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6 **UNITED STATES DISTRICT COURT**  
7 **NORTHERN DISTRICT OF CALIFORNIA**

8 Byron T. Nelson as Administrator of the Estate) Case No.: \_\_\_\_\_  
9 of Gary E. Udell, Deceased and Michelle A. )

10 Udell, Individually, )  
11 Plaintiffs, )  
12 vs. )  
13 Pfizer Inc., )  
14 Defendant )

- COMPLAINT FOR DAMAGES**
1. Negligence
  2. Strict Products Liability (Failure to Warn/Defective Design)
  3. Violation of Cal. Civil Code § 1790 *et seq.* (Breach of Implied Warranty)
  4. Violation of Cal. Civil Code § 1790 *et seq.* (Breach of Express Warranty)
  5. Fraudulent Misrepresentation
  6. Fraudulent Concealment
  7. Negligent Misrepresentation
  8. Cal. Bus. & Prof. Code § 17200 *et seq.* (UCL)
  9. Cal. Bus. & Prof. Code § 17500 *et seq.* (FAL)
  10. Loss of Consortium
  11. Survival
  12. Wrongful Death

21 **DEMAND FOR JURY TRIAL**

22 Plaintiffs, Byron T. Nelson as Administrator of the Estate of Gary E. Udell, Deceased and  
23 Michelle A. Udell, Individually, by and through their undersigned counsel, hereby submit this  
24 Complaint and Jury Demand against Defendant, Pfizer Inc. (“Pfizer” or “Defendant”) for  
25 compensatory damages, punitive damages, equitable relief and such other relief deemed just and  
26 proper arising from the injuries to Gary E. Udell resulting from the ingestion of the prescription drug  
27 Viagra®. In support of this Complaint and Jury Demand, Plaintiffs allege the following:  
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1 This is an action for personal injuries and damages, including the untimely and wrongful death  
2 suffered by Gary E. Udell as a direct and proximate result of Pfizer Inc.’s (“Pfizer”) negligent and  
3 wrongful conduct in connection with the design, development, manufacturing, testing, packaging,  
4 promoting, marking, distribution, labeling and/or sale of sildenafil citrate tablets sold under the brand  
5 name Viagra® (“Viagra®”).  
6

7 **PARTIES**

8 1. Plaintiff, Michelle A. Udell, currently resides in the County of Sacramento, State of  
9 California. At all times relevant herein, Gary E. Udell, decedent, was a resident of the County of  
10 Placer, State of California.  
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12 2. At the time of Gary E. Udell’s death, Michelle A. Udell and Gary E. Udell were  
13 married.  
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15 3. Byron T. Nelson was appointed by the Superior Court of California, County of Placer  
16 as the Administrator of the Estate of Gary E. Udell on April 17, 2015.  
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18 4. Defendant, Pfizer Inc. (“Pfizer”) is a corporation organized and existing under the  
19 laws of the State of Delaware with its principal place of business in the State of New York. Pfizer  
20 regularly conducts business in the States of Delaware, New York, California and throughout the  
21 United States and derives substantial revenues from drugs it sells in the States of Delaware, New  
22 York, California and throughout the United States. Pfizer is engaged in the business of designing,  
23 developing, manufacturing, labeling, promoting, marketing, distributing and selling pharmaceutical  
24 drugs, including the drug Viagra® in New York, California and throughout the United States.  
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1 markets, advertises, distributes, sells and receives substantial profits from the sales of Viagra® in this  
2 District, and has and continues to conceal and make material omissions in this District, so as to  
3 subject it to *in personam* jurisdiction in this Judicial District.

4 13. On December 11, 2015, a Petition was filed with the Judicial Panel on Multidistrict  
5 Litigation (“JPML”) seeking coordination of all such matters before the U.S. District Court for the  
6 Northern District of California. *See In Re: Viagra Products Liability Litigation*, MDL No. 2691.  
7 The Petition was fully briefed, unopposed by Pfizer and all other interested parties, and argued on  
8 March 31, 2016.  
9

10 14. On April 7, 2016, the JPML issued a Transfer Order and consolidation of related cases  
11 into *In Re: Viagra (Sildenafil Citrate) Products Liability Litigation*, MDL No. 2691 and transferred  
12 the consolidation to the United States District Court for the Northern District of California before The  
13 Honorable Richard Seeborg.  
14

15 15. Therefore, venue is also proper in the Northern District of California pursuant to 28  
16 U.S.C. § 1407.  
17

18 16. Related Viagra® actions are pending in this and other federal judicial districts  
19 throughout the United States. In light of this pretrial coordination and cooperation, Plaintiffs are  
20 filing this Complaint in the Northern District of California. For purposes of remand and trial, venue  
21 is proper in Decedent’s home District, the United States District Court for the Eastern District of  
22 California, Riverside Division.  
23

24 17. Plaintiffs are domiciled in California, Decedent was prescribed and ingested Viagra®  
25 in California and sustained injuries in California.  
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**FACTS**

**Background**

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3 18. On March 27, 1998, the U.S. Food and Drug Administration approved a new drug  
4 application (“NDA”) for the manufacture and sale of sildenafil citrate.

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

8 20. Sildenafil citrate (“Sildenafil”) is the active ingredient in Viagra®.

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

15  
16 22. Viagra® treats erectile dysfunction by inhibiting the secretion of phosphodiesterase  
17 type 5 (“PDE5”), an enzyme responsible for the degradation of cyclic guanosine monophosphate  
18 (“cGMP”). When the cGMP is not degraded by the PDE5, smooth muscles in the corpus cavernosum  
19 relax, creating an erection.  
20

21 23. The National Institutes of Health estimate that erectile dysfunction affects as many as  
22 thirty million men in the United States.<sup>1</sup>  
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<sup>1</sup> NIH Consensus Development Panel on Impotence (July 7, 1993).

**Prevalence of Viagra® in the Market**

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2 24. In its 2013 Annual Report, Pfizer states that it accumulated revenue exceeding  
3 \$1,800,000,000 from worldwide sales of Viagra®. This statistic is particularly significant in light of  
4 the fact that Pfizer lost exclusivity of Viagra® throughout Europe in 2013, which in itself led to a  
5 drop in profits from the previous calendar year.  
6

7 25. Viagra® holds approximately 45% of the U.S. market share for erectile dysfunction  
8 medications.<sup>2</sup>

9 26. Pfizer estimates that Viagra® has been prescribed to more than 35 million men  
10 worldwide.<sup>3</sup>

11 27. In 2012 alone, physicians wrote approximately eight million prescriptions for  
12 Viagra®.<sup>4</sup>  
13

14 **Pfizer’s Knowledge**

15 28. Unbeknownst to Viagra® users, studies have shown that the cellular activity providing  
16 the mechanism of action for Viagra® is associated with the development and/or exacerbation of  
17 melanoma.  
18

19 29. The American Cancer Society states that melanoma is “the most serious type of skin  
20 cancer.”<sup>5</sup>  
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26 <sup>2</sup> 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>.

27 <sup>3</sup> Hilary Stout, *The Thrill That Was*, N.Y. TIMES, June 5, 2011, available at:  
<http://query.nytimes.com/gst/fullpage.html?res=9B06E3DF173DF173FF936A35755C0A9679D8B63>.

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

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

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

5  
6           31.     Several studies have linked the mechanism of action for Viagra® to cell mutation  
7 cultivating melanomagenesis, or the creation of melanocytes which develop into melanoma.

8           32.     Upon information and belief, according to the Center for Drug Evaluation and  
9 Research “Joint Clinical Review” Internal Safety Review for Viagra (Sildenafil) NDA 20-895, Pfizer  
10 knew as early as approximately 1998 that there were people that dropped out of the clinical studies  
11 due to the development of carcinoma, including but not limited to melanoma, after taking Viagra® as  
12 part of a study.

13  
14           33.     A study published in 2011 found that treatment with Viagra® can promote melanoma  
15 cell invasion.<sup>7</sup> Specifically, by inhibiting PDE5, Viagra® mimics an effect of gene activation and  
16 therefore may potentially function as a trigger for the creation of melanoma cells.

17  
18           34.     A 2012 study published in the Journal of Cell Biochemistry also found that PDE5  
19 inhibitors were shown to promote melanin synthesis,<sup>8</sup> which may exacerbate melanoma  
20 development.<sup>9</sup>

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

27 <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).

28 <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).

<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).





1           40.     While designing and formulating Viagra®, Pfizer discovered or should have  
2 discovered that the drug’s mechanism of action, the inhibition of PDE5, also presented a significant  
3 risk of the development and/or the exacerbation of melanoma.

4           41.     Despite these significant findings, Pfizer has made no efforts in its ubiquitous Viagra®  
5 advertisements to warn users about the potential risk of developing and/or exacerbating melanoma  
6 that has been scientifically linked to its drug.

7           42.     Members of the general public had no plausible means through which they could have  
8 discovered the significant risk of melanomagenesis associated with PDE5 inhibition.

9           43.     Prescribing physicians would not have had the same level of access to the research and  
10 development conducted by Pfizer prior to its decision to manufacture Viagra® for general public use.

11           44.     Pfizer failed to communicate to the general public that the inhibition of PDE5  
12 inherently necessary to the efficacy of Viagra® would also present a significant risk of one’s  
13 development and/or exacerbation of cancerous cells.

14           45.     For example, no individual prescribed to use Viagra® would have believed or be  
15 expected to know that his use of Viagra® would expose him to an increased risk of developing  
16 melanoma or exacerbating the growth of melanocytes already present in the body.

17           46.     Pfizer expected or should have expected individuals who suffered from erectile  
18 dysfunction to ingest Viagra® as a means to treat their condition.

19           47.     Pfizer expected or should have expected physicians treating erectile dysfunction to  
20 prescribe Viagra® as a means to treat this condition.

21           48.     The risk presented by ingesting Viagra® would be present from the moment of  
22 manufacture; that is, the user would not need to change or alter the drug itself or the means by which  
23 it was ingested in order for the drug to carry the same risk of harm as described herein.  
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**Risks and Benefits of Viagra® Use**

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2 49. Erectile dysfunction is not fatal, nor does it present any related symptoms or  
3 characteristics harmful to one's physical health; however, those with erectile dysfunction are unable  
4 to achieve and maintain an erection.

5  
6 50. At all times relevant hereto, Viagra® was useful to some members of the population;  
7 namely, men diagnosed with erectile dysfunction.

8 51. However, Viagra® also encourages the development of melanoma in the body of a  
9 user, thereby placing them at a significant health risk.

10 52. Pfizer manufactured, marketed and sold Viagra® as a PDE5 inhibitor; however, the  
11 mechanism of action that made the drug effective in treating erectile dysfunction simultaneously  
12 increased the risk of the user developing melanoma.

13  
14 53. At the time Viagra® was formulated and manufactured, Pfizer knew or should have  
15 known that the drug posed a significantly heightened risk to users, specifically through the increased  
16 likelihood that those users would develop melanoma because of the chemical reactions inherent to the  
17 drug's functioning.

18  
19 54. Through the testing and formulating of Viagra®, and before the initiation of the drug's  
20 mass manufacturing, Pfizer knew or should have known in the exercise of ordinary care that the  
21 chemical reactions inherent to Viagra®'s mechanism of action would present a cancer-related health  
22 hazard to potential future users.

23  
24 55. The risk presented by the use of Viagra® through PDE5 inhibition – a characteristic  
25 inherent to the drug's potential efficacy – was unquestionably far more significant than the benefit  
26 provided to its users.



1           64.     On February 15, 2012, Mr. Udell underwent another whole body PET/CT scan from  
2 vertex to toes which demonstrated increased size of a large left pericardiac metastasis, with invasion  
3 into the mediastinum and pericardiac fat with obstruction of the left upper lobe pulmonary  
4 vasculature.

5           65.     On February 23, 2012, Mr. Udell began chemotherapy treatment as part of a  
6 carboplatin/paclitaxel/axitinib clinical trial for his metastatic melanoma. Upon information and  
7 belief, Mr. Udell continued to receive treatment as part of the clinical trial until approximately July  
8 25, 2013.

9           66.     Over the course of this treatment, Mr. Udell underwent regular PET Scans, almost  
10 monthly.

11           67.     In or about October 17, 2013, Mr. Udell began treatment with trametinib + GSK795, a  
12 different type of chemotherapy treatment, for his metastatic melanoma which continued through  
13 January 2014.

14           68.     On February 4, 2014, Mr. Udell was admitted to the hospital and underwent a CT scan  
15 of his abdomen, pelvis and chest. The findings reported an invading large mass along the left aspect  
16 of the mediastinum with ill-defined margins, measuring approximately 12 cm in AP dimension by 6.3  
17 cm in transverse dimension by 15.2 cm craniocaudad dimension. The mass encasing and invading  
18 the left mainstem bronchus and bronchials to the left upper lobe and left lower lobe. A soft issue  
19 mass was seen in the anterior aspect of the left lower lobe measuring 4.9 cm x 5.5 cm. There were  
20 patchy alveolar infiltrates in the right upper lobe, right middle lobe and right lower lobe,  
21 predominately in the periphery, suspicious for a superimposed pneumonia. Parenchymal bands were  
22 seen in the left lung apex compatible with parenchymal scarring. Several scattered soft tissue  
23 nodules were seen throughout both lungs compatible with satellite lesions.  
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1           74. For the duration of these efforts, Pfizer directed its advertising efforts to consumers  
2 located across the nation, including consumers in the State of California and throughout the United  
3 States. Such efforts were also aimed at prescribing physicians across the nation, including  
4 prescribing physicians in the State of California and throughout the United States.  
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6           75. At all times mentioned in this Complaint, Pfizer's officers and directors participated  
7 in, authorized and directed the production and aggressive promotion of Viagra® when they knew, or  
8 with the exercise of reasonable care should have known, of the risk of developing melanoma  
9 associated with Viagra® use. In doing so, these officers and directors actively participated in the  
10 tortious conduct which resulted in the injuries suffered by many Viagra® users, including Plaintiffs.  
11

12           76. Pfizer purposefully downplayed, understated and outright ignored the melanoma-  
13 related health hazards and increased risks associated with using Viagra®. Pfizer also deceived  
14 potential Viagra® users by relaying positive information through the press, including testimonials  
15 from retired, popular U.S. politicians, while downplaying known adverse and serious health  
16 consequences.  
17

18           77. Pfizer concealed material information related to melanoma development from  
19 potential Viagra® users.

20           78. In particular, in the warnings the company includes in its commercials, online and  
21 print advertisements, Pfizer failed to mention any potential risk for melanoma development and/or  
22 exacerbation associated with Viagra® use.  
23

24           79. As a result of Pfizer's advertising and marketing, and representations about its  
25 product, men in the United States pervasively sought prescriptions for Viagra®. If Gary E. Udell had  
26 known the risks and dangers associated with taking Viagra®, he would have elected not to take  
27  
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1 Viagra® and, consequently, would not have developed melanoma. Similarly, if Mr. Udell's  
2 physicians had been aware of the risks and dangers associated with taking Viagra®, they would not  
3 have prescribed Viagra®.

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**  
6 **NEGLIGENCE**

7 80. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint  
8 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more  
9 fully set forth herein.

10 81. Pfizer had a duty to exercise reasonable care and comply with existing standards of  
11 care in the testing, designing, researching, developing, manufacturing, packaging, promoting,  
12 labeling, advertising, marketing, selling and/or distribution of Viagra® into the stream of commerce  
13 including a duty to ensure that the product would not cause users to suffer unreasonable and  
14 dangerous side effects.

15 82. Pfizer failed to exercise ordinary care and failed to comply with existing standards of  
16 care in the testing, designing, researching, developing, manufacturing, packaging, promoting,  
17 labeling, advertising, marketing, selling and/or distribution of Viagra® into interstate commerce in  
18 that Pfizer knew or should have known that using Viagra® created an unreasonable risk of melanoma  
19 as well as other severe personal injuries which are permanent and lasting in nature, physical pain and  
20 mental anguish, including diminished enjoyment of life as well as the need for lifelong medical  
21 treatment, monitoring, medications and/or death.

22 83. Pfizer, its agents, servants and/or employees failed to exercise ordinary care and failed  
23 to comply with existing standards of care in the following acts and/or omissions:  
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- a. Failing to conduct adequate testing, including pre-clinical and clinical testing and post-marketing surveillance to determine the safety risks of Viagra® for treating men while promoting the use of Viagra® and providing kickbacks to healthcare professionals to convince healthcare professionals to prescribe Viagra® for erectile dysfunction;
- b. Marketing Viagra® for the treatment of erectile dysfunction without testing it to determine whether Viagra® was safe for this use;
- c. Designing, manufacturing, producing, promoting, formulating, creating and/or developing Viagra® without adequately and thoroughly testing it;
- d. Selling Viagra® without conducting sufficient tests to identify the dangers posed by Viagra® to men;
- e. Failing to adequately and correctly warn Plaintiffs, the public, the healthcare community, including Gary E. Udell and his healthcare providers, as well as the FDA of the dangers of Viagra® in men;
- f. Failing to evaluate available data and safety information concerning Viagra® use in men;
- g. Advertising and recommending the use of Viagra® without sufficient knowledge as to its dangerous propensities to cause and/or exacerbate melanoma;
- h. Representing that Viagra® was safe for treating men when in fact it was and is unsafe;
- i. Representing that Viagra® was safe and efficacious for treating erectile dysfunction when Defendant was aware that neither the safety nor efficacy for such treatment has been established;
- j. Representing that Viagra® was not carcinogenic in the animal studies conducted in rats and rabbits;
- k. Failing to provide any warnings regarding melanoma;
- l. Failing to accompany Viagra® with proper and/or accurate warnings regarding all possible adverse side effects associated with the use of Viagra®;
- m. Failing to issue sufficiently strengthened warnings following additional evidence associating Viagra® use with the increased risk of melanoma;



- 1 n. Failing to advise Gary E. Udell and his healthcare providers, the FDA and the  
2 healthcare community that neither the safety nor the efficacy of Viagra® for  
3 treating erectile dysfunction has been established and that the risks of using the  
4 drug for that condition outweigh any putative benefit; and  
5 o. Failing to advise Gary E. Udell and his healthcare providers, the FDA and the  
6 healthcare community of clinically significant adverse events, specifically  
7 melanoma, associated with Viagra® use for erectile dysfunction.

8 84. Pfizer, its agents, servants and/or employees failed to exercise ordinary care and  
9 violated 21 U.S.C. § 331, 352; 42 U.S.C. § 1320a-7b; and 21 C.F.R. §§ 201.57, 201.128 in particular.

10 85. The laws violated by Pfizer were designed to protect Plaintiffs and similarly situated  
11 persons against the risks and hazards that have occurred in this case. Therefore, Defendant's conduct  
12 constitutes negligence *per se*.

13 86. Despite the fact that Pfizer knew or should have known that Viagra® significantly  
14 increased the risk of melanoma, it continued and still continues to negligently market through false  
15 and misleading promotion and communication, manufacture, distribute and/or sell Viagra® to  
16 consumers including Gary E. Udell.

17 87. Pfizer knew or should have known that consumers such as Mr. Udell would  
18 foreseeably suffer injury as a result of its failure to exercise ordinary care as set forth above.

19 88. Pfizer's negligence was the proximate cause of Plaintiffs' injuries, harm and economic  
20 loss which Plaintiffs suffered and/or will continue to suffer.

21 89. Plaintiffs incorporate herein paragraphs 35 through 68, *supra*, as particularized  
22 evidence of the pattern of negligent behavior of Pfizer.

23 90. Had Gary E. Udell not taken Viagra®, he would not have suffered those injuries and  
24 damages as described herein with particularity.  
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1 91. As a result of the foregoing acts and omissions, Gary E. Udell was caused to suffer  
2 injuries from melanoma, including but not limited to an untimely and wrongful death, that are  
3 permanent and lasting in nature, physical pain and mental anguish including diminished enjoyment of  
4 life, as well as the need for lifelong medical treatment, monitoring, medication and/or death.

5  
6 92. Gary E. Udell sustained severe emotional distress and suffering as a result of Pfizer's  
7 wrongful conduct resulting in his injuries including his untimely and wrongful death.

8 93. As a result of the foregoing acts and omissions, Gary E. Udell required medical care  
9 for which he incurred medical, health, incidental and related expenses.

10 94. By reason of the foregoing, Plaintiffs have been damaged by Pfizer's wrongful  
11 conduct. Pfizer's conduct was willful, wanton, reckless and, at the very least, arose to the level of  
12 gross negligence so as to indicate a complete disregard of the rights and safety of Plaintiffs and others  
13 justifying an award of punitive damages.

14  
15 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor for  
16 compensatory and punitive damages together with interest, costs herein, attorneys' fees and all such  
17 other and further relief as this Court deems just and proper. Plaintiffs also demand that the issues  
18 herein contained be tried by a jury.

19  
20 **SECOND CAUSE OF ACTION**  
21 **STRICT LIABILITY**  
22 **(Failure to Warn/Defective Design)**

23 95. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint  
24 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully  
25 set forth herein.

1 96. Viagra® was tested, designed, researched, developed, manufactured, packaged,  
2 promoted, labeled, advertised, marketed, sold, distributed and/or placed into the stream of commerce  
3 by Pfizer and was defective at the time it left Pfizer's control in that, and not by way of limitation, the  
4 drug labeling failed to include adequate warnings, instructions and directions relating to the dangerous  
5 risks associated with the use of Viagra® to treat erectile dysfunction. Viagra® was also defective in  
6 its design because the foreseeable risks of harm posed by the product could have been reduced or  
7 avoided by the adoption of a reasonable alternative design. Safe and effective products were available  
8 for the purpose for which Pfizer marketed Viagra® for use in men with erectile dysfunction and  
9 neither the safety nor the efficacy of Viagra® for that purpose had been established.  
10

11 97. Pfizer failed to provide adequate warnings to healthcare providers and consumers,  
12 including Gary E. Udell and his treating healthcare providers of the increased risk and/or exacerbation  
13 of melanoma associated with Viagra® and aggressively promoted the product to healthcare providers,  
14 hospitals and directly to consumers.  
15

16 98. Prescribing physicians, healthcare providers and men neither knew nor had reason to  
17 know of the existence of the aforementioned melanoma at the time of prescribing and/or ingesting of  
18 Viagra®. Healthcare providers and/or consumers would not have recognized the potential risks or  
19 side effects for which Pfizer failed to include appropriate warnings and which it masked through the  
20 unbalanced promotion of Viagra® specifically for treatment in men with erectile dysfunction.  
21

22 99. If Pfizer had communicated the risk of developing and/or exacerbating melanoma  
23 associated with Viagra® use to Gary Udell's healthcare providers, then his healthcare provider (s)  
24 would not have prescribed Viagra®.  
25

26 100. If Pfizer had communicated the risk of developing and/or exacerbating melanoma  
27 associated with Viagra® use to Gary E. Udell, then Mr. Udell would not have taken Viagra®.  
28

1 101. Plaintiffs incorporate herein paragraphs 35 through 68, *supra*, as particularized  
2 evidence of the failures to warn of Pfizer.

3 102. At all times herein mentioned, due to Pfizer's marketing of Viagra®, the drug was  
4 prescribed and used as intended by Gary E. Udell and in a manner reasonably foreseeable to Pfizer.  
5

6 103. Pfizer is liable to Plaintiffs for the negligent and/or willful failure to provide adequate  
7 warnings and other clinically relevant information and data regarding the appropriate use of Viagra®  
8 to Gary E. Udell and his healthcare providers.

9 104. Pfizer, as a manufacturer of pharmaceutical drugs, is held to the level of knowledge of  
10 an expert in the field. Further, Pfizer knew or should have known that the warnings and other  
11 clinically relevant information and data which they distributed, omitting the risks of developing and/or  
12 exacerbating melanoma, associated with the use of Viagra® were inadequate.  
13

14 105. Pfizer had a continuing duty to provide consumers including Gary E. Udell and his  
15 healthcare providers with warnings and other clinically relevant information and data regarding the  
16 risks and dangers associated with Viagra® as it became or could have become available to Pfizer.  
17

18 106. Despite the fact that Pfizer knew or should have known that Viagra® caused and/or  
19 exacerbated melanoma, it continued to manufacture, package, promote, label, advertise, distribute and  
20 sell Viagra® without stating that there existed safer and more equally effective alternative drug  
21 products and/or providing adequate clinically relevant information, warnings and data.

22 107. Pfizer knew or should have known that consumers and Mr. Udell specifically would  
23 foreseeably and needlessly suffer injury as a result of Pfizer's failures.  
24

25 108. Pfizer breached its duty to provide timely and adequate warnings, instructions and  
26 information in the following particulars:  
27  
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- 1 a. failing to ensure Viagra® warnings to the healthcare community, physicians,  
2 Gary E. Udell's healthcare providers and Gary E. Udell were accurate and  
3 adequate despite having extensive knowledge of the risks associated with  
4 Viagra®;
- 5 b. failing in obligation to provide the healthcare community, physicians, Gary E.  
6 Udell's healthcare providers and Gary E. Udell with adequate clinically  
7 relevant information, data and warnings regarding the adverse health risks  
8 associated with exposure to Viagra® and/or that there existed safer and more  
9 or equally effective alternative drug products;
- 10 c. failing to conduct post-market safety surveillance and report that information  
11 to the healthcare community, Gary E. Udell's healthcare providers and Gary E.  
12 Udell;
- 13 d. failing to include adequate warnings and/or providing adequate and clinically  
14 relevant information and data that would alert the healthcare community, Gary  
15 E. Udell's healthcare providers and Gary E. Udell to the dangerous risks of  
16 Viagra® including among other things the increased risk of melanoma;
- 17 e. failing to continually monitor, test and analyze data regarding safety, efficacy  
18 and prescribing practices of their marketed drugs including Viagra®;
- 19 f. failing to review all adverse drug event information (AER) and to report any  
20 information bearing upon the adequacy and/or accuracy of its warnings,  
21 efficacy or safety including the risks and/or prevalence of side effects caused  
22 by Viagra® to the healthcare community, Gary E. Udell's healthcare providers  
23 and Gary E. Udell;
- 24 g. failing to provide adequate post-marketing warnings and instructions after  
25 Pfizer knew or should have known of the significant risks of, among other  
26 things, melanoma of Viagra®;
- 27 h. failing to periodically review all medical literature regarding Viagra® and  
28 failing to report data, regardless of the degree of significance, regarding the  
adequacy and/or accuracy of their warnings, efficacy or safety of Viagra®;
- i. failing to disclose the results of the testing and other information in Pfizer's  
possession regarding Viagra® and the increased risk of melanoma and/or  
exacerbation of melanoma; and
- j. failing to warn adequately the healthcare community, the general public and  
Gary E. Udell of the dangers of using Viagra® for erectile dysfunction  
including the risk of melanoma and/or representing that Viagra® was safe for

erectile dysfunction when in fact Pfizer knew or should have known that Viagra® was unsafe for this use and that Viagra® increased the risk of melanoma and/or exacerbation of melanoma.

109. As a direct and proximate result of the defective nature of Viagra®, Gary E. Udell was caused to suffer injuries from melanoma that are permanent and lasting in nature, physical pain and mental anguish including diminished enjoyment of life, as well as the need for lifelong medical treatment, monitoring, medication and/or death.

110. Plaintiffs sustained severe emotional distress and suffering as a result of Pfizer's wrongful conduct resulting in Mr. Udell's injuries.

111. As a result of the foregoing acts and omissions, Gary E. Udell required medical care for which he incurred medical, health, incidental and related expenses.

112. By reason of the foregoing, Plaintiffs have been damaged by Pfizer's wrongful conduct. Pfizer's conduct was willful, wanton, reckless and, at the very least, arose to the level of gross negligence so as to indicate a complete disregard of the rights and safety of Plaintiffs and others justifying an award of punitive damages.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor for compensatory and punitive damages together with interest, costs herein, attorneys' fees and all such other and further relief as this Court deems just and proper. Plaintiffs also demand that the issues herein contained be tried by a jury.

**THIRD CAUSE OF ACTION**  
**VIOLATION OF Cal. Civil Code § 1790 et seq.**  
**(Breach Of Implied Warranty)**

113. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

1 114. Gary E. Udell used Viagra® in substantially the same condition it was in when it left  
2 the control of Pfizer.

3 115. Prior to the time that Gary E. Udell used Viagra®, Pfizer implicitly warranted to Mr.  
4 Udell and his physicians that Viagra® was of merchantable quality, safe to use and fit for the use for  
5 which it was intended.  
6

7 116. Pfizer implicitly warranted the safety of Viagra® through a multimedia advertising  
8 campaign conducted over a span of several years, as Viagra® had been on the market for many years  
9 prior to the time when Gary E. Udell was first prescribed Viagra®.

10 117. Pfizer implicitly warranted the merchantable quality of Viagra® by opting to mass-  
11 produce and promote the prescription and sale of Viagra®.  
12

13 118. Pfizer implicitly warranted that Viagra® was fit for the use for which it was intended  
14 by offering assertions through multimedia advertisements that the drug was used for the treatment of  
15 erectile dysfunction.

16 119. Gary E. Udell was unskilled in the research, design and manufacture of erectile  
17 dysfunction medications and therefore reasonably relied entirely on the skill, judgment and implied  
18 warranty of Pfizer in deciding to use Viagra®.  
19

20 120. Gary E. Udell's physicians would not have had the same level of access to the  
21 research and development conducted by Pfizer prior to its decision to manufacture Viagra® for  
22 general use.

23 121. Viagra® was neither safe for its intended use nor of merchantable quality, as had been  
24 implicitly warranted by Pfizer, in that Viagra®'s mechanism of action – the inhibition of PDE5 –  
25 inherently presented a significant increased risk of developing and/or exacerbating melanoma.  
26  
27  
28

1 122. As a direct and proximate result of the falsity of the warranties implicated by Pfizer's  
2 actions and omissions, Gary E. Udell suffered significant pain, suffering, invasive procedures and  
3 economic damages incurred for the treatment of melanoma caused by Viagra® use.

4 123. By reason of the foregoing, Plaintiffs have been damaged by Pfizer's wrongful  
5 conduct. Pfizer's conduct was willful, wanton, reckless and, at the very least, arose to the level of  
6 gross negligence so as to indicate a complete disregard of the rights and safety of Plaintiffs and others  
7 justifying an award of punitive damages.

8 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor for  
9 compensatory and punitive damages together with interest, costs herein, attorneys' fees and all such  
10 other and further relief as this Court deems just and proper. Plaintiffs also demand that the issues  
11 herein contained be tried by a jury.  
12

13  
14 **FOURTH CAUSE OF ACTION**  
15 **VIOLATION OF Cal. Civil Code § 1790 et seq.**  
16 **(Breach Of Express Warranty)**

17 124. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint  
18 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more  
19 fully set forth herein.

20 125. At all times relevant hereto, Pfizer expressly represented and warranted to Gary E.  
21 Udell and his healthcare providers, by and through statements made by Pfizer or their authorized  
22 agents or sales representatives, orally and in publications, package inserts and other written materials  
23 intended for physicians, medical patients and the general public, that Viagra® was safe, effective and  
24 proper for its intended use.  
25  
26  
27  
28



1           126. These representations include, but are not limited to, the information disseminated in  
2 Pfizer's patient information and prescribing information publications, Pfizer's website and on the  
3 FDA's website, since the drug entered the market.

4           127. The warranties expressly made by Pfizer through its marketing and labeling were false  
5 as Viagra® is unsafe.  
6

7           128. Specifically, Viagra® is unsafe in that its mechanism of action, the inhibition of the  
8 PDE5 enzyme, also increases the risk of the development and proliferation of melanocytic cells in the  
9 user's body.

10           129. Gary E. Udell's physicians acted as reasonable physicians in relying on what they  
11 believed to be the superior knowledge, judgment and access to research information possessed by  
12 Pfizer in choosing to prescribe Viagra® to Mr. Udell.  
13

14           130. Gary E. Udell acted as a reasonable consumer, relied on what he believed to be the  
15 superior skill, judgment, representations and express warranties of Pfizer in deciding to purchase and  
16 use Viagra®.  
17

18           131. In direct reliance upon the warranties made by Pfizer that Viagra® was safe to use in  
19 treating erectile dysfunction, Gary E. Udell's physicians prescribed and Mr. Udell ingested Viagra®  
20 and ultimately developed melanoma and suffered an untimely and wrongful death as a result.

21           132. As a direct and proximate result of the breach of warranty committed by Pfizer, Gary  
22 E. Udell suffered significant pain, suffering, invasive procedures and economic damages incurred for  
23 the treatment of melanoma caused by Viagra® use.  
24  
25  
26  
27  
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1 133. By reason of the foregoing, Plaintiffs have been damaged by Pfizer's wrongful  
2 conduct. Pfizer's conduct was willful, wanton, reckless and, at the very least, arose to the level of  
3 gross negligence so as to indicate a complete disregard of the rights and safety of Plaintiffs and others  
4 justifying an award of punitive damages.

5 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor for  
6 compensatory and punitive damages together with interest, costs herein, attorneys' fees and all such  
7 other and further relief as this Court deems just and proper. Plaintiffs also demand that the issues  
8 herein contained be tried by a jury.  
9

10 **FIFTH CAUSE OF ACTION**  
11 **FRAUDULENT MISREPRESENTATION**

12 134. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint  
13 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more  
14 fully set forth herein.  
15

16 135. Pfizer falsely and fraudulently represented to men suffering with erectile dysfunction  
17 and the healthcare community, including Gary E. Udell and his healthcare providers that:

- 18 a. Viagra® was safe and effective for treating erectile dysfunction;  
19 b. Viagra® had been adequately tested and studied in men with erectile  
20 dysfunction;  
21 c. Viagra® use was safe by omitting knowledge of an increased risk of  
22 melanoma; and  
23 d. Viagra®'s designation established the safety and efficacy of Viagra® for  
24 treating erectile dysfunction.

25 136. These representations made by Pfizer were material, false and misleading.

26 137. When Pfizer made these representations, it knew they were false.  
27  
28

1           138. Pfizer made these representations with the intent of defrauding and deceiving the  
2 public in general, and the healthcare community in particular, and were made with the intent of  
3 inducing the public in general, and the healthcare community in particular, including Gary E. Udell  
4 and his healthcare providers, to recommend, prescribe, dispense and/or purchase Viagra® to treat  
5 erectile dysfunction, all of which evidenced a callous, reckless willful, depraved indifference to the  
6 health, safety and welfare of Mr. Udell.  
7

8           139. At the time the aforesaid representations were made by Pfizer and at the time Gary E.  
9 Udell was prescribed and ingested Viagra® to treat erectile dysfunction, he was unaware of the  
10 falsity of said representations and reasonably believed them to be true.  
11

12           140. In reliance upon said representations, Gary E. Udell's prescribers were induced to  
13 prescribe and Mr. Udell was induced to ingest Viagra® for the treatment of erectile dysfunction.  
14

15           141. Pfizer knew that Viagra® had not been sufficiently tested for erectile dysfunction and  
16 that it lacked adequate warnings.  
17

18           142. Pfizer knew or should have known that Viagra® increases the risk of melanoma  
19 and/or the exacerbation of melanoma.  
20

21           143. As a result of the foregoing acts and omissions, Gary E. Udell was caused to suffer  
22 injuries from melanoma, including but not limited to an untimely and wrongful death, that are  
23 permanent and lasting in nature, physical pain and mental anguish including diminished enjoyment of  
24 life, invasive procedures, as well as the need for lifelong medical treatment, monitoring and/or  
25 medication.  
26

27           144. Plaintiffs sustained severe emotional distress and suffering as a result of Pfizer's  
28 wrongful conduct and the injuries from melanoma.

1 145. As a result of the foregoing acts and omissions, Gary E. Udell required medical care  
2 for which he incurred medical, health, incidental and related expenses.

3 146. By reason of the foregoing, Plaintiffs have been damaged by Pfizer's wrongful  
4 conduct. Pfizer's conduct was willful, wanton, reckless and, at the very least, arose to the level of  
5 gross negligence so as to indicate a complete disregard of the rights and safety of Plaintiffs and others  
6 justifying an award of punitive damages.  
7

8 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor for  
9 compensatory and punitive damages together with interest, costs herein, attorneys' fees and all such  
10 other and further relief as this Court deems just and proper. Plaintiffs also demand that the issues  
11 herein contained be tried by a jury.  
12

13 **SIXTH CAUSE OF ACTION**  
14 **FRAUDULENT CONCEALMENT**

15 147. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint  
16 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more  
17 fully set forth herein.

18 148. In representations to Gary E. Udell and his healthcare providers, men with erectile  
19 dysfunction (including Gary E. Udell) and the FDA, Pfizer fraudulently concealed and intentionally  
20 omitted the following material facts:  
21

- 22 a. Pfizer was illegally paying and offering to pay doctors remuneration to promote  
23 and prescribe Viagra®;  
24 b. Viagra® use increases the risk of developing melanoma and/or exacerbates  
25 melanoma;  
26 c. the risks of melanoma associated with the consumption of Viagra® by men with  
27 erectile dysfunction were not adequately tested prior to Pfizer's marketing of  
28 Viagra®;

- 1 d. the safety and efficacy of Viagra® for treating erectile dysfunction had not been
- 2 established;
- 3 e. Viagra® is not safe and effective for treating erectile dysfunction; and
- 4 f. Pfizer's internal data and information associated Viagra® with melanoma.

5 149. Pfizer's concealment and omissions of material facts concerning, among other things,  
6 the safety and efficacy of Viagra® for erectile dysfunction was made purposefully, willfully,  
7 wantonly and/or recklessly to mislead physicians, hospital, healthcare providers and men with  
8 erectile dysfunction including Gary E. Udell into reliance, continued use of Viagra® and to cause  
9 them to promote, purchase, prescribe and/or dispense Viagra®.  
10

11 150. Pfizer knew that physicians, hospitals, healthcare providers and men with erectile  
12 dysfunction such as Gary E. Udell had no way to determine the truth behind Pfizer's concealment and  
13 material omissions of facts surrounding Viagra® as set forth herein.  
14

15 151. Gary E. Udell and his healthcare providers reasonably relied on Pfizer's promotional  
16 statements concerning the asserted safety and efficacy of Viagra ® for men with erectile dysfunction  
17 from which Pfizer negligently, fraudulently and/or purposefully omitted material facts.  
18

19 152. As a result of the foregoing acts and omissions, Gary E. Udell was caused to suffer  
20 injuries from melanoma, including but not limited to an untimely and wrongful death, that are  
21 permanent and lasting in nature, physical pain and mental anguish including diminished enjoyment of  
22 life, invasive procedures, as well as the need for lifelong medical treatment, monitoring and/or  
23 medication.  
24

25 153. Gary E. Udell sustained severe emotional distress and suffering as a result of Pfizer's  
26 wrongful conduct and the injuries from melanoma.  
27

28 154. As a result of the foregoing acts and omissions, Gary E. Udell required medical care  
for which he incurred medical, health, incidental and related expenses.

1 155. By reason of the foregoing, Plaintiffs have been damaged by Pfizer's wrongful  
2 conduct. Pfizer's conduct was willful, wanton, reckless and, at the very least, arose to the level of  
3 gross negligence so as to indicate a complete disregard of the rights and safety of Plaintiffs and others  
4 justifying an award of punitive damages.

5  
6 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor for  
7 compensatory and punitive damages together with interest, costs herein, attorneys' fees and all such  
8 other and further relief as this Court deems just and proper. Plaintiffs also demand that the issues  
9 herein contained be tried by a jury.

10  
11 **SEVENTH CAUSE OF ACTION**  
**NEGLIGENT MISREPRESENTATION**

12 156. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint  
13 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more  
14 fully set forth herein.

15  
16 157. Pfizer falsely and negligently represented to the healthcare community and men with  
17 erectile dysfunction, including Gary E. Udell and his healthcare providers that:

- 18 a. Viagra® was safe and effective for treating erectile dysfunction;  
19 b. Viagra® had been adequately tested and studied in men with erectile  
20 dysfunction;  
21 c. Viagra® use pursuant to Pfizer's labeling was safe; and  
22 d. Viagra®'s designation established the safety and efficacy of Viagra® for  
23 treating erectile dysfunction.

24 158. These representations made by Pfizer were, in fact, false and misleading.  
25  
26  
27  
28

1 159. As a result of the foregoing acts and omissions, Gary E. Udell was caused to suffer  
2 injuries from melanoma, including but not limited to an untimely and wrongful death, that are  
3 permanent and lasting in nature, physical pain and mental anguish including diminished enjoyment of  
4 life, invasive procedures, as well as the need for lifelong medical treatment, monitoring and/or  
5 medication.  
6

7 160. Gary E. Udell also sustained severe emotional distress and suffering as a result of  
8 Pfizer's wrongful conduct and his injuries.

9 161. As a result of the foregoing acts and omissions, Gary E. Udell required medical care  
10 for which he incurred medical, health, incidental and related expenses  
11

12 162. By reason of the foregoing, Plaintiffs have been damaged by Pfizer's wrongful  
13 conduct. Pfizer's conduct was willful, wanton, reckless and, at the very least, arose to the level of  
14 gross negligence so as to indicate a complete disregard of the rights and safety of Plaintiffs and others  
15 justifying an award of punitive damages.

16 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor for  
17 compensatory and punitive damages together with interest, costs herein, attorneys' fees and all such  
18 other and further relief as this Court deems just and proper. Plaintiffs also demand that the issues  
19 herein contained be tried by a jury.  
20

21 **EIGHTH CAUSE OF ACTION**  
22 **VIOLATION OF CAL. BUS. & PROF. CODE § 17200, et seq.**  
23 **(Violation of Unfair Competition Law)**

24 163. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint  
25 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more  
26 fully set forth herein.  
27  
28

1           164. The Unfair Competition Law (“UCL”) defines unfair competition as meaning and  
2 including any “unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or  
3 misleading advertising...” (Cal. Bus. & Prof. Code § 17200). Unlawful business acts are those which  
4 are in violation of federal, state, county or municipal statutes or codes, as well as federal and state  
5 regulations. This prohibition extends to any act, omission or conduct affecting the rights of  
6 consumers within the State of California.  
7

8           165. Pfizer has designed and continues to design, manufacture, market, sell and place into  
9 the stream of commerce Viagra® that was purchased and used throughout California. Pfizer has  
10 failed and continues to fail to disclose and conceal the serious safety risks posed by the design of  
11 Viagra® as it does not warn Gary E. Udell and/or his healthcare providers of the increased risk of  
12 developing melanoma and/or exacerbating melanoma as a result of ingesting Viagra®.  
13

14           166. Pfizer has been and remains obligated to disclose this material safety risk because  
15 reasonable consumers expect Viagra® to treat erectile dysfunction. In failing to disclose this critical  
16 safety risk, known to Pfizer but not to reasonable consumers such as Gary E. Udell and his healthcare  
17 providers, Pfizer engaged in and continues to engage in unlawful, unfair and/or fraudulent conduct  
18 under Cal. Bus. & Prof. Code §17200.  
19

20           167. Plaintiffs incorporate herein paragraphs 35 through 68, *supra*, as particularized  
21 evidence of the pattern of omission, concealment, unlawful, unfair and/or fraudulent conduct by  
22 Pfizer.  
23

24           168. The UCL § 17200 specifically prohibits any “***unlawful*** . . . business act or practice.”  
25 Pfizer has violated Section § 17200’s prohibition against engaging in an unlawful act or practice by,  
26 *inter alia*, advertising, promoting, labeling an distributing and/or agreeing to advertise, promote,  
27  
28



1 label and distribute Viagra® that does not provide adequate warnings and other clinically relevant  
2 information and data regarding the appropriate use of Viagra® to both federal and California state  
3 laws.

4 169. Pfizer's ongoing labeling and distribution of Viagra® without post- market warnings  
5 and clinically relevant information after Pfizer knew or should have known of the significant risks of  
6 developing and/or exacerbating melanoma from the ingestion of Viagra® violates this section as  
7 discussed above.

9 170. The UCL §17200 also prohibits any "**unfair** . . . business act or practice." As  
10 described in the preceding paragraphs, Pfizer engages in the unfair business practice of testing,  
11 designing, researching, developing, manufacturing, packaging, promoting, labeling, advertising,  
12 marketing, selling and distributing Viagra® and failing to disclose a more equally effective alternate  
13 product to avoid developing melanoma and/or exacerbating melanoma and failing to warn the  
14 healthcare providers, hospitals and men with erectile dysfunction of the dangers of ingesting  
15 Viagra®.

17 171. Pfizer's business practices are unethical, oppressive and unscrupulous as well as  
18 violating fundamental policies in this state. Further, any justifications for Pfizer's wrong conduct are  
19 outweighed by the adverse effects of such conduct. Thus, Pfizer engaged in unfair business practices  
20 prohibited by Cal. Bus. & Prof. Code § 17200, *et seq.*

22 172. The UCL § 17200 also prohibits any "**fraudulent business act or practice.**"  
23 Defendants violated this prong of the UCL by disseminating misleading statements about Viagra® to  
24 the public and healthcare professionals. Further, Pfizer violated this prong of the UCL by failing to  
25 provide scientifically proven information about Viagra® with the intent to induce consumers to  
26  
27  
28

1 purchase Viagra® in order to help treat erectile dysfunction. Plaintiffs claim that Pfizer's  
2 nondisclosures and misleading statements concerning Viagra®, as more fully set forth above, were  
3 false, misleading and/or likely to deceive the consumers within the meaning of Cal. Bus. & Prof.  
4 Code § 17200.

5  
6 173. Pfizer's conduct caused and continues to cause substantial injury to Plaintiffs and  
7 other Viagra® users. Plaintiffs have suffered injury, emotional distress and will incur lifelong care as  
8 a result of Defendant's unfair conduct.

9  
10 174. As a result of Pfizer's violation of the UCL, Plaintiff is entitled to appropriate  
11 equitable relief, including injunctive relief and monetary relief in the form of restitution and interest.  
12 Plaintiffs are also entitled to recover penalties, as well as an award of attorneys' fees, costs and  
13 expenses for prosecuting this action.

14 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor for  
15 any and all such other and further relief as this Court deems just and proper.

16  
17 **NINTH CAUSE OF ACTION**  
18 **VIOLATION OF CAL. BUS. & PROF. CODE § 17500, et seq.**  
19 **(Violation of False Advertising Law)**

20 175. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint  
21 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more  
22 fully set forth herein.

23 176. The False Advertising Law ("FAL") prohibits various deceptive practices in  
24 connection with the dissemination, in any manner, of representations which are likely to deceive  
25 members of the public to purchase products such as Viagra®.  
26  
27  
28

1 177. Plaintiffs are informed and believe that Pfizer fulfilled its duty to express all safety  
2 warnings and side effects within advertising, packaging and marketing products and/or to healthcare  
3 providers, when in fact, as a direct and proximate result of Pfizer forgoing its duties, Plaintiffs  
4 suffered severe and permanent physical and emotional injuries, including melanoma and/or the  
5 exacerbation of melanoma which required invasive treatment and ultimately an untimely and  
6 wrongful death.

8 178. Pfizer knew or should have known that the promotion, labeling and distribution, as  
9 alleged above, is untrue, deceptive, misleading or materially incomplete, as part of a plan or scheme  
10 with the intent or purpose not to sell such medication as represented. In order to not mislead  
11 consumers, Pfizer should have adequately and thoroughly tested Viagra® before manufacturing,  
12 producing, promoting, formulating, creating and/or developing Viagra®.

14 179. Pfizer has committed acts of untrue and misleading advertising, as defined by Cal.  
15 Bus. & Prof. Code § 17500, by engaging in the acts and practices described above with the intent to  
16 induce members of the public to purchase their drug to treat erectile dysfunction. At the time that  
17 Pfizer made the above referenced misrepresentations in its advertisements and/or packaging labels, it  
18 knew or should have known that the advertising was untrue and misleading.

20 180. As a direct and proximate result of the acts and practices alleged above, members of  
21 the general public who have taken Viagra® have lost and continue to lose monies.

22 181. Pfizer intended Gary E. Udell and hid healthcare providers to rely upon the  
23 advertisements and numerous material misrepresentations as set forth more fully herein. In fact,  
24 Gary E. Udell and his healthcare providers relied upon the advertisements and misrepresentations to  
25 their detriment.  
26  
27  
28

1 182. The above described false, misleading and deceptive advertising Pfizer disseminated  
2 continues to have a likelihood to deceive in that Pfizer has failed to disclose the true and actual safety  
3 risk of Viagra®. Pfizer has failed to adequately warn to accurately reflect the risk of Viagra®, which  
4 continues to create a misleading perception of safety of Viagra®.

5  
6 183. As a result of Pfizer's violation of the FAL, Plaintiffs are entitled to appropriate  
7 equitable relief, including injunctive relief and monetary relief in the form of restitution and interest.  
8 Plaintiffs are also entitled to recover penalties, as well as an award of attorneys' fees, costs and  
9 expenses for prosecuting this action, where appropriate.

10 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor for  
11 any and all such other and further relief as this Court deems just and proper.  
12

13 **TENTH CAUSE OF ACTION**  
14 **LOSS OF CONSORTIUM**

15 184. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint  
16 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more  
17 fully set forth herein.

18 185. Michelle A. Udell and Gary E. Udell were legally married as husband and wife.

19 186. Upon information and belief, at times when Mr. Udell ingested Pfizer's Viagra® and  
20 suffered from metastatic melanoma and ultimately a wrongful death, Michelle A. Udell was the  
21 spouse of Gary E. Udell. Michelle A. Udell depended upon him for emotional guidance, care,  
22 compassion, companionship and financial support.  
23

24 187. As a result of the wrongful and/or negligent acts of the Pfizer, Michelle A. Udell was  
25 caused to suffer, and will continue to suffer, the loss of love, companionship, compassion, care,  
26 comfort, affection, moral support, protection and consortium of her husband, Gary E. Udell.  
27  
28

1 188. The loss of consortium was directly and proximately caused by the actions and  
2 inactions of the Pfizer and its products.

3 189. By reason of the foregoing, Plaintiffs have been damaged by Pfizer's wrongful  
4 conduct. Pfizer's conduct was willful, wanton, reckless and, at the very least, arose to the level of  
5 gross negligence so as to indicate a complete disregard of the rights and safety of Gary E. Udell and  
6 others justifying an award of punitive damages.  
7

8 190. By reason of the foregoing, Plaintiffs demand judgment against Pfizer for damages as  
9 described herein in an amount determined by the jury and such other and further relief as allowable in  
10 equity or law.

11 191. WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their  
12 favor for compensatory and punitive damages together with interest, costs herein, attorneys' fees and  
13 all such other and further relief as this Court deems just and proper. Plaintiffs also demand that the  
14 issues herein contained be tried by a jury.  
15

16 **ELEVENTH CAUSE OF ACTION**  
17 **SURVIVAL ACTION**

18 192. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint  
19 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more  
20 fully set forth herein.  
21

22 193. Plaintiff, Byron T. Nelson as Administrator of the Estate of Gary E. Udell, has  
23 standing to sue Pfizer in a survival action under C.R.S. § 13-20-101, *et seq.*

24 194. Plaintiff, Byron T. Nelson as Administrator of the Estate of Gary E. Udell, brings a  
25 claim for the conscious pain and suffering of Gary E. Udell against Pfizer for causing the pain and  
26 suffering up to the death of Gary E. Udell through the wrongful conduct, acts and/or omissions of  
27 Pfizer and its agents as set forth herein.  
28

1 195. As a direct and proximate result of the wrongful, negligent, grossly negligent,  
2 reckless, wanton and willful acts of Pfizer and its agents with regard to Pfizer's Viagra® as set forth  
3 herein, Gary E. Udell suffered extreme fear, anxiety, psychological and emotional distress and pain  
4 and suffering leading up and including his untimely death from advanced metastatic melanoma.

5  
6 196. Plaintiff, Byron T. Nelson as Administrator of the Estate of Gary E. Udell, is entitled  
7 to recover all compensatory, punitive and other damages permitted under the law from Pfizer for the  
8 conscious pain and suffering of Gary E. Udell as a direct and proximate result of the wrongful  
9 conduct, acts and/or omissions of Pfizer and its agents as set forth herein.

10  
11 197. By reason of the foregoing, Plaintiffs have been damaged by Pfizer's wrongful  
12 conduct. Pfizer's conduct was willful, wanton, reckless and, at the very least, arose to the level of  
13 gross negligence so as to indicate a complete disregard of the rights and safety of Plaintiffs and others  
14 justifying an award of punitive damages.

15  
16 198. By reason of the foregoing, Plaintiffs demand judgment against Pfizer for damages as  
17 described herein in an amount determined by the jury and such other and further relief as allowable in  
18 equity or law.

19 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor for  
20 compensatory and punitive damages together with interest, costs herein, attorneys' fees and all such  
21 other and further relief as this Court deems just and proper. Plaintiffs also demand that the issues  
22 herein contained be tried by a jury.

23  
24 **TWELFTH CAUSE OF ACTION**  
**WRONGFUL DEATH**

25  
26 199. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint  
27 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more  
28 fully set forth herein.

1           200. Plaintiff, Byron T. Nelson as Administrator of the Estate of Gary E. Udell, has  
2 standing to sue Pfizer in a wrongful death action under C.R.S. § 13-21-201, *et seq.*

3           201. The death of Mr. Udell was directly and proximately caused as a result of Pfizer's  
4 wrongful acts, negligence, failure to warn and/or breach of warranties as described herein.

5           202. If Mr. Udell was not deceased, Pfizer's wrongful acts, negligence, failure to warn  
6 and/or breach of warranties would have entitled him to maintain an action in his own right to recover  
7 damages and other relief.

8           203. As a direct and proximate result of Gary E. Udell's unfortunate and untimely death,  
9 Plaintiffs are entitled to damages and other relief as provided by law.

10           204. Plaintiffs have also suffered monetary damages as a result of Gary E. Udell's untimely  
11 death, including medical, funeral and related expenses and the costs incurred in bringing this action.

12           205. Gary E. Udell suffered from metastatic melanoma that ultimately led to his untimely  
13 death on February 11, 2014 as a direct and proximate result of the defective and dangerous condition,  
14 including but not limited to inadequate warnings of Pfizer's Viagra®.

15           206. Pfizer's wrongful acts, omissions, and negligence proximately resulted in Gary E.  
16 Udell's death.

17           207. Accordingly, Pfizer is liable for each of the causes of action alleged herein.

18           208. By reason of the foregoing, Plaintiffs have been damaged by Pfizer's wrongful  
19 conduct. Pfizer's conduct was willful, wanton, reckless and, at the very least, arose to the level of  
20 gross negligence so as to indicate a complete disregard of the rights and safety of Plaintiffs and others  
21 justifying an award of punitive damages.  
22  
23  
24  
25  
26  
27  
28

1 209. By reason of the foregoing, Plaintiffs demand judgment against Pfizer for damages as  
2 described herein in an amount determined by the jury and such other and further relief as allowable in  
3 equity or law.

4 210. WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their  
5 favor for compensatory and punitive damages together with interest, costs herein, attorneys' fees and  
6 all such other and further relief as this Court deems just and proper. Plaintiffs also demands that the  
7 issues herein contained be tried by a jury.  
8

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs demand a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure  
11 and the Seventh Amendment of the United States Constitution.  
12

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff demands judgment against Defendant on each of the above-  
15 referenced claims and causes of action and as follows:

- 16 a. For general damages in a sum in excess of the jurisdictional minimum of this  
17 Court;
- 18 b. For medical, incidental and hospital expenses according to proof;
- 19 c. For pre-judgment and post-judgment interest as provided by law;
- 20 d. For full refund of all purchase costs of Viagra®, including restitution;
- 21 e. For the loss of love, compassion, comfort and care of a spouse;
- 22 f. For the conscious pain and suffering leading up to the wrongful death;
- 23 g. For the wrongful death;
- 24 h. For consequential damages in excess of the jurisdictional minimum of this  
25 Court;
- 26 i. For compensatory damages in excess of the jurisdictional minimum of this  
27 Court;  
28



- 1
- 2 j. For punitive damages in an amount in excess of any jurisdictional minimum of
- 3 this Court in an amount sufficient to deter similar conduct in the future and
- 4 punish the Defendant for the conduct described herein;
- 5 k. For attorneys' fees and costs of this action; and
- 6 l. For equitable relief and such other and further relief as this Court deems
- 7 necessary, just and proper.

8 Dated: June 2, 2016

/s/ Kimberly D. Barone Baden

Kimberly D. Barone Baden (CA SBN 207731)

Ann E. Rice Ervin

Motley Rice LLP

28 Bridgeside Boulevard

Mount Pleasant, SC 29464

(843) 216-9265 (Phone)

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Attorneys for Plaintiffs

**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.)

<p><b>I. (a) PLAINTIFFS</b> BYRON T. NELSON AS ADMINISTRATOR OF THE ESTATE OF GARY E. UDELL, DECEASED AND MICHELLE A. UDELL, INDIVIDUALLY</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>PLACER, CA</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Motley Rice LLP 28 Bridgeside Boulevard Mount Pleasant, SC 29464 (843) 216-9265</p>	<p><b>DEFENDANTS</b> PFIZER INC.</p> <p>County of Residence of First Listed Defendant <u>NY</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in one Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input checked="" type="checkbox"/> 1</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

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

<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i></p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input checked="" type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p><b>IMMIGRATION</b></p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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**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**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
28 U.S.C. 1332

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 \$ Exceeds \$75,000    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*

JUDGE The Honorable Richard Seeborg    DOCKET NUMBER 3:16-md-02691

**IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)**  
*(Place an "X" in One Box Only)*

SAN FRANCISCO/OAKLAND     SAN JOSE     EUREKA

DATE 6/2/2016    SIGNATURE OF ATTORNEY OF RECORD /s/ Kimberly D. Barone Baden

**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.