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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
(SAN FRANCISCO DIVISION)

AMADOR HERRARA,

Plaintiff,

vs.

PFIZER, INC.;

Defendant.

Case No.: \_\_\_\_\_

**COMPLAINT FOR DAMAGES**

- 1. Violation of Bus. & Prof. Code § 17200 et seq. (Unfairness)**
- 2. Violation of Bus. & Prof. Code § 17200 et seq (Fraudulent)**
- 3. Violation of Bus. & Prof. Code § 17200 et seq (Unlawfulness)**
- 4. Strict Liability – Defective Design**
- 5. Strict Liability – Failure to Warn**
- 6. Negligence**
- 7. Violation of Cal. Civil Code § 1790 et seq. (Breach of Express Warranty)**
- 8. Violation of Cal. Civil Code § 1790 et seq. (Breach of Implied Warranty)**

**DEMAND FOR JURY TRIAL**

Plaintiff, AMADOR HERRARA, individually alleges:

**BACKGROUND**

1. This is an action for personal injuries and damages suffered by Plaintiff Amador Herrera (“Plaintiff”) as a direct and proximate result of Pfizer, Inc.’s (“Pfizer”) negligent and

1 wrongful conduct in connection with the design, development, manufacture, testing, packaging,  
2 promoting, marketing, distribution, labeling, and/or sale of sildenafil citrate tablets sold under  
3 the brand name Viagra® (“Viagra”).

4 **JURISDICTION AND VENUE**

5 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because  
6 Plaintiff is a citizen of the State of California, and Pfizer maintains its principal place of  
7 business and residence outside of California. The value of Plaintiff’s claims exceeds the total of  
8 seventy-five thousand dollars (\$75,000.00), exclusive of recoverable interest and costs. None of  
9 the causes of action stated herein has been assigned or otherwise given to any other court or  
10 tribunal.

11 3. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1332(a)(2)  
12 because Pfizer is a resident of a foreign state and does substantial business within the State of  
13 California and in this Judicial District, and otherwise maintains the requisite minimum contacts  
14 within the State of California. Additionally, Pfizer markets, advertises, distributes, sells, and  
15 receives substantial profits from the sales of Viagra in this District, and has and continues to  
16 conceal and make material omissions in this District, so as to subject it to *in personam*  
17 jurisdiction in this Judicial District. A substantial part of the events and omissions concerning  
18 the claims of Plaintiff occurred within this District. Furthermore, venue is proper in this District  
19 because Plaintiff purchased Viagra in this District.

20 **PARTIES**

21 4. Plaintiff, AMADOR HERRARA, resides in the County of San Francisco, State  
22 of California.

23 5. Defendant Pfizer, Inc. is a Delaware corporation with its principal place of  
24 business at 235 East 42nd Street, New York, New York, 10017. Defendant’s registered agent is  
25 C T Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

26 6. Pfizer, including its owners, employees, parent companies, subsidiaries,  
27 affiliates, and agents, developed, designed, manufactured, assembled, tested, inspected,  
28 marketed, promoted, advertised, warranted, distributed, sold, packaged, and/or provided

1 warnings and instructions for Viagra.

2 7. Pfizer conducts substantial business within California through the marketing,  
3 distribution, and sale of Viagra.

4 **FACTS**

5 A. Background

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

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

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

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

22 12. The National Institutes of Health estimate that erectile dysfunction affects as  
23 many as thirty million men in the United States.<sup>1</sup>

24 B. Prevalence of Viagra in Market

25 13. In its 2013 Annual Report, Pfizer states that it accumulated revenue exceeding  
26 \$1,800,000,000 from worldwide sales of Viagra. This statistic is particularly significant in light  
27 of the fact that Pfizer lost exclusivity of Viagra throughout Europe in 2013, which in itself led to  
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<sup>1</sup> NIH Consensus Development Panel on Impotence (July 7, 1993).

1 a drop in profits from the previous calendar year.

2 14. Viagra holds approximately 45% of the U.S. market share for erectile  
3 dysfunction medications.<sup>2</sup>

4 15. Pfizer estimates that Viagra has been prescribed to more than 35 million men  
5 worldwide.<sup>3</sup>

6 16. In 2012 alone, physicians wrote approximately eight million prescriptions for  
7 Viagra.<sup>4</sup>

8 C. Pfizer's Knowledge of Defect

9 17. Unbeknownst to most Viagra users, recent studies have shown that the cellular  
10 activity providing the mechanism of action for Viagra may also be associated with the  
11 development and/or exacerbation of melanoma.

12 18. The American Cancer Society states that melanoma is "the most serious type of  
13 skin cancer."<sup>5</sup>

14 19. According to the National Cancer Institute, part of the National Institutes of  
15 Health, melanoma is more likely than other skin cancers to spread to other parts of the body,  
16 thereby causing further tissue damage and complicating the potential for effective treatment and  
17 eradication of the cancerous cells.<sup>6</sup>

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

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24 <sup>2</sup> Jacque Wilson, *Viagra: The Little Blue Pill That Could*, CNN, Mar. 27, 2013, available at:  
25 <http://www.cnn.com/2013/03/27/health/viagra-anniversary-timeline/index.html>.

26 <sup>3</sup> Hilary Stout, *Viagra: The Thrill That Was*, N.Y. TIMES, June 5, 2011, available at:  
<http://query.nytimes.com/gst/fullpage.html?res=9B06E3DF173FF936A35755C0A9679D8B63>.

27 <sup>4</sup> Wilson, *supra* note 4.

28 <sup>5</sup> American Cancer Society, *Skin Cancer Facts*, last revised March 19, 2014, available at:  
<http://www.cancer.org/cancer/cancercauses/sunanduvexposure/skin-cancer-facts>.

<sup>6</sup> National Cancer Institute, *Types of Skin Cancer*, last updated Jan. 11, 2011, available at:  
<http://www.cancer.gov/cancertopics/wyntk/skin/page4>.

1 21. A study published in 2011 found that treatment with Viagra can promote  
2 melanoma cell invasion.<sup>7</sup> Specifically, by inhibiting PDE5, Viagra mimics an effect of gene  
3 activation and therefore may potentially function as a trigger for the creation of melanoma cells.

4 22. A 2012 study published in the Journal of Cell Biochemistry also found that  
5 PDE5 inhibitors were shown to promote melanin synthesis,<sup>8</sup> which may exacerbate melanoma  
6 development.<sup>9</sup>

7 23. On April 7, 2014, an original study (“the JAMA study”) was published on the  
8 website for the *Journal of the American Medical Association Internal Medicine* which, in light  
9 of the previous studies, sought to examine the direct relationship between sildenafil use and  
10 melanoma development in men in the United States.<sup>10</sup> The JAMA study was published in the  
11 journal’s June 2014 edition.

12 24. Among 25,848 participants, the JAMA study reported that recent sildenafil users  
13 at baseline had a significantly elevated risk of invasive melanoma, with a “hazard ratio” of 1.84;  
14 in other words, the study participants who had recently used sildenafil exhibited an 84%  
15 increase in risk of developing or encouraging invasive melanoma.<sup>11</sup>

16 D. Consumer Expectations

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

20 26. Viagra has engaged in increasingly aggressive marketing techniques and  
21 strategies to promote the use of Viagra in the face of increasing pharmaceutical competition. By  
22 means of demonstration, a 2004 article in The Chicago Tribune cited industry reports stating

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24 <sup>7</sup> I. Aozarena, et al., *Oncogenic BRAF Induces Melanoma Cell Invasion by Downregulating The*  
*cGMP-Specific Phosphodiesterase PDE5A*, 19 *CANCER CELL* 45 (2011).

25 <sup>8</sup> X Zhang, et al., *PDE5 Inhibitor Promotes Melanin Synthesis Through the PKG Pathway in*  
*B16 Melanoma Cells*, 113 *J. CELL BIOCHEM.* 2738 (2012).

26 <sup>9</sup> F.P. Noonan, et al., *Melanoma Induction by Ultraviolet A But Not Ultraviolet B Radiation*  
*Requires Melanin Pigment*, 3 *NATURE COMMUNICATIONS* 884 (2012).

27 <sup>10</sup> 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*  
28 *INTERNAL MEDICINE* 964 (2014).

<sup>11</sup> *Id.*

1 that Viagra spent “tens of millions of dollars each month on direct-to-consumer advertising [  
2 ].”<sup>12</sup>

3 27. Pfizer has also been criticized by regulators, physicians and consumer groups for  
4 its attempts to target younger men in their advertising. Doctors and federal regulators stated that  
5 “such ads sen[t] a confusing message to patients who might really benefit from the drug.”<sup>13</sup>

6 28. While designing and formulating Viagra, Pfizer discovered or should have  
7 discovered that the drug’s mechanism of action, the inhibition of PDE5, also presented a  
8 significant risk of exacerbating melanoma.

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

12 30. Members of the general public had no plausible means through which they could  
13 have discovered the significant risk of melanomagenesis associated with PDE5 inhibition.

14 31. Prescribing physicians would not have had the same level of access to the  
15 research and development conducted by Pfizer prior to its decision to manufacture Viagra for  
16 general public use.

17 32. Pfizer failed to communicate to the general public that the inhibition of PDE5  
18 inherently necessary to the efficacy of Viagra would also present a significant risk of one’s  
19 development or exacerbation of cancerous cells.

20 33. For example, no individual prescribed to use Viagra would believe or be  
21 expected to know that his use of Viagra would expose him to an increased risk of developing  
22 melanoma or exacerbating the growth of melanocytes already present in his body.

23 34. Pfizer expected or should have expected individuals who suffered from erectile  
24 dysfunction to ingest Viagra as a means to treat their condition.

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26 <sup>12</sup> Bruce Japsen, *Viagra’s 2 Rivals Grab Market Share In A Year*, CHICAGO TRIBUNE, Sept. 23,  
27 2004, available at [http://articles.chicagotribune.com/2004-09-23/business/0409230283\\_1\\_viagra-erectile-levitra](http://articles.chicagotribune.com/2004-09-23/business/0409230283_1_viagra-erectile-levitra).

28 <sup>13</sup> 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](http://articles.chicagotribune.com/2007-02-08/business/0702080063_1_viagra-erectile-pfizer-spokesman).

1 35. Pfizer expected or should have expected physicians treating erectile dysfunction  
2 to prescribe Viagra as a means to treat the condition.

3 36. The risk presented by ingesting Viagra would be present from the moment of  
4 manufacture; that is, the user would not need to change or alter the drug itself or the means by  
5 which it was ingested in order for the drug to carry the same risk of harm as described herein.

6 E. Risks and Benefits of Viagra Use

7 37. At all times relevant hereto, Viagra was useful to some members of the  
8 population; namely, men diagnosed with erectile dysfunction.

9 38. Erectile dysfunction is not fatal, nor does it present any related symptoms or  
10 characteristics harmful to one's physical health; however, it did provide the benefit of allowing  
11 men with erectile dysfunction to achieve and maintain an erection.

12 39. Viagra also encourages the development of melanoma in the body of a user,  
13 thereby placing them at a significant health risk.

14 40. Pfizer manufactured, marketed and sold Viagra as a PDE5 inhibitor; however,  
15 the mechanism of action that made the drug effective in treating erectile dysfunction  
16 simultaneously enhanced the risk of the user developing melanoma.

17 41. At the time Viagra was formulated and manufactured, Pfizer knew or should  
18 have known that the drug posed a significantly heightened risk to users, specifically through the  
19 increased likelihood that those users would develop melanoma because of the chemical  
20 reactions inherent to the drug's functioning.

21 42. Through the testing and formulating of Viagra, and before the initiation of the  
22 drug's mass manufacture, Pfizer knew or should have known in the exercise of ordinary care  
23 that the chemical reactions inherent to Viagra's mechanism of action would present a cancer-  
24 related health hazard to potential future users.

25 43. The risk presented by the use of Viagra through PDE5 inhibition – a  
26 characteristic inherent to the drug's potential efficacy – was unquestionably far more significant  
27 than the benefit provided to its users.

28 ///

1 44. Because the risk of using Viagra so greatly outweighs the benefits of such use,  
2 the drug presents an unreasonably dangerous risk when used in its intended condition.

3 F. Facts Regarding Plaintiff

4 45. Plaintiff began pharmaceutical treatment for erectile dysfunction in September of  
5 2007, when his physician Dr. Kamal Shamash recommended that he begin taking Viagra.

6 46. Plaintiff continued to fill his Viagra prescriptions from Dr. Shamash and take the  
7 drug regularly until at least March 7, 2014.

8 47. On May 25, 2012, Plaintiff's dermatologist Dr. Nicolajs Lapins noted a large  
9 variegated macule, over 2 cm in size, on Plaintiff's right posterior shoulder. Dr. Lapins  
10 performed a scoop biopsy on the site, which the dermatopathology report showed was a  
11 compound melanocytic proliferation extending to the edge and base of the biopsy specimen.

12 48. After the initial biopsy, Dr. Lapins determined that further excision was  
13 necessary to determine whether the lesion was in fact melanoma. On June 22, 2012, Dr. Lapins  
14 performed a wide local excision of the nevus. The excised skin was biopsied, and the biopsy  
15 tested positive for melanoma.

16 49. Since first being diagnosed with melanoma, Plaintiff has had to remain vigilant  
17 in monitoring his skin for lesions.

18 50. Had Pfizer properly disclosed the melanoma-related risks associated with Viagra,  
19 Plaintiff would have avoided the risk of developing melanoma from Viagra use by deciding not  
20 to take Viagra at all; by severely limiting the dosage and/or length of time during which he used  
21 it; and/or by more closely monitoring the degree to which his Viagra consumption was  
22 adversely affecting his health.

23 51. As a direct, proximate, and legal result of Pfizer's negligence and wrongful  
24 conduct, and the unreasonably dangerous and defective characteristics of the drug Viagra,  
25 Plaintiff suffered severe and permanent physical and emotional injuries. His physical injuries  
26 have included melanoma as well as the numerous surgeries necessitated by his skin cancer  
27 diagnosis. Plaintiff has endured not only physical pain and suffering but also economic loss,  
28 including significant expenses for medical care and treatment. Because of the nature of his



1 diagnosis, he will certainly continue to incur such medical expenses in the future. As a result of  
2 these damages, Plaintiff seeks actual and punitive damages from Pfizer.

3 G. Summary

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

9 53. For the duration of these efforts, Pfizer directed its advertising efforts to  
10 consumers located across the nation, including consumers in the State of California. Such  
11 efforts were also aimed at prescribing physicians across the nation, including prescribing  
12 physicians in the State of California.

13 54. At all times mentioned in this Complaint, Pfizer's officers and directors  
14 participated in, authorized, and directed the production and aggressive promotion of Viagra  
15 when they knew, or with the exercise of reasonable care should have known, of the risk of  
16 developing melanoma associated with Viagra use. In doing so, these officers and directors  
17 actively participated in the tortious conduct which resulted in the injuries suffered by many  
18 Viagra users, including Plaintiff.

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

23 56. Pfizer concealed material information related to melanoma development from  
24 potential Viagra users.

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

28 ///



1 particularized evidence of the pattern of omission and concealment perpetrated by Pfizer against  
2 Plaintiff.

3 63. As a result of Pfizer’s violations of the UCL, Plaintiff is entitled to appropriate  
4 equitable relief, including injunctive relief, and monetary relief in the form of restitution and  
5 interest. Plaintiff is also entitled to recover penalties, as well as an award of attorneys’ fees,  
6 costs, and expenses for prosecuting this action.

7 **SECOND CAUSE OF ACTION**  
8 **(Violation of Bus. & Prof. Code § 17200 *et seq.*)**  
9 **(Fraudulent)**

10 64. Plaintiff adopts and incorporates all preceding paragraphs as if stated fully  
11 herein.

12 65. California Business & Professions Code Section 17200 (“Unfair Competition  
13 Law” or “UCL”) precludes unfair competition: *i.e.*, the employment of any unlawful, unfair or  
14 fraudulent business acts or practices; and, any unfair, deceptive, untrue or misleading  
15 advertising (Cal. Bus. & Prof. Code Section 17500). This prohibition extends to any act,  
16 omission, or conduct affecting the rights of consumers within the State of California.

17 66. Pfizer has designed and continues to design, manufacture, market, sell, and place  
18 into the stream of commerce the Viagra purchased and used across California. Pfizer has failed  
19 and continues to fail to disclose and conceal the serious safety hazard posed by the design of  
20 Viagra—it does not warn Plaintiff or his physicians of the increased risk of developing  
21 melanoma as a result of using Viagra, and should not be purchased or used for that purpose.

22 67. Pfizer has been and remains obligated to disclose this material safety hazard  
23 because reasonable consumers like Plaintiff expect Viagra to perform its only intended and  
24 reasonably expected function and purpose of allowing them to achieve and maintain an erection.  
25 In failing to disclose this critical safety hazard, known to Pfizer but not to reasonable consumers  
26 like Plaintiff or his physicians, Pfizer engaged in and continue to engage in fraudulent conduct  
27 by omission under Cal. Bus. & Prof. Code §17200. Plaintiff incorporates herein paragraphs 1  
28 and 25-57, *supra*, as particularized evidence of the pattern of omission and concealment  
perpetrated by Pfizer against Plaintiff.

1 68. As a result of Pfizer’s violations of the UCL, Plaintiff is entitled to appropriate  
2 equitable relief, including injunctive relief, and monetary relief in the form of restitution and  
3 interest. Plaintiff is also entitled to recover penalties, as well as an award of attorneys’ fees,  
4 costs, and expenses for prosecuting this action.

5 **THIRD CAUSE OF ACTION**  
6 **(Violation of Bus. & Prof. Code § 17200 et seq.)**  
7 **(Unlawfulness)**

8 69. Plaintiff adopts and incorporates all preceding paragraphs as if stated fully  
9 herein.

10 70. Pfizer’s conduct is unlawful under the UCL because it violates Cal. Civ. Code §  
11 1750, et seq. (hereinafter “Consumer Legal Remedies Act” or “CLRA”). Through omission and  
12 concealment, Pfizer has misrepresented and continues to misrepresent that Viagra: (a) has  
13 characteristics, uses or benefits that it does not have (Section 1770(a)(5)); and, (b) is of a  
14 particular standard, quality, or grade when they are of another (Section 1770(a)(7)). Plaintiff  
15 incorporates herein paragraphs 1 and 25-57, supra, as particularized evidence of the pattern of  
16 misrepresentation by omission perpetrated by Pfizer against Plaintiff.

17 71. Were it not for Pfizer’s unlawful conduct, Plaintiff would not have purchased  
18 Viagra. Instead, he would have purchased safe and reliable erectile dysfunction medication fit  
19 and safe for its intended purpose.

20 72. Plaintiff has and will continue to suffer injury in fact and lose money as a direct  
21 result of Pfizer’s unfair competition in that he has had to undergo multiple surgeries and will  
22 continue to be required to undergo periodic skin checks to ensure against recurrence.

23 73. As a result of Pfizer’s violations of the UCL, Plaintiff is entitled to appropriate  
24 equitable relief, including injunctive relief, and monetary relief in the form of restitution and  
25 interest. Plaintiff is also entitled to recover penalties, as well as an award of attorneys’ fees,  
26 costs, and expenses for prosecuting this action.

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**FOURTH CAUSE OF ACTION**  
**(Strict Liability – Defective Design)**

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2  
3 74. Plaintiff adopts and incorporates all preceding paragraphs as if stated fully  
4 herein.

5 75. Pfizer formulated, manufactured, marketed, and sold Viagra with the intent that  
6 its users take the drug as a means of treating erectile dysfunction.

7 76. Plaintiff's physician prescribed Viagra to Plaintiff with the intent that Plaintiff  
8 purchase and ingest the drug to treat his erectile dysfunction.

9 77. Plaintiff's physician prescribed Viagra to Plaintiff with the belief and expectation  
10 that the drug's mechanism of action – the inhibition of the PDE5 enzyme – would effectuate  
11 Plaintiff's treatment goals in a foreseeable manner; i.e., Plaintiff would no longer suffer from  
12 the symptoms of erectile dysfunction.

13 78. Plaintiff, following the advice of his physician, purchased and ingested Viagra  
14 with the expectation that the drug would safely treat his erectile dysfunction.

15 79. However, the Viagra ingested by Plaintiff failed to treat his erectile dysfunction  
16 in a safe manner, even though he used the drug as it was intended to be used, as the drug's  
17 inhibition of PDE5 encouraged the development of melanoma throughout Plaintiff's internal  
18 systems and organs.

19 80. Viagra, as a drug, presented no open and obvious danger, but instead appeared to  
20 be a benign, harmless pill.

21 81. At all times relevant hereto, Viagra was useful to some members of the  
22 population; namely, men diagnosed with erectile dysfunction.

23 82. Erectile dysfunction is not fatal, nor does it present any related symptoms or  
24 characteristics harmful to one's physical health; however, it did provide the benefit of allowing  
25 men with erectile dysfunction to achieve and maintain an erection.

26 83. Viagra also encourages the development of melanoma in the body of a user,  
27 thereby placing them at a significant health risk.

28 ///

1 84. The risk presented by the use of Viagra through PDE5 inhibition – a  
2 characteristic inherent to the drug’s potential efficacy – was far more significant than the benefit  
3 provided to its users. Plaintiff incorporates herein paragraphs 1 and 25-57, *supra*, as  
4 particularized evidence of the defective design used by Pfizer in manufacturing and selling  
5 Viagra to Plaintiff.

6 85. Because the risk of using Viagra so greatly outweighs the benefits of such use,  
7 the drug presents an unreasonably dangerous risk when used in its intended condition.

8 86. Plaintiff did not change or alter the condition of the Viagra pills he ingested in  
9 any way, shape or form before ingesting them; instead, at the time he consumed the pills, they  
10 were in the same condition they were when those pills were manufactured and sold by Pfizer.

11 87. Because of the disproportionate risk presented by the use of Viagra, and/or  
12 because the drug did not perform as expected by a reasonable consumer, Viagra was  
13 unreasonably dangerous when it left the control of Pfizer.

14 88. As a direct and proximate result of Viagra’s unreasonably dangerous design,  
15 Plaintiff has suffered significant pain, suffering, and economic damages incurred through cancer  
16 treatment necessitated by Viagra use.

17 **FIFTH CAUSE OF ACTION**  
18 **(Strict Liability – Failure to Warn)**

19 89. Plaintiff adopts and incorporates all preceding paragraphs as if stated fully  
20 herein.

21 90. While designing and formulating Viagra, Pfizer discovered or should have  
22 discovered that the drug’s mechanism of action, the inhibition of PDE5, also presented a  
23 significant risk of exacerbating melanoma.

24 91. As a member of the general public, Plaintiff had no plausible means through  
25 which he could have discovered the significant risk of melanomagenesis associated with PDE5  
26 inhibition.

27 ///

28 ///

1 92. Plaintiff's physician would not have had the same level of access to the research  
2 and development conducted by Pfizer prior to its decision to manufacture Viagra for general  
3 use.

4 93. Pfizer failed to communicate to Plaintiff or his physician that the inhibition of  
5 PDE5 inherently necessary to the efficacy of Viagra would also present a significant risk of  
6 one's development or exacerbation of cancerous cells.

7 94. If Pfizer had communicated the risk of developing or exacerbating  
8 melanomagenesis directly associated with Viagra use to Plaintiff's physician, he would not have  
9 prescribed Viagra to Plaintiff; severely limited the dosage he prescribed to Plaintiff; and/or  
10 closely monitored the length to which the Viagra was adversely affecting Plaintiff's health.

11 95. If Pfizer had communicated the risk of developing or exacerbating  
12 melanomagenesis directly associated with Viagra use to Plaintiff, Plaintiff would not have taken  
13 Viagra; severely limited the dosage he ingested; and/or closely monitored the length to which  
14 the Viagra was adversely affecting his personal health. Plaintiff incorporates herein paragraphs  
15 1 and 25-57, *supra*, as particularized evidence of the failures to warn perpetrated by Pfizer  
16 against Plaintiff.

17 96. Plaintiff did not change or alter the condition of the Viagra pills he ingested in  
18 any way, shape or form before ingesting them; instead, at the time he consumed the pills, they  
19 were in the same condition they were when those pills were manufactured and sold by Pfizer.

20 97. As a direct and proximate result of Pfizer's failure to warn Plaintiff or his  
21 physician of the significant melanoma-related risks associated with Viagra's mechanism of  
22 action, Plaintiff suffered significant pain, suffering, and economic damages incurred through  
23 cancer treatment from melanoma caused by Viagra use.

24 **SIXTH CAUSE OF ACTION**  
25 **(Negligence)**

26 98. Plaintiff adopts and incorporates all preceding paragraphs as if stated fully  
27 herein.

28 99. At all times relevant hereto, as the manufacturer of a product, Pfizer had a duty

1 to design reasonably safe products.

2 100. At the time Viagra was formulated and manufactured, Pfizer knew or should  
3 have known that the drug posed a significantly heightened risk to users, specifically through the  
4 increased likelihood that those users would develop melanoma because of the chemical  
5 reactions inherent to the drug's functioning.

6 101. Through the testing and formulating of Viagra, and before the initiation of the  
7 drug's mass manufacture, Pfizer knew or should have known in the exercise of ordinary care  
8 that the chemical reactions inherent to Viagra's mechanism of action would present a cancer-  
9 related health hazard to potential future users like Plaintiff.

10 102. In proceeding to manufacture, market, and sell Viagra, Pfizer carelessly  
11 disregarded the hazard inherently presented by the drug.

12 103. Pfizer expected or should have expected individuals who suffered from erectile  
13 dysfunction, like Plaintiff, to purchase and ingest Viagra.

14 104. Pfizer expected or should have expected physicians treating erectile dysfunction,  
15 like Plaintiff's physician, to prescribe Viagra as a means to treat the condition.

16 105. Pfizer manufactured, marketed and sold Viagra as a PDE5 inhibitor; however,  
17 the mechanism of action that made the drug effective in treating erectile dysfunction  
18 simultaneously enhanced the risk of the user developing melanoma.

19 106. Through its design, Viagra's design makes it dangerous to its users. Plaintiff  
20 incorporates herein paragraphs 1 and 25-57, *supra*, as particularized evidence of the pattern of  
21 negligent behaviors perpetrated by Pfizer against Plaintiff.

22 107. As a direct and proximate result of the negligence committed by Pfizer in testing  
23 and ultimately selling Viagra, Plaintiff suffered significant pain, suffering, and economic  
24 damages incurred through cancer treatment from melanoma caused by Viagra use.

25 **SEVENTH CAUSE OF ACTION**  
26 **(Violation of Cal. Civil Code § 1790 *et seq.*)**  
27 **(Breach of Express Warranty)**

28 108. Plaintiff adopts and incorporates all preceding paragraphs as if stated fully  
herein.



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

6           110. These representations include, but are not limited to, the information  
7 disseminated in Pfizer's patient information and prescribing information publications, available  
8 on its website and on the FDA's website, since the drug entered the market.

9           111. The warranties expressly made by Pfizer through its marketing and labeling were  
10 false in that Viagra is unsafe.

11           112. Specifically, Viagra is unsafe in that its mechanism of action, the inhibition of  
12 the PDE5 enzyme, also increases the risk of the development and proliferation of melanocytic  
13 cells in the user's body.

14           113. Plaintiff's physician acted as a reasonable physician in relying on what he  
15 believed to be the superior knowledge, judgment, and access to research information possessed  
16 by Pfizer in choosing to prescribe Viagra to Plaintiff.

17           114. Plaintiff, acting as a reasonable consumer, relied on what he believed to be the  
18 superior skill, judgment, representations, and express warranties of Pfizer in deciding to  
19 purchase and use Viagra.

20           115. In direct reliance upon the warranties made by Pfizer that Viagra was safe to use  
21 in treating erectile dysfunction, Plaintiff's physician prescribed and Plaintiff used Viagra and  
22 ultimately developed melanoma from the mechanism of action rendering the drug effective.  
23 Plaintiff incorporates herein paragraphs 1 and 25-57, *supra*, as particularized evidence of the  
24 pattern of omission and concealment perpetrated by Pfizer against Plaintiff.

25           116. As a direct and proximate result of the breach of warranty committed by Pfizer,  
26 Plaintiff suffered significant pain, suffering, and economic damages incurred through cancer  
27 treatment from melanoma caused by Viagra use.

28 ///

**EIGHTH CAUSE OF ACTION**  
**(Violation of Cal. Civil Code § 1790 *et seq.*)**  
**(Breach of Implied Warranty)**

1  
2  
3 117. Plaintiff adopts and incorporates all preceding paragraphs as if stated fully  
4 herein.

5 118. Plaintiff used Viagra in substantially the same condition it was in when it left the  
6 control of Pfizer.

7 119. Prior to the time that Plaintiff used Viagra, Pfizer implicitly warranted to  
8 Plaintiff and his physician that Viagra was of merchantable quality, safe to use, and fit for the  
9 use for which it was intended.

10 120. Pfizer implicitly warranted the safety of Viagra through a multimedia  
11 advertising campaign conducted over a span of several years, as Viagra had been on the market  
12 for several years prior to the time when Plaintiff was first prescribed Viagra.

13 121. Pfizer implicitly warranted the merchantable quality of Viagra by opting to  
14 mass-produce and promote the prescription and sale of Viagra.

15 122. Pfizer implicitly warranted that Viagra was fit for the use for which it was  
16 intended by offering assertions through multimedia advertisements that the drug was used for  
17 the treatment of erectile dysfunction.

18 123. Plaintiff was and is unskilled in the research, design and manufacture of erectile  
19 dysfunction medications and therefore reasonably relied entirely on the skill, judgment and  
20 implied warranty of Pfizer in deciding to use Viagra.

21 124. Plaintiff's physician would not have had the same level of access to the research  
22 and development conducted by Pfizer prior to its decision to manufacture Viagra for general  
23 use.

24 125. Viagra was neither safe for its intended use nor of merchantable quality, as had  
25 been implicitly warranted by Pfizer, in that Viagra's mechanism of action – the inhibition of  
26 PDE5 – inherently presented a significant increase in the user's risk of developing melanoma.

27 126. As a direct and proximate result of the falsity of the warranties implicated by  
28 Pfizer's actions and omissions, Plaintiff suffered significant pain, suffering, and economic

1 damages incurred through cancer treatment from melanoma caused by Viagra use.

2 **PUNITIVE DAMAGES**

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

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

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

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

16 131. Pfizer’s unconscionable conduct warrants an award of exemplary and punitive  
17 damages against the company.

18 **RELIEF REQUESTED**

19 **WHEREFORE**, Plaintiff prays judgment against Pfizer as follows:

20 **ON THE FIRST CAUSE OF ACTION:**

- 21 1. Equitable and/or injunctive relief as appropriate;
- 22 2. Monetary relief including restitution and fluid recovery;
- 23 3. Attorneys’ fees, expenses, and costs of suit;
- 24 4. Interest; and
- 25 5. Such other and further relief as the Court deems proper.

26 **ON THE SECOND CAUSE OF ACTION:**

- 27 1. Equitable and/or injunctive relief as appropriate;
- 28 2. Monetary relief including restitution and fluid recovery;

- 1 3. Attorneys’ fees, expenses, and costs of suit;
- 2 4. Interest; and
- 3 5. Such other and further relief as the Court deems proper.

**ON THE THIRD CAUSE OF ACTION:**

- 5 1. Equitable and/or injunctive relief as appropriate;
- 6 2. Monetary relief including restitution and fluid recovery;
- 7 3. Attorneys’ fees, expenses, and costs of suit;
- 8 4. Interest; and
- 9 5. Such other and further relief as the Court deems proper.

**ON THE FOURTH CAUSE OF ACTION:**

- 11 1. Injunctive relief;
- 12 2. Damages including punitive damages;
- 13 3. Attorneys’ fees, expenses, and costs of suit;
- 14 4. Interest; and
- 15 5. Such other and further relief as the Court deems proper.

**ON THE FIFTH CAUSE OF ACTION:**

- 17 1. Equitable and/or injunctive relief as appropriate;
- 18 2. Monetary relief including restitution and fluid recovery;
- 19 3. Attorneys’ fees, expenses, and costs of suit;
- 20 4. Interest; and
- 21 5. Such other and further relief as the Court deems proper.

**ON THE SIXTH CAUSE OF ACTION:**

- 23 1. Equitable and/or injunctive relief as appropriate;
- 24 2. Monetary relief including restitution and fluid recovery;
- 25 3. Attorneys’ fees, expenses, and costs of suit;
- 26 4. Interest; and
- 27 5. Such other and further relief as the Court deems proper.

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**ON THE SEVENTH CAUSE OF ACTION:**

- 1. Equitable and/or injunctive relief as appropriate;
- 2. Monetary relief including restitution and fluid recovery;
- 3. Attorneys’ fees, expenses, and costs of suit;
- 4. Interest; and
- 5. Such other and further relief as the Court deems proper.

**ON THE EIGHTH CAUSE OF ACTION:**

- 1. Equitable and/or injunctive relief as appropriate;
- 2. Monetary relief including restitution and fluid recovery;
- 3. Attorneys’ fees, expenses, and costs of suit;
- 4. Interest; and
- 5. Such other and further relief as the Court deems proper.

**DEMAND FOR JURY TRIAL**

Plaintiff Amador Herrera demands a trial by jury.

Dated: October 23, 2015.

LEVIN SIMES, LLP

/s/ Rachel Abrams  
 Rachel Abrams  
 LEVIN SIMES, LLP  
 44 Montgomery Street, 32<sup>nd</sup> Floor  
 San Francisco, CA, 94104  
 Telephone: (415) 426-3000  
 Facsimile: (415) 426-3001

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
AMADOR HERRARA

DEFENDANTS
PFIZER, INC.

(b) County of Residence of First Listed Plaintiff San Francisco, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant NY
(IN U.S. PLAINTIFF CASES ONLY)

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Rachel Abrams
Levin Simes, LLP: 44 Montgomery St, 32nd Fl, San Francisco, CA
94104; (415) 426-3000

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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)

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

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

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
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:
Product Liability

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ More than \$75,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/23/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Rachel Abrams

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

## 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. 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.
- VIII. 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.
- Date and Attorney Signature.** Date and sign the civil cover sheet.