

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
PALM BEACH DIVISION

ARNOLD MITTLER and REGINA)
MITTLER, his wife,)
)
Plaintiff,)
)
v.)
)
PFIZER, INC.,)
)
Defendant.)
_____)

CIVIL ACTION NO. 9:16-cv-81230

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs, ARNOLD MITTLER and REGINA MITTLER, his wife, by and through their undersigned counsel, hereby file this Complaint against Defendant Pfizer, Inc. (“Pfizer”) for personal injuries and damages as alleged herein. In support thereof, Plaintiffs state the following:

INTRODUCTION

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

PARTIES

2. Plaintiffs ARNOLD MITTLER and REGINA MITTLER are residents and citizens of Palm Beach Gardens, Palm Beach County, Florida.

3. Defendant Pfizer is a corporation organized and existing under the laws of the state of Delaware. Defendant maintains its principal place of business at 235 East 42nd Street, New York, New York 10017. Defendant’s phone number is (212) 733-2323.

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

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, as there is complete diversity of citizenship between parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Plaintiff resides in the State of Florida, and Defendant resides in the State of Delaware. This Court has personal jurisdiction over this Defendant because Pfizer maintains significant contacts with this judicial district by virtue of conducting business within the district.

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

7. This action is related to and constitutes a tag-along action to MDL No. 2691 styled *In Re: Viagra (Sildenafil Citrate) Products Liability Litigation*, Case No. 16-md-02691, pending in the United States District Court for the Northern District of California, San Francisco Division before United States District Court Judge Richard Seeborg. Plaintiffs contend that immediate transfer of this action to the MDL with a stay of these proceedings pending transfer by the Judicial Panel on Multi-District Litigation would be appropriate.

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FACTUAL BACKGROUND

A. Facts Regarding Pfizer and Viagra

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

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

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

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

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

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

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

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

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

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

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

² Bruce Japsen, *Viagra's 2 Rivals Grab Market Share In A Year*, CHICAGO TRIBUNE, Sept. 23, 2004, available at http://articles.chicagotribune.com/2004-09-23/business/0409230283_1_viagra-erectile-levitra.

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

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

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

B. Facts Regarding Viagra's Link to Melanoma

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

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

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

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

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

⁶ Wilson, *supra* note 4.

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

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

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

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

25. On April 7, 2014, an original study (“the JAMA study”) was published on the website for the *Journal of the American Medical Association Internal Medicine* which, in light of the previous studies, sought to examine the direct relationship between sildenafil use and melanoma development in men in the United States.¹² The JAMA study was published in the journal’s June 2014 edition.

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

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

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

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

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

¹³ *Id.*

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

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

29. For the duration of these efforts, Pfizer directed its advertising efforts to consumers located across the nation, including consumers in the state of Michigan.

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

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

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

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

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

C. Facts Regarding Plaintiff's Use of Viagra and Injuries

35. Plaintiff began pharmaceutical treatment for erectile dysfunction in 2002 when his physician recommended that he begin taking Viagra.

36. On or about May 1, 2015, Plaintiff was diagnosed with melanoma of his right cheek and on November 25, 2015, Plaintiff was diagnosed with malignant melanoma based upon pathology from a lesion on his right leg.

37. Since first being diagnosed with melanoma, Plaintiff has had to remain vigilant in monitoring his skin for lesions and will require future medical treatment for this condition as well as now being at higher risk for recurrence of cancer in the future.

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

39. As a direct, proximate, and legal result of Pfizer's negligence and wrongful conduct, and the unreasonably dangerous and defective characteristics of the drug Viagra, Plaintiff suffered severe and permanent physical and emotional injuries. His physical injuries have included melanoma as well as the numerous biopsies necessitated by his skin cancer diagnosis. Plaintiff has endured not only physical pain and suffering but also economic loss, including significant

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expenses for medical care and treatment. Because of the nature of his diagnosis, he will certainly continue to incur such medical expenses in the future.

40. As a result of these damages, Plaintiff seeks actual and punitive damages from Pfizer.

CAUSES OF ACTION

COUNT I
(STRICT LIABILITY)

41. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein. Plaintiffs plead this Count in the broadest sense possible, pursuant to all laws that may apply pursuant to choice of law principles, including the law of the Plaintiff's resident State.

42. At the time of Plaintiff's injuries, Pfizer's pharmaceutical drug Viagra was defective and unreasonably dangerous to foreseeable consumers, including Plaintiff.

43. At all times herein mentioned, Pfizer designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and/or Viagra as hereinabove described that was used by the Plaintiff.

44. Pfizer's Viagra was expected to and did reach the usual consumers, handlers, and persons coming into contact with said product without substantial change in the condition in which it was produced, manufactured, sold, distributed, and marketed by Pfizer.

45. At those times, Viagra was in an unsafe, defective, and inherently dangerous condition, which was dangerous to users, and in particular, the Plaintiff herein.

46. The Viagra designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and/or distributed by Pfizer was defective in design or formulation in that, when it

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left the hands of the manufacturer and/or suppliers, the foreseeable risks exceeded the benefits associated with the design or formulation of Viagra.

47. The Viagra designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and/or distributed by Pfizer was defective in design and/or formulation, in that, when it left the hands of the Pfizer and related manufacturers and/or suppliers, it was unreasonably dangerous, and it was more dangerous than an ordinary consumer would expect.

48. At all times herein mentioned, Viagra was in a defective condition and unsafe, and Pfizer knew or had reason to know that said product was defective and unsafe, especially when used in the form and manner as provided by the Pfizer.

49. Pfizer knew, or should have known that at all times herein mentioned, their Viagra was in a defective condition, and was and is inherently dangerous and unsafe.

50. At the time of the Plaintiff's use of Viagra, Viagra was being used for the purposes and in a manner normally intended, namely for the treatment of erectile dysfunction.

51. Pfizer, with this knowledge, voluntarily designed their Viagra in a dangerous condition for use by the public, and in particular for use by Plaintiff herein.

52. Pfizer had a duty to create a product that was not unreasonably dangerous for its normal, intended use.

53. Pfizer created a product that was unreasonably dangerous for its normal, intended use.

54. The Viagra designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and/or distributed by Pfizer was manufactured defectively in that Viagra left the hands of Pfizer in a defective condition and was unreasonably dangerous to its intended users.

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55. The Viagra designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and/or distributed by Pfizer reached its intended users in the same defective and unreasonably dangerous condition in which the Pfizer's Viagra was manufactured.

56. Pfizer designed, researched, manufactured, tested, advertised, promoted, marketed, sold and distributed a defective product which created an unreasonable risk to the health of consumers and to the Plaintiff herein in particular; and Pfizer are therefore strictly liable for the injuries sustained by Plaintiff herein.

57. Plaintiff could not, through the exercise of reasonable care, have discovered Viagra's defects herein mentioned and perceived its danger.

58. The Viagra designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and/or distributed by Pfizer was defective due to inadequate warnings or instructions, as the Pfizer knew or should have known that the product created a risk of serious and dangerous side effects including the development of melanoma and other personal injuries which are permanent and lasting in nature. Further, Pfizer failed to adequately warn of said risk.

59. The Viagra designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and/or distributed by Pfizer was defective due to inadequate warnings and/or inadequate testing.

60. The Viagra designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and/or distributed by Pfizer was defective due to inadequate post-marketing surveillance and/or warnings because, after Pfizer knew or should have known of the risks of serious side effects including the development of melanoma, as well as other severe and permanent health consequences from Viagra, it failed to provide adequate warnings to users or consumers of the product, and continued to improperly advertise, market and/or promote its product, Viagra.

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61. The Viagra ingested by Plaintiff was in the same or substantially similar condition as it was when it left the possession of Pfizer.

62. Plaintiff did not misuse or materially alter the Viagra that Plaintiff ingested.

63. Pfizer is strictly liable for Plaintiff's injuries in the following ways:

- a. Viagra as designed, manufactured, sold and supplied by the Pfizer, was defectively designed and placed into the stream of commerce by Pfizer in a defective and unreasonably dangerous condition;
- b. Pfizer failed to properly market, design, manufacture, distribute, supply and/or sell Viagra;
- c. Pfizer failed to warn and place adequate warnings and instructions on Viagra;
- d. Pfizer failed to adequately test Viagra;
- e. Pfizer failed to provide timely and adequate post-marketing warnings and instructions after they knew of the risk of injury associated with the use of Viagra, and,
- f. A feasible alternative design existed that was capable of preventing Plaintiff's injuries.

