

IN THE UNITED STATES DISTRICT COURT  
FOR THE District Court of New Jersey

John McDaniel;  Plaintiff,  v.  JOHNSON & JOHNSON; JOHNSON & JOHNSON PHARMACEUTICAL RESEARCH & DEVELOPMENT, L.L.C., JANSSEN RESEARCH & DEVELOPMENT, LLC; JANSSEN PHARMACEUTICALS, INC.; ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC. Defendants.	Civil Action No.: _____  <b>COMPLAINT</b>  <b>JURY TRIAL DEMAND</b>
---	---

COMES NOW the Plaintiff John McDaniel, by and through the undersigned counsel, hereby brings this Complaint for damages against the Defendants, and alleges the following:

**INTRODUCTION**

1. This is an action for damages suffered by Plaintiff as a direct and proximate result of Defendants' negligent and wrongful conduct in connection with the design, development, manufacture, testing, packaging, promoting, marketing, advertising, distribution, labeling, and/or sale of the pharmaceutical drug Levaquin® (also known as levofloxacin). Levaquin® in any of its forms shall herein be referred to as "Levaquin."

2. Plaintiff maintains that Levaquin is defective, dangerous to human health, unfit and unsuitable to be marketed and sold in commerce, and lacked proper warnings and directions as to the dangers associated with its use.

3. Plaintiff's injuries, like those striking thousands of similarly situated victims across the country, were avoidable.

**PARTIES**

4. Plaintiff John McDaniel is a natural person residing in West Columbia, South

Carolina and is a citizen and resident of the United States and of West Columbia, South Carolina.

5. Plaintiff brings this action for personal injuries sustained by the use of Levaquin. As a direct and proximate result of being prescribed and ingesting Levaquin, Plaintiff developed peripheral neuropathy and/or symptoms of peripheral neuropathy.

6. Defendant Johnson & Johnson is a New Jersey corporation that has its principal place of business at One Johnson & Johnson Plaza, New Brunswick, Middlesex County, New Jersey 08933.

7. Defendant Johnson & Johnson has transacted and conducted business within the state of New Jersey.

8. Defendant Johnson & Johnson has derived substantial revenue from goods and products used in New Jersey and South Carolina.

9. Defendant Johnson & Johnson expected or should have expected its acts to have consequences within New Jersey and South Carolina, and derived substantial revenue from interstate commerce.

10. Defendant Johnson & Johnson was engaged in the business of designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling Levaquin.

11. Defendant Johnson & Johnson Pharmaceutical Research & Development, L.L.C. ("Johnson & Johnson PRD") is a limited liability company organized under the laws of New Jersey, which has its principal place of business at 920 Route 202 South, P.O. Box 300, Mail Stop 2628, Raritan, New Jersey 08869.

12. Defendant Johnson & Johnson PRD has transacted and conducted business within the State of New Jersey.

13. Defendant Johnson & Johnson PRD has derived substantial revenue from goods and products used in the State of New Jersey.

14. Defendant Johnson & Johnson PRD expected or should have expected their acts to have consequences within the State of New Jersey, and derived substantial revenue from interstate commerce.

15. At all times material hereto, Defendant Johnson & Johnson PRD was engaged in the business of designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling Levaquin.

16. Defendant Johnson & Johnson PRD is part of the Defendant Johnson & Johnson's "Family of Companies."

17. Defendant Janssen Research & Development, LLC is a limited liability company, which has its principal place of business at 920 Route 202 South, P.O. Box 300, Mail Stop 2628, Raritan, New Jersey 08869.

18. Defendant Janssen Research & Development, LLC has transacted and conducted business within New Jersey at 920 Route 202 South, P.O. Box 300, Mail Stop 2628, Raritan, New Jersey 08869.

19. Defendant Janssen Research & Development, LLC has derived substantial revenue from goods and products used in New Jersey and South Carolina.

20. Defendant Janssen Research & Development, LLC expected or should have expected their acts to have consequences within New Jersey, and derived substantial revenue from interstate commerce.

21. At all times material hereto, Defendant Janssen Research & Development, LLC was engaged in the business of designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling Levaquin.

22. Defendant Janssen Research & Development, LLC is part of the Defendant Johnson & Johnson's "Family of Companies."

23. Defendant Janssen Pharmaceuticals, Inc. is a Pennsylvania corporation which has its principal place of business at 1000 Route 202 South, P.O. Box 300, Raritan, New Jersey

08869.

24. Defendant Janssen Pharmaceuticals, Inc. has transacted and conducted business within New Jersey and South Carolina.

25. Defendant Janssen Pharmaceuticals, Inc. has derived substantial revenue from goods and products used in New Jersey and South Carolina.

26. Defendant Janssen Pharmaceuticals, Inc. expected or should have expected their acts to have consequences within Pennsylvania and South Carolina, and derived substantial revenue from interstate commerce.

27. At all times material hereto, Defendant Janssen Pharmaceuticals, Inc. was engaged in the business of designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling Levaquin.

28. Defendant Janssen Pharmaceuticals, Inc. is a wholly owned subsidiary of Defendant Johnson & Johnson.

29. Defendant Ortho-McNeil-Janssen Pharmaceuticals, Inc. (hereinafter "Ortho-McNeil") is a Delaware corporation which has its principal place of business at 1000 Route 202 South, P.O. Box 300, Raritan, New Jersey 08869.

30. Defendant Ortho-McNeil has transacted and conducted business within the State of New Jersey.

31. Defendant Ortho-McNeil has derived substantial revenue from goods and products used in the State of New Jersey.

32. Defendant Ortho-McNeil expected or should have expected their acts to have consequences within the State of Pennsylvania, and derived substantial revenue from interstate commerce.

33. At all times material hereto, Defendant Ortho-McNeil was engaged in the business of designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling Levaquin.

34. Defendant Ortho-McNeil is a wholly owned subsidiary of Defendant Johnson & Johnson.

35. As used herein, "Defendants" includes all named Defendants.

36. Defendants are authorized to do business in New Jersey and derive substantial income from doing business in this state.

37. Upon information and belief, Defendants purposefully availed themselves of the privilege of conducting activities with New Jersey, thus invoking the benefits and protections of its laws.

38. Upon information and belief, Defendants did act together to design, sell, advertise, manufacture and/or distribute Levaquin, with full knowledge of its dangerous and defective nature.

### **JURISDICTION AND VENUE**

39. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiff and Defendant. Defendants are all either incorporated and/or have their principal place outside of the state in which the Plaintiff resides.

40. The amount in controversy between Plaintiff and Defendants exceeds \$75,000, exclusive of interest and cost.

41. The Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

42. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that Defendants conduct business here and are subject to personal jurisdiction in this District. Furthermore, Defendants sell, market, and/or distribute Levaquin within the District of New Jersey and this District.

### **FACTUAL ALLEGATIONS**

#### **A. Case General Facts**

43. At all relevant times, Defendants were in the business of and did design, research,

manufacture, test, advertise, promote, market, sell, distribute, and/or have acquired and are responsible for Defendants who have designed, researched, manufactured, tested, advertised, promoted, marketed, sold and distributed the pharmaceutical drug Levaquin.

44. Plaintiff was prescribed Levaquin and used it as directed.

45. Levaquin was approved by the United States Food and Drug Administration (hereinafter “FDA”) on December 20, 1996, for use in the United States, and is the brand name for the antibiotic levofloxacin.

46. Levaquin is a broad-spectrum fluoroquinolone antibiotic used to treat lung, sinus, skin, and urinary tract infections caused by certain germs called bacteria.

47. In 2003, after generic versions of Cipro (a competing fluoroquinolone antibiotic) went on the market, Levaquin became the number one prescribed fluoroquinolone in the United States.

48. In 2006, after generic versions of Zithromax, a highly popular macrolide antibiotic, went on the market, Levaquin became the number one prescribed antibiotic in the world.

49. In 2007, Levaquin was ranked 37 of the top 200 drugs that were prescribed in the United States.

50. In 2007, Levaquin was ranked 19th in world sales of prescribed drugs.

51. In 2007, Levaquin accounted for 6.5% of Johnson & Johnson’s total revenue, generating \$1.6 billion in revenue, an 8% increase over the previous year.

52. Defendant Janssen Pharmaceuticals, Inc. indicates on its website that “[i]n a large number of clinical trials, Levaquin has been shown to have a proven safety and efficacy profile for the treatment of many bacterial infections.”

53. However, the scientific evidence has established a clear association between Levaquin and an increased risk of long-term and sometimes irreversible peripheral neuropathy.

54. Defendants knew or should have known that Levaquin is associated with an

increased risk of developing irreversible peripheral neuropathy.

55. Defendants failed to appropriately and adequately inform and warn Plaintiff and Plaintiff's prescribing physicians of the serious and dangerous risks associated with the use of Levaquin concerning peripheral neuropathy, as well as other severe and personal injuries, which are permanent and/or long-lasting in nature, cause significant physical pain and mental anguish, diminished enjoyment of life, and the need for medical treatment, monitoring and/or medications.

56. The warning label for Levaquin during the period from September 2004 through August 2013 misled Plaintiff and Plaintiff's treating physician by incorrectly advising patients and physicians that peripheral neuropathy associated with Levaquin was "rare" and in any case could be avoided by discontinuing the drug upon the onset of certain symptoms. The truth, however, is that the onset of irreversible peripheral neuropathy is often rapid and discontinuation of the drug will not ensure that the peripheral neuropathy is reversible.

57. Though this injury can be significant and debilitating, the language regarding the "rare" risk of peripheral neuropathy was buried at the bottom of a long list of adverse reactions that were included on the Levaquin label; the language was in no way highlighted for the benefit of prescribing physicians and patients.

58. Additionally, Defendants failed to disseminate a "Dear Doctor" letter to physicians concerning the label change or the risk of irreversible peripheral neuropathy, and Defendants failed to disclose this serious and dangerous effect when promoting Levaquin to physicians.

59. Despite their knowledge that Levaquin was associated with an elevated risk of permanent nerve damage, Defendants' promotional campaign was focused on Levaquin's purported "safety profile."

60. As early as 1992, there was evidence of the association between fluoroquinolone antibiotics and peripheral neuropathy. Dr. Aoun from the Infectious Diseases Clinic and

Microbiology Laboratory at the Institut Jules Bordet in Belgium, along with others, wrote a letter to the editor of the Lancet raising concerns about a 37-year old patient who developed peripheral neuropathy after taking fluoroquinolones.

61. Four years later, Karin Hedenmalm and Olav Spigset published “Peripheral sensory disturbances related to treatment with fluoroquinolones” based on a review of 37 separate reports of symptoms of peripheral nerve damage, highlighting concerns about numbness, pain, and muscle weakness.

62. One of the first studies in the United States that included the post market experience concerning Levaquin and neuropathy was “Peripheral Neuropathy Associated with Fluoroquinolones” written by Jay S. Cohen.

63. The Cohen paper was published in December 2001 and revealed that adverse events reported by forty-five patients suggested a possible association between fluoroquinolones and long-term peripheral nervous system damage. The study noted in particular the presence of severe and/or persistent nerve problems. Over one-half of the patients surveyed said their symptoms lasted for more than a year, and eighty percent characterized their symptoms as severe. The Cohen paper recommended further investigation of the association between fluoroquinolones and peripheral neuropathy. The study concluded with the following advisory: “If the occurrence of fluoroquinolone-associated ADEs of this severity and duration is confirmed, physicians need to be informed and warnings might be considered for these drugs’ product information.”

64. In 2002 and 2003 Defendants were put on notice that numerous reports had been submitted to the FDA’s Adverse Event Reporting System that identified fluoroquinolone users who had developed disabling peripheral neuropathy that persisted long after the drug had been discontinued.

65. A scientific review by the FDA of the adverse events in the FDA Adverse Event database in 2003 concerning Levaquin and other fluoroquinolones revealed numerous reports of



long-term peripheral neuropathy.

66. In September 2004, an amended Levaquin label concerning peripheral nerve damage was approved by the FDA. The amended label included the following statement in the Warnings section:

Peripheral Neuropathy: Rare cases of sensory or sensorimotor axonal polyneuropathy affecting small and/or large axons resulting in paresthesias, hypoesthesias, dysesthesias and weakness have been reported in patients receiving quinolones, including levofloxacin. Levofloxacin should be discontinued if the patient experiences symptoms of neuropathy including pain, burning, tingling, numbness, and/or weakness or other alterations of sensation including light touch, pain, temperature, position sense, and vibratory sensation in order to prevent the development of an irreversible condition.

67. Thus, rather than warning patients and physician that the use of Levaquin may result in permanent nerve damage, Defendants instead adopted a warning that misleadingly indicated such damage was rare and in any event could be avoided by simply discontinuing the drug upon the onset of certain symptoms.

68. Defendants' failure to adequately warn physicians resulted in (1) patients receiving Levaquin instead of another acceptable and adequate non-fluoroquinolone antibiotic, sufficient to treat the illness for which Plaintiff presented to the provider; (2) and physicians failing to warn and instruct consumers about the risk of peripheral nervous system injuries associated with Levaquin.

69. The failure of Defendants to include appropriate warnings in the label as published to the medical community also resulted in an absence of adequate warnings in patient information presented directly to consumers, either as part of samples packages or as part of the prescription they received from retail pharmacies.

70. Despite Defendants' knowledge and failure to adequately warn Plaintiff and

physicians of the above, Defendants continue to market Levaquin as a first line therapy for common bronchitis, sinusitis and other non-life threatening bacterial infections, conditions for which many other safer antibiotics are available.

71. In August of 2013, after mounting evidence of the relationship between fluoroquinolones and severe, long-term peripheral neuropathy, the FDA determined that the existing warning regarding peripheral nerve damage was inadequate. On August 15, 2013, an updated warning was issued in which the risk of rapid onset of irreversible peripheral neuropathy was finally included. The updated warning also removed the statement that nerve damage occurred only in rare cases.

72. Notwithstanding this updated 2013 label change, the Levaquin label remains inadequate and confusing regarding the risk of developing irreversible peripheral neuropathy. For instance, the Levaquin label currently states under the “Warnings and Precautions” section of the first page as follows: “Peripheral neuropathy: discontinue immediately if symptoms occur in order to *prevent irreversibility* (5.8).” This statement implies to physicians and patients that, if the patient stops using the drug immediately after symptoms occur, the symptoms are reversible. However, in section 5.8, the label states that “Symptoms [of peripheral neuropathy] may occur soon after initiation of LEVAQUIN® and *may be irreversible*.” This later statement conflicts with the earlier statement by implying that no matter whether the patient stops using the drug immediately after experiencing symptoms, the symptoms may be permanent. It is inconsistent to advise physicians and patients in one section of the label that that the symptoms of peripheral neuropathy are reversible if the drug is stopped immediately after symptoms occur, but to advise physicians and patients in another section of the label that symptoms may be irreversible no matter whether they stop taking the medication immediately upon experiencing symptoms.

73. In January of 2014, Ayad Ali published “Peripheral neuropathy and Guillain-Barré syndrome risks associated with exposure to systemic fluoroquinolones: a pharmacovigilance analysis” which reemphasized the link between fluoroquinolones and peripheral neuropathy and called for increased scrutiny of the risk-benefit of fluoroquinolone

prescriptions. The Ali paper also detailed the presence of strong safety signals dating back to at least 2005 regarding the potential for Levaquin and other fluoroquinolones to cause long-term, disabling peripheral neuropathy.

**B. Case Specific Facts**

74. Plaintiff was prescribed Levaquin in pill form by Plaintiff's doctor. Plaintiff was prescribed Levaquin for an infection and used it as directed.

75. Plaintiff was prescribed Levaquin and used the prescription as instructed.

76. Plaintiff, after taking Levaquin as instructed, experienced symptoms of peripheral nerve damage, including numbness, pain, and muscle weakness.

77. Plaintiff continues to suffer from pain, tingling, and numbness sensations all over Plaintiff's body.

78. Had Defendants properly disclosed the risks associated with Levaquin, Plaintiff would have avoided the risk of neuropathy by not using Levaquin at all, and would not have suffered the injuries set forth with particularity herein.

79. As alleged herein, as a direct and proximate result of Defendants' negligent conduct, and the unreasonably dangerous and defective characteristics of the drug Levaquin, Plaintiff suffered severe and permanent physical and emotional injuries, including, but not limited to irreversible neuropathy. Plaintiff has further incurred losses and damages including pain and suffering, emotional distress, mental anguish, loss of enjoyment of life; loss of consortium; suffered economic loss, including loss of income and incurring significant expenses for medical care and treatment.

80. Plaintiff will continue to incur such losses, damages and expenses in the future.

**EQUITABLE TOLLING OF APPLICABLE STATUTE OF LIMITATIONS**

81. Plaintiff incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

82. The running of any statute of limitations has been tolled by reason of Defendants'

fraudulent concealment. Defendants, through their affirmative misrepresentations and omissions, actively concealed from Plaintiff and Plaintiff's treating physicians the true risks associated with Levaquin.

83. As a result of Defendants' actions, Plaintiff and, upon information and belief, Plaintiff's treating physicians were unaware, and could not reasonably know or have learned through reasonable diligence that Plaintiff had been exposed to the risks alleged herein and that those risks were the direct and proximate result of Defendants' acts and omissions.

84. Furthermore, Defendants are estopped from relying on any statute of limitations because of their fraudulent concealment of the true character, quality and nature of Levaquin. Defendants were under a duty to disclose the true character, quality, and nature of Levaquin because this was non-public information over which Defendants had and continues to have exclusive control, and because Defendants knew that this information was not available to the Plaintiff, medical providers and/or to their facilities. In addition, Defendants are estopped from relying on any statute of limitations because of their intentional concealment of these facts.

85. The Plaintiff had no knowledge that Defendants were engaged in the wrongdoing alleged herein. Because of the fraudulent acts of concealment of wrongdoing by Defendants, the Plaintiff could not have reasonably discovered the wrongdoing at any time prior. Also, the economics of this fraud should be considered. Defendants had the ability to and did spend enormous amounts of money in furtherance of their purpose of marketing, promoting and/or distributing a profitable drug, notwithstanding the known or reasonably known risks. Plaintiff and medical professionals could not have afforded and could not have possibly conducted studies to determine the nature, extent and identity of related health risks, and were forced to rely on only the Defendants' representations. Accordingly, Defendants are precluded by the discovery rule and/or the doctrine of fraudulent concealment from relying upon any statute of limitations.

86. For each Count hereinafter alleged and averred, the above and following Paragraphs should be considered re-alleged as if fully rewritten.

**COUNT I- Strict Liability**

87. Plaintiff incorporates all paragraphs of this Complaint as if set forth herein.

88. Levaquin was defective at the time of its manufacture, development, production, testing, inspection, endorsement, prescription, sale and distribution in that warnings, instructions and directions accompanying Levaquin failed to warn of the dangerous risks posed by Levaquin, including the risk of developing irreversible peripheral neuropathy.

89. At all times alleged herein, Levaquin was defective and Defendants knew that Levaquin was to be used by consumers without inspection for defects. Moreover, Plaintiff, Plaintiff's prescribing physicians, and Plaintiff's health care providers neither knew nor had reason to know at the time of Plaintiff's use of Levaquin of the aforementioned defects. Ordinary consumers would not have recognized the potential risks for which Defendants failed to include the appropriate warnings.

90. At all times alleged herein, Levaquin was prescribed to and used by Plaintiff as intended by Defendants and in a manner reasonably foreseeable to Defendants.

91. The design of Levaquin was defective in that the risks associated with using Levaquin outweighed any benefits of the design. Any benefits associated with the use of Levaquin were either relatively minor or nonexistent and could have been obtained by the use of other, alternative treatments and products that could equally or more effectively reach similar results but without the increased risk of developing irreversible peripheral neuropathy.

92. The defect in design existed when the product left Defendants' possession.

93. At the time Levaquin left the control of Defendants, Defendants knew or should have known of the risks associated with ingesting Levaquin.

94. As a result of Levaquin's defective condition, Plaintiff suffered the injuries and damages alleged herein.

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

**COUNT II- Negligence**

95. Plaintiff incorporates all paragraphs of this Complaint as if set forth herein.

96. At all times material hereto, Defendants had a duty to exercise reasonable care, and to comply with existing standards of care, in the design, development, manufacture, testing, inspection, packaging, promotion, marketing, distribution, labeling, and/or sale of Levaquin.

97. Defendants breached their duty of reasonable care to Plaintiff, Plaintiff's prescribing physician, and Plaintiff's healthcare providers, and failed to comply with existing standards of care, in that they negligently promoted, marketed, distributed, and/or labeled Levaquin, and were otherwise negligent:

- a. In the design, development, research, manufacture, testing, packaging, promotion, marketing, sale, and/or distribution of Levaquin;
- b. In failing to warn or instruct, and/or adequately warn or adequately instruct, users of the subject product, including Plaintiff herein, of Levaquin's dangerous and defective characteristics;
- c. In the design, development, implementation, administration, supervision, and/or monitoring of clinical trials for the subject product;
- d. In promoting the subject product in an overly aggressive, deceitful, and fraudulent manner, despite evidence as to the product's defective and dangerous characteristics due to its propensity to cause irreversible peripheral neuropathy;
- e. In representing that the subject product was safe for its intended use when, in fact, the product was unsafe for its intended use;
- f. In failing to perform appropriate pre-market testing of the subject product;

- g. In failing to perform appropriate post-market surveillance of the subject product;
- h. In failing to adequately and properly test Levaquin before and after placing it on the market;
- i. In failing to conduct sufficient testing on Levaquin which, if properly performed, would have shown that Levaquin had the serious side effect of causing irreversible peripheral neuropathy;
- j. In failing to adequately warn Plaintiff, Plaintiff's prescribing physician and nurse practitioner, and plaintiff's healthcare providers that the use of Levaquin carried a risk of developing irreversible peripheral neuropathy;
- k. In failing to provide adequate post-marketing warnings or instructions after Defendant knew or should have known of the significant risk of irreversible peripheral neuropathy associated with the use of Levaquin; and
- l. In failing to adequately and timely inform Plaintiff, Plaintiff's prescribing physician, Plaintiff's healthcare providers, and the healthcare industry of the risk of serious personal injury, namely irreversible peripheral neuropathy, from Levaquin ingestion as described herein.

98. Plaintiff's injuries and damages as alleged herein were and are the direct and proximate result of Defendants' failure to comport with their obligations of due care.

99. Defendants' actions were a substantial factor in bringing about the injuries and damages suffered by Plaintiff.

100. Had Defendants exercised ordinary care, and complied with the then existing standards of care, Plaintiff would not have been injured.

101. Defendants knew or should have known that consumers, such as Plaintiff, would foreseeably suffer injury as a result of Defendants' failure to exercise reasonable and ordinary care.

102. As a direct and proximate result of Defendants' carelessness and negligence, their

failure to exercise reasonable care and their deviation from accepted standards of care, Plaintiff suffered and will continue to suffer severe and permanent physical and emotional injuries, including, but not limited to peripheral neuropathy. Plaintiff has endured and will continue to endure pain, suffering, and loss of enjoyment of life; and has suffered and will continue to suffer economic loss, including incurring significant expenses for medical care and treatment. Plaintiff seek actual and punitive damages from Defendants as alleged herein.

WHEREFORE, Plaintiff respectfully request that this court enter judgment against Defendants for in a sum in excess of \$75,000, costs herein incurred, for attorney's fees, and for such other and further relief as this Court deems just and proper. Plaintiff also demands that the issues herein contained be tried by a jury.

**COUNT III-Negligent Failure to Warn**

103. Plaintiff incorporates all paragraphs of this Complaint as if set forth herein.

104. Defendants have engaged in the business of selling, distributing, supplying, manufacturing, marketing, and/or promoting Levaquin, and through that conduct have knowingly and intentionally placed Levaquin into the stream of commerce with full knowledge that it reaches consumers such as Plaintiff who ingested it.

105. Defendants did in fact sell, distribute, supply, manufacture, and/or promote Levaquin to Plaintiff and to Plaintiff's prescribing physicians, healthcare providers, and the healthcare industry. Additionally, Defendants expected the Levaquin that they were selling, distributing, supplying, manufacturing, and/or promoting to reach – and Levaquin did in fact reach – prescribing physicians and consumers, including Plaintiff and Plaintiff's prescribing physicians and healthcare providers, without any substantial change in the condition of the product from when it was initially distributed by Defendants.

106. At all times herein mentioned, the aforesaid product was defective and unsafe in manufacture such that it was unreasonably dangerous to the user, and was so at the time it was distributed by Defendants and ingested by Plaintiff. The defective condition of Levaquin



was due in part to the fact that it was not accompanied by proper warnings regarding the possible side effect of developing long-term and potentially irreversible peripheral neuropathy as a result of its use.

107. This defect caused serious injury to Plaintiff, who used Levaquin in its intended and foreseeable manner.

108. At all times herein mentioned, Defendants had a duty to properly design, manufacture, compound, test, inspect, package, label, distribute, market, examine, maintain supply, provide proper warnings, and take such steps to assure that the product did not cause users to suffer from unreasonable and dangerous side effects.

109. Defendants so negligently and recklessly labeled, distributed, and promoted the aforesaid product that it was dangerous and unsafe for the use and purpose for which it was intended.

110. Defendants negligently and recklessly failed to warn of the nature and scope of the side effects associated with Levaquin, namely irreversible peripheral neuropathy.

111. Defendants were aware of the probable consequences of the aforesaid conduct. Despite the fact that Defendants knew or should have known that Levaquin caused serious injuries, they failed to exercise reasonable care to warn of the dangerous side effect of developing irreversible peripheral neuropathy from Levaquin use, even though this side effect was known or reasonably scientifically knowable at the time of distribution. Defendants willfully and deliberately failed to avoid the consequences associated with their failure to warn, and in doing so, Defendants acted with a conscious disregard for the safety of Plaintiff.

112. Plaintiff could not have discovered any defect in the subject product through the exercise of reasonable care.

113. Defendants, as the manufacturers and/or distributors of the subject product, are held to the level of knowledge of an expert in the field.

114. Plaintiff reasonably relied upon the skill, superior knowledge, and judgment

of Defendants.

115. Had Defendants properly disclosed the risks associated with Levaquin, Plaintiff would have avoided the risk of irreversible peripheral neuropathy by not using Levaquin and Plaintiff's physician would have avoided the risk of irreversible peripheral neuropathy by not prescribing Levaquin.

116. As a direct and proximate result of the carelessness, negligence, recklessness, and gross negligence of Defendants alleged herein, and in such other ways to be later shown, the subject product caused Plaintiff to sustain injuries as herein alleged. Plaintiff seeks actual and punitive damages from Defendants as alleged herein.

WHEREFORE, Plaintiff respectfully request that this court enter judgment against Defendants in a sum in excess of \$75,000, for costs herein incurred, for attorney's fees, and for such other and further relief as this Court deems just and proper.

#### **COUNT IV-Negligent Design Defect**

117. Plaintiff incorporates all paragraphs of this Complaint as if set forth herein.

118. At all times herein mentioned, Defendants had a duty to properly design, manufacture, compound, test, inspect, package, label, distribute, market, examine, maintain supply, provide proper warnings, and take such steps to assure that Levaquin did not cause users to suffer from unreasonable and dangerous side effects.

119. At all times herein mentioned, the aforesaid product was defective and unsafe in design and manufacture such that it was unreasonably dangerous to the user, and was so at the time it was distributed by Defendants and ingested by Plaintiff.

120. Levaquin was defective at the time of its design, manufacture, development, production, testing, inspection, endorsement, prescription, sale and distribution in that warnings, instructions and directions accompanying Levaquin failed to warn of the dangerous risks posed by Levaquin, including the risk of developing irreversible peripheral neuropathy.

121. At all times alleged herein, Levaquin was defective and Defendants knew that

Levaquin was to be used by consumers without inspection for defects. Moreover, Plaintiff, Plaintiff's prescribing physician, Plaintiff's healthcare providers, and the healthcare industry neither knew nor had reason to know at the time of Plaintiff's use of Levaquin of the aforementioned defects. Ordinary consumers would not have recognized the potential risks for which Defendants failed to include the appropriate warnings.

122. At all times alleged herein, Levaquin was prescribed to and used by Plaintiff as intended by Defendants and in a manner reasonably foreseeable to Defendants.

123. The design of Levaquin was defective in that the risks associated with using Levaquin outweighed any benefits of the design. Any benefits associated with the use of Levaquin were either relatively minor or nonexistent and could have been obtained by the use of other, alternative treatments and products that could equally or more effectively reach similar results.

124. The defect in design existed when the product left Defendants' possession.

125. At the time Levaquin left the control of Defendants, Defendants knew or should have known of the risks associated with ingesting Levaquin.

126. As a result of Levaquin's defective condition, Plaintiff suffered the injuries and damages alleged herein.

WHEREFORE, Plaintiff respectfully request that this court enter judgment against Defendants in a sum in excess of \$75,000, for costs herein incurred, for attorney's fees, and for such other and further relief as this Court deems just and proper.

**COUNT V-Negligent Misrepresentation**

127. Plaintiff incorporates all paragraphs of this Complaint as if set forth herein.

128. At all times herein mentioned, Defendants have engaged in the business of selling, distributing, supplying, manufacturing, marketing, and/or promoting Levaquin, and through that conduct have knowingly and intentionally placed Levaquin into the stream of commerce with full knowledge that it reaches consumers such as Plaintiff who ingested it.

129. Defendants, in the course of their business, negligently and/or recklessly misrepresented to Plaintiff, Plaintiff's prescribing physicians, and the healthcare industry the safety and effectiveness of Levaquin and/or recklessly and/or negligently concealed material information, including adverse information, regarding the safety, effectiveness, and dangers posed by Levaquin.

130. Defendants made representations that Levaquin was safe and effective to Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, and the healthcare industry when it marketed its product to them but failed to provide any warning that Levaquin caused long-term, potentially irreversible peripheral neuropathy.

131. Defendants made reckless or negligent misrepresentations and negligently or recklessly concealed adverse information when Defendants knew, or should have known, that Levaquin had defects, dangers, and characteristics that were other than what Defendants had represented to Plaintiff, Plaintiff's physician(s) and the healthcare industry generally. Specifically, Defendants negligently or recklessly concealed from Plaintiff, Plaintiff's prescribing physicians, the health care industry, and the consuming public that:

- (a) Since at least 1996 Defendant Johnson & Johnson and/or its predecessors were in possession of data demonstrating that Levaquin increases the risk of irreversible peripheral neