultimately death; and the Plaintiff, as an individual, suffered damages including both economic and non-economic losses, including but not limited to obligations to pay for medical services, funeral and other expenses, other damages, and loss of consortium.

COUNT VI
Fraudulent Misrepresentation

80. Plaintiff adopts and incorporates by reference all of the above allegations, and further avers as follows:

81. From the time the company first marketed and distributed Viagra until the present, Pfizer willfully deceived Plaintiff's decedent by concealing from him, his healthcare providers, and the general public the facts concerning Viagra's risks and dangers.

82. At all times relevant hereto, Pfizer conducted a sales and marketing campaign to promote the sale of Viagra and, in doing so, willfully deceived Plaintiff's decedent, his healthcare providers and the general public as to the benefits, health risks and consequences of using Viagra.

83. At all points during its sales and marketing campaign, Pfizer knew that Viagra was and is not safe for human consumption; was and is hazardous to a user's health; and showed and shows a propensity to cause serious injury to a user.

84. Pfizer had the duty to disclose the facts concerning the melanoma-related risks and dangers posed by ingestion of Viagra.

85. Pfizer intentionally concealed and suppressed the facts evidencing Viagra's melanoma-related risks with the intent to defraud potential consumers, as Pfizer knew that healthcare providers would not prescribe Viagra, and consumers like Plaintiff's decedent would not use Viagra, if they were aware of the dangers posed by using Viagra.

86. As a direct and proximate result of Pfizer's misrepresentations, Plaintiff's decedent suffered serious injury, harm, damages, economic and non-economic loss, and ultimately death; and the Plaintiff, as an individual, suffered damages including both economic and non-economic losses, including but not limited to obligations to pay for medical services, funeral and other expenses, other damages, and loss of consortium.

COUNT VII
Negligent Misrepresentation

87. Plaintiff adopts and incorporates by reference all of the above allegations, and further avers as follows:

88. From the time the company first marketed and distributed Viagra until the present, Pfizer made representations to Plaintiff's decedent, his healthcare providers, and the general public that Viagra was safe and fit for human consumption.

89. Pfizer made representations regarding the safety of consuming Viagra without any reasonable ground for believing such representations to be true.

90. Representations concerning Viagra's safety and fitness for human consumption were made directly by Pfizer or its sales representatives and other authorized agents, and in publications and other written materials directed to physicians, medical patients and the public, with the intention of promotion of prescribing, purchasing and using of Viagra.

91. The representations by Pfizer were false, in that Viagra is not safe or fit for human consumption; using Viagra is hazardous to health; and Viagra has a propensity to cause serious injuries, including those suffered by Plaintiff's decedent, to its users.

92. Plaintiff's decedent relied on the misrepresentations made by Pfizer in purchasing and using Viagra.

93. Plaintiff's decedent's reliance on Pfizer's misrepresentations was justified because such misrepresentations were made by entities that were in a position to know of and disclose any potentially harmful information concerning the use of Viagra.

94. If Plaintiff's decedent had known of the information concealed by Pfizer regarding the melanoma-related risks posed by Viagra, Plaintiff's decedent would not have purchased and subsequently used Viagra.

95. As a direct and proximate result of Pfizer's misrepresentations, Plaintiff's decedent suffered serious injury, harm, damages, economic and non-economic loss, and ultimately death; and the Plaintiff, as an individual, suffered damages including both economic and non-economic losses, including but not limited to obligations to pay for medical services, funeral and other expenses, other damages, and loss of consortium.

COUNT VIII **Fraudulent Concealment**

96. Plaintiff adopts and incorporates by reference all of the above allegations, and further avers as follows:

97. Pfizer fraudulently withheld and concealed information about the substantial risks of using Viagra by representing through Viagra's labeling, advertising, marketing materials, detail persons, sales representatives, seminar presentations, publications, notice letters, and regulatory submissions that Viagra was safe.

98. Pfizer fraudulently concealed information which demonstrated that Viagra was not safer than other erectile dysfunction treatments available on the market, and instead represented that Viagra was safer than other alternative medications.

99. Pfizer had access to material facts and information concerning the unreasonable risk of developing and/or exacerbating the spread of cancerous cells posed by using Viagra.

100. The concealment of information by Pfizer about the risks posed by Viagra use was intentional and conducted with awareness that the company's actual representations were false.

101. Pfizer's concealment of the risks associated with using Viagra and dissemination of untrue information to the contrary was conducted with the intent that healthcare providers would prescribe, and patients would subsequently purchase and use, Viagra.

102. Plaintiff's decedent and his healthcare providers relied upon Pfizer's misrepresentations and were unaware of the substantial risk of Viagra which Pfizer concealed from the public.

103. In relying on Pfizer's misrepresentations, and unaware of Pfizer's concealment of information regarding the risk posed by Viagra, Plaintiff's decedent purchased and used Viagra.

104. Plaintiff's decedent would not have purchased or used Viagra if he had been aware of the fact of Pfizer's concealment of harmful information and/or dissemination of misrepresentations that Viagra was safe and fit for human consumption.

105. As a result of the foregoing fraudulent concealment by Pfizer, Plaintiff's decedent suffered serious injury, harm, damages, economic and non-economic loss, and ultimately death; and the Plaintiff, as an individual, suffered damages including both economic and non-economic

losses, including but not limited to obligations to pay for medical services, funeral and other expenses, other damages, and loss of consortium.

COUNT IX
Violation of New York Consumer Protection Laws
(N.Y. GEN. BUS. LAW §§ 349 *et seq.*)

106. Plaintiff adopts and incorporates by reference all of the above allegations, and further avers as follows:

107. As the manufacturer, supplier, and seller of Viagra, Pfizer has a statutory duty to refrain from unfair or deceptive acts or trade practices in the design, labeling, development, manufacture, promotion, and sale of Viagra.

108. Pfizer engaged in wrongful conduct while obtaining money from Plaintiff's decedent under false pretenses, specifically through the sale of Viagra; Pfizer would not have obtained such money and Plaintiff's decedent would not have paid such money had Pfizer not engaged in unfair and deceptive conduct.

109. Pfizer's wrongful conduct included representing that Viagra had characteristics, ingredients, uses, or benefits that it did not have, despite actual knowledge to the contrary.

110. Pfizer engaged in fraudulent or deceptive conduct that created a likelihood of confusion or misunderstanding amongst potential customers so as to create demand and increase sales of Viagra.

111. Pfizer violated New York's consumer protection laws meant to protect consumers from unfair, deceptive, fraudulent and unconscionable trade and business practices by knowingly and falsely representing that Viagra was fit for use for its intended purpose.

112. Representations concerning Viagra's safety and fitness for human consumption were made directly by Pfizer or its sales representatives and other authorized agents, and in

publications and other written materials directed to physicians, medical patients and the public, with the intention of promotion of prescribing, purchasing and using of Viagra.

113. Consumers like Plaintiff's decedent and the general public relied upon Pfizer's representations in determining which drug to purchase for personal use.

114. Plaintiff's decedent purchased and used Viagra primarily for personal use and thereby suffered ascertainable losses as a result of Pfizer's actions in violation of New York's consumer protection laws.

115. Had Pfizer not engaged in the deceptive conduct described herein, Plaintiff's decedent would not have purchased Viagra and thereafter incurred related medical costs for the injury it caused.

116. As a direct and proximate result of Pfizer's unlawful and deceptive conduct, Plaintiff's decedent suffered serious injury, harm, damages, economic and non-economic loss, and ultimately death; and the Plaintiff, as an individual, suffered damages including both economic and non-economic losses, including but not limited to obligations to pay for medical services, funeral and other expenses, other damages, and loss of consortium.

COUNT X

Gross Negligence

117. Plaintiff adopts and incorporates by reference all of the above allegations, and further avers as follows:

118. The wrongful acts committed by Pfizer were aggravated by malice, fraud, and grossly negligent disregard for the rights of the general public.

119. Pfizer's conduct involved an extreme degree of risk, considering the probability and magnitude of potential harm to the general public.

120. Despite Pfizer's awareness of the severity of the risk associated with its actions, it nevertheless chose to proceed with the manufacture, promotion, distribution and sale of Viagra with conscious indifference to the rights, safety, or welfare of the general public.

121. Plaintiff's decedent relied on the representations made by Pfizer and suffered injury and death as a proximate result of such reliance; and the Plaintiff, as an individual, suffered damages including both economic and non-economic losses, including but not limited to obligations to pay for medical services, funeral and other expenses, other damages, and loss of consortium.

COUNT XI
Punitive Damages

122. Plaintiff adopts and incorporates by reference all of the above allegations, and further avers as follows:

123. Prior to the manufacturing, sale, and distribution of Viagra, Pfizer knew that said medication was in a defective condition as previously described herein, and knew that those who were prescribed the medication would experience and had already experienced severe physical, mental, and emotional injuries.

124. Pfizer, through their officers, directors, managers, and agents, knew that Viagra presented a substantial and unreasonable risk of harm to the public, including Plaintiff's decedent, and, as such, Pfizer unreasonably subjected consumers of said drugs to risk of injury or death from using Viagra.

125. Pfizer and its agents, officers, and directors intentionally proceeded with the manufacturing, sale, and distribution and marketing of Viagra knowing these actions would expose persons to serious danger in order to advance the company's market share and profits.

126. The acts, conduct, and omissions of Pfizer, as alleged throughout this Complaint, were willful and malicious.

127. Pfizer's unconscionable conduct warrants an award of exemplary and punitive damages against the company.

COUNT XII
Loss of Consortium

128. Plaintiff incorporates by reference paragraphs 1-127 of this Complaint as if fully set forth herein.

129. At all relevant times hereto, Plaintiff Ron Rosenwein was the adult son of the Plaintiff's decedent, Lloyd Rosenwein

130. For the reasons set forth herein, Plaintiff has necessarily paid and has become liable to pay for medical aid, treatment, monitoring, medications, and other expenditures as a proximate result of Defendants' misconduct.

131. For the reasons set forth herein, Plaintiff has suffered and will continue to suffer the loss of his loved one's support, companionship, services, society, love and affection.

132. Plaintiff suffered great emotional pain and mental anguish.

133. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff sustained and will continue to sustain severe emotional distress, economic losses and other damages-for which he is entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial. Defendants are liable to Plaintiff, Ron Rosenwein, for all general, special and equitable relief to which they are entitled by law.

COUNT XIII
Discovery Rule and Equitable Tolling/Estoppel

134. Plaintiff incorporates by reference paragraphs 1-133 of this Complaint as if fully set forth herein,

135. Plaintiff asserts all applicable state statutory and common law rights and theories related to the tolling or extension of any applicable statute of limitations, including equitable tolling, class action tolling, delayed discovery, discovery rule, and fraudulent concealment.

136. Plaintiff pleads that the discovery rule should be applied to toll the running of the statute of limitations until Plaintiff knew, or through the exercise of reasonable care and diligence should have known, of facts indicating that the Plaintiff's decedent had been injured, the cause of the injury, and the tortious nature of the wrongdoing that caused the injury.

137. Despite diligent investigation by Plaintiff into the cause of the injuries, including consultations with the relevant medical providers regarding the nature of the Plaintiff Decedent's injuries and damages, its relationship to Viagra was not discovered, and through reasonable care and due diligence could not have been discovered, until a date within the applicable statute of limitations for filing Plaintiffs' claims. Therefore, under appropriate application of the discovery rule, Plaintiffs suit was filed well within the applicable statutory limitations period.

138. The running of the statute of limitations in this case is tolled due to equitable tolling. Defendant is estopped from asserting a statute of limitations defense due to Defendants' fraudulent concealment, through affirmative misrepresentations and omissions, from the Plaintiff's decedent and his physicians, of the true risks associated with Viagra. As a result of Defendant's fraudulent concealment, the Plaintiff's decedent and his physicians were unaware, and could not have known or have learned through reasonable diligence, that he had been

exposed to the risks alleged herein and that those risks were the direct and proximate result of the wrongful acts and omissions of the Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment against Pfizer both individually, and on behalf of his decedent, as follows:

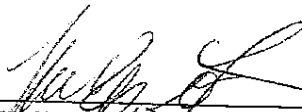
- (a) Consequential damages in excess of the jurisdictional minimum of this Court;
- (b) For punitive damages in an amount in excess of any jurisdictional minimum of this Court and in an amount sufficient to impress upon Pfizer the seriousness of their conduct and to deter similar conduct in the future;
- (c) Pre-judgment and post-judgment interest as provided by law;
- (d) For full refund of all purchase costs Plaintiff's decedent paid for Viagra;
- (e) For attorneys' fees, expenses, and costs of this action; and
- (f) For such further relief as this Court deems necessary, just, and proper.

VIII. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all counts and as to all issues.

Dated: March 26, 2015.

Respectfully submitted,



Kelly A. Fitzpatrick (NY Bar Code: KF7642)
Agostinho J. Ribeiro (NY Bar Code: AR6409)
Leah F. Walsh (CT Bar 29111) *pro hac pending*
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