64. By reason of the foregoing, Pfizer has become strictly liable in tort to Plaintiff herein for the manufacturing, marketing, promoting, distribution, and selling of a defective product, Viagra.

65. Pfizer's defective design, manufacturing defect, and inadequate warnings of Viagra were acts that amount to willful, wanton, and/or reckless conduct by Pfizer.

66. That said defects in Pfizer's drug Viagra were a substantial factor in causing Plaintiff's injuries.

67. As a result of the foregoing acts and omissions, Plaintiff was caused to suffer serious and dangerous side effects including but not limited to the development of melanoma as well as other severe and personal injuries (in some cases death) which are permanent and lasting

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in nature, physical pain and mental anguish, diminished enjoyment of life, and financial expenses for hospitalization and medical care.

68. Pfizer's conduct, as described above, was extreme and outrageous. Pfizer risked the lives of the consumers and users of their products, including Plaintiff herein, with knowledge of the safety and efficacy problems and suppressed this knowledge from the general public. Pfizer made conscious decisions not to redesign, re-label, warn or inform the unsuspecting consuming public. Pfizer's outrageous conduct warrants an award of punitive damages.

69. As a direct and proximate result of Pfizer's defective manufacturing and/or design of Viagra, and/or Pfizer's failure to warn of Viagra's melanoma-related dangers, Plaintiff has suffered and will continue to suffer from personal injury, emotional distress, and economic loss.

COUNT II
(MANUFACTURING DEFECT)

70. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein. Plaintiffs plead this Count in the broadest sense available under the law, to include pleading same pursuant to all substantive law that applies to this case, as may be determined by choice of law principles, regardless of whether arising under statute and/or common law.

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

72. Viagra was defective when it left Pfizer's control insofar as the drug presented foreseeable risks that exceeded the benefits of the product.

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

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

75. Neither Plaintiff nor his healthcare providers misused or materially altered the Viagra prior to Plaintiff's use of the product.

76. As a direct and proximate result of one or more of Pfizer's wrongful acts or omissions, Plaintiff suffered serious injury, harm, damages, and economic and non-economic loss; further, he will continue to suffer such harm, damages and losses in the future.

COUNT III
(DESIGN DEFECT)

77. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein. Plaintiffs plead this Count in the broadest sense available under the law, to include pleading same pursuant to all substantive law that applies to this case, as may be determined by choice of law principles, regardless of whether arising under statute and/or common law.

78. Viagra was not merchantable and/or reasonably suited to the use intended, and its condition when sold was the proximate cause of the injuries to Plaintiff herein.

79. Pfizer manufactured, marketed, promoted, distributed and sold Viagra in the stream of interstate commerce.

80. Pfizer placed Viagra into the stream of commerce with wanton and reckless disregard for the safety of patients, including Plaintiff herein.

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81. Viagra was in an unsafe, defective, and inherently dangerous condition when it was placed into the stream of commerce by Pfizer.

82. When the Viagra manufactured, marketed, promoted and distributed by Pfizer left Pfizer's custody and control, the foreseeable risks associated with use of the product – particularly with regard to the significant risk of developing melanoma therefrom – far exceeded the benefits associated with the product's use.

83. Viagra contains defects in its design which render the drug dangerous to consumers, including Plaintiff herein, when used as intended or as reasonably foreseeable to Pfizer. The design defects render Viagra unreasonably dangerous, or far more dangerous than a reasonably prudent consumer or healthcare provider would expect when such a product was used in an intended and/or foreseeable manner.

84. The nature and magnitude of the risk of harm associated with the design of Viagra, particularly the risk of developing and/or exacerbating the spread of cancerous cells in the product's user, is significant in light of the drug's intended and reasonably foreseeable use.

85. The intended or actual utility of Viagra is not of such benefit to justify the significant risk of developing and/or exacerbating the development of melanoma which is associated with the drug's use.

86. In developing, marketing, and selling Viagra, it was both technically and economically feasible for Pfizer to develop an alternative design which would either eliminate or substantially reduce the significant risk of developing melanoma presented by the drug's current design.

87. It was both technologically and economically feasible for Viagra to develop an alternative product which was safer in light of its intended or reasonably foreseeable use.

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88. It is highly unlikely that Viagra users like Plaintiff would be aware of the risks associated with Viagra through warnings, general knowledge or other sources of information provided to them by Pfizer, but Pfizer knew or should have known of the melanoma-related risks associated with Viagra which were present even when the drug was used as instructed.

89. Viagra was not merchantable and/or reasonably suited for its intended use.

90. Viagra's condition at the time of its sale was the proximate cause of Plaintiff's injuries.

91. The unreasonably dangerous nature of Viagra caused serious harm to Plaintiff.

92. As a direct and proximate result of one or more of these wrongful acts or omissions of Pfizer, Plaintiff suffered serious injury, harm, damages, and economic and non-economic loss. Further, he will continue to suffer such harm, damages and losses in the future.

COUNT IV
(FAILURE TO WARN)

93. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein. Plaintiffs plead this Count in the broadest sense possible, pursuant to all laws that may apply pursuant to choice of law principles, including the law of the Plaintiffs' resident State.

94. Pfizer had a duty to warn Plaintiff and his healthcare providers of the risk of developing and/or exacerbating the spread of cancerous melanoma cells associated with Viagra.

95. Pfizer knew, or in the exercise of reasonable care should have known, about the risk of developing and/or exacerbating the spread of cancerous melanoma cells associated with the use of Viagra.

96. When the Viagra manufactured and sold by Pfizer left Pfizer's custody and control, it was in an unreasonably dangerous and/or unsafe condition because it was not accompanied by

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accurate or clear warnings; specifically, the drug was not accompanied by warnings that disclosed the risk of developing and/or exacerbating the spread of cancerous melanoma cells associated with the drug's use.

97. Pfizer failed to provide warnings or instructions regarding the cancer risks presented by using its product that a manufacturer exercising reasonable care would have provided, considering the likelihood that its product would cause these injuries.

98. Pfizer failed to update warnings based on information received from product surveillance and scientific studies after Viagra was first approved by the FDA and marketed, sold and used in the United States; warnings which a manufacturer exercising reasonable care would have provided.

99. Pfizer had a continuing duty to warn Plaintiff and his healthcare providers of the cancer-related dangers associated with its product.

100. The Viagra manufactured and/or supplied by Pfizer was defective due to inadequate warnings or instructions because Pfizer knew or should have known that (a) the product created significant risks of serious bodily harm to consumers such as Plaintiff, and that (b) consumers like Plaintiff would rely upon the warnings or instructions provided by Pfizer in choosing to take Viagra. Despite this knowledge, Pfizer nevertheless chose to disseminate Viagra without adequate warnings or instructions.

101. The Viagra manufactured and/or supplied by Pfizer was defective due to inadequate post-marketing warnings or instructions because, after Pfizer knew or should have known of the risk of serious bodily harm posed by the use of Viagra, Pfizer failed to provide an adequate warning to consumers and/or their healthcare providers of the product, despite knowing that using Viagra could directly lead to serious injury.

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102. Pfizer, as the manufacturer and distributor of Viagra, is held to the same level of knowledge as an expert in the field.

103. Plaintiff, individually and through his healthcare providers, reasonably relied upon the skill, superior knowledge and judgment of Pfizer to determine the warnings and instructions which were appropriate for public dissemination.

104. Had Plaintiff or his healthcare providers received adequate warnings regarding the risks associated with the use of Viagra, Plaintiff would not have used the drug.

105. Plaintiff and Plaintiff's healthcare providers could not have, by the exercise of reasonable care, discovered the defects which accompanied Viagra use or perceived the danger of such defects, because those risks were not open or obvious.

106. In reliance upon the representations made by Pfizer, Plaintiff used Viagra for its approved purpose and in a manner intended and reasonably foreseeable by Pfizer.

107. As a direct and proximate result of one or more of Pfizer's wrongful acts and/or omissions, Plaintiff suffered serious injury, harm, damages, and economic and non-economic loss. Further, he will continue to suffer such harm, damages and losses in the future.

COUNT V
(NEGLIGENCE)

108. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein. Plaintiffs plead this Count in the broadest sense possible, pursuant to all laws that may apply pursuant to choice of law principles, including the law of the Plaintiffs' resident State.

109. At all times relevant hereto, Pfizer had a duty to properly manufacture, design, formulate, compound, test, produce, process, assemble, inspect, research, distribute, market, label,

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package, distribute, prepare for use, sell, prescribe and adequately warn of the risks and dangers associated with the use of Viagra.

110. At all times relevant hereto, Pfizer manufactured, designed, formulated, distributed, compounded, produced, processed, assembled, inspected, distributed, marketed, labeled, packaged, prepared for use and sold Viagra while disregarding the fact that the foreseeable harm presented by the drug greatly outweighed the benefits it provided to users like Plaintiff.

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

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

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

114. Pfizer's negligence proximately caused the injuries, harm and economic loss which Plaintiff has and will continue to suffer.

COUNT VI
(BREACH OF IMPLIED WARRANTY)

115. Plaintiff incorporates by reference each preceding and succeeding paragraph as though set forth fully at length herein. Plaintiff pleads this Count in the broadest sense possible, pursuant to all laws that may apply pursuant to choice of law principles, including the law of the Plaintiffs' resident State.

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

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

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

119. As a direct and proximate result of the breach of warranty committed by Pfizer, Plaintiff suffered serious injury, harm, damages, and economic and non-economic loss. He will continue to suffer such harm, damages and losses in the future.

COUNT VII
(BREACH OF EXPRESS WARRANTY)

120. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein. Plaintiffs plead this Count in the broadest sense possible, pursuant to all laws that may apply pursuant to choice of law principles, including the law of the Plaintiffs' resident State.

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

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

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

124. As a direct and proximate result of the breach of express warranty by Pfizer, Plaintiff suffered serious injury, harm, damages, and economic and non-economic loss. He will continue to suffer such harm, damages and losses in the future.

COUNT VIII
(FRAUD)

125. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein. Plaintiffs plead this Count in the broadest sense possible, pursuant to all laws that may apply pursuant to choice of law principles, including the law of the Plaintiffs' resident State.

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

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

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

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

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

130. As a result of Pfizer's fraudulent and deceitful conduct, Plaintiff suffered serious injury, harm, damages, and economic and non-economic loss. He will continue to suffer such harm, damages and losses in the future.

COUNT IX
(FRAUDULENT MISREPRESENTATION)

131. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein. Plaintiffs plead this Count in the broadest sense possible, pursuant to all laws that may apply pursuant to choice of law principles, including the law of the Plaintiffs' resident State.

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

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

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

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

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

Mittler v. Pfizer
Complaint

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

137. As a result of the foregoing fraudulent misrepresentations made by Pfizer, Plaintiff suffered serious injury, harm, damages, and economic and non-economic loss; further, he will continue to suffer such harm, damages and losses in the future.

COUNT X
(NEGLIGENT MISREPRESENTATION)

138. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein. Plaintiffs plead this Count in the broadest sense possible, pursuant to all laws that may apply pursuant to choice of law principles, including the law of the Plaintiffs' resident State.

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

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

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

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

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143. Plaintiff relied on the misrepresentations made by Pfizer in purchasing and using Viagra.

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

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

146. As a result of the foregoing negligent misrepresentations by Pfizer, Plaintiff suffered serious injury, harm, damages, and economic and non-economic loss; further, he will continue to suffer such harm, damages and losses in the future.

COUNT XI
(FRAUDULENT CONCEALMENT)

147. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein. Plaintiffs plead this Count in the broadest sense possible, pursuant to all laws that may apply pursuant to choice of law principles, including the law of the Plaintiffs' resident State.

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

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

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

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

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

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

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

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

156. As a result of the foregoing fraudulent concealment by Pfizer, Plaintiff suffered serious injury, harm, damages, and economic and non-economic loss, and will continue to suffer such harm, damages and losses in the future.

COUNT XII
(LOSS OF CONSORTIUM)

164. Plaintiffs incorporate by reference each preceding and succeeding paragraph as

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though set forth fully at length herein. Plaintiffs plead this Count in the broadest sense, pursuant to all laws that may apply pursuant to choice of law principles, including the law of the Plaintiffs' resident State.

165. At all relevant times hereto, where applicable, Plaintiffs had spouses (hereafter referred to as "Spouse Plaintiffs") and/or family members (hereafter referred to as "Family Member Plaintiffs") who have suffered injuries and losses as a result of the Plaintiffs' injuries from Xarelto.

166. For the reasons set forth herein, Spouse Plaintiffs and/or Family Member Plaintiffs have necessarily paid and have become liable to pay for medical aid, treatment, monitoring, medications, and other expenditures and will necessarily incur further expenses of a similar nature in the future as a proximate result of Defendants' misconduct.

167. For the reasons set forth herein, Spouse Plaintiffs and/or Family Member Plaintiffs have suffered and will continue to suffer the loss of their loved one's support, companionship, services, society, love and affection.

168. For all Spouse Plaintiffs, Plaintiffs allege that their marital relationship was impaired and depreciated, and the marital association between wife and husband has been altered.

169. Spouse Plaintiffs and/or Family Member Plaintiffs have suffered great emotional pain and mental anguish.

170. As a direct and proximate result of Defendants' wrongful conduct, Spouse Plaintiffs, Family Member Plaintiffs, and/or intimate partners of the aforesaid Plaintiffs, have sustained and will continue to sustain severe physical injuries, severe emotional distress, economic losses and other damages for which they are entitled to compensatory and equitable

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damages and declaratory relief in an amount to be proven at trial. Defendants are liable to Spouse Plaintiffs, Family Member Plaintiffs, and intimate partners jointly and severally for all general, special and equitable relief to which Spouse Plaintiffs, Family Member Plaintiffs, and intimate partners are entitled by law.

PUNITIVE DAMAGES ALLEGATIONS

171. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein. Plaintiffs plead this Count in the broadest sense possible, pursuant to all laws that may apply pursuant to choice of law principles, including the law of the Plaintiffs' resident State.

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment against Pfizer as follows:

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

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DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all counts and as to all issues.

Dated this 11th day of July, 2016.

/s/Brenda S. Fulmer

Brenda S. Fulmer
Florida Bar No.: 999891
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Searcy Denney Scarola Barnhart & Shipley, P.A.
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Phone: (561) 686-6300
Fax: (561) 383-9498
Attorneys for Plaintiff

JS 44 (Rev. 11/15) Revised 03/16

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.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

ARNOLD MITTLER and REGINA MITTLER,

DEFENDANTS

PFIZER, INC.

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

PALM BEACH COUNTY

County of Residence of First Listed Defendant
(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)

Brenda S. Fulmer, Searcy Denney Scarola Barnhart & Shipley,
2139 Palm Beach Lakes Blvd., West Palm Beach, FL 33409

Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

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

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | | | |
|--------------------------|---|---------------------------------------|----------------------------|--------------------------|---|----------------------------|---------------------------------------|
| | | PTF | DEF | | | PTF | DEF |
| <input type="checkbox"/> | Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> | Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| <input type="checkbox"/> | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input checked="" type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

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

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Re-filed (See VI below)
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment
- 8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case YES NO b) Related Cases YES NO
 JUDGE Richard Seeborg DOCKET NUMBER MDL 2691

VII. CAUSE OF ACTION 28 U.S.C. Section 1332 **Product Defect resulting in serious personal injury**
 LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
 DATE July 11, 2016 SIGNATURE OF ATTORNEY OF RECORD /s/Brenda S. Fulmer

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

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.C.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; 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 clerks 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 seven 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.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

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.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. 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

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) 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.

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

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 9:16-cv-81230

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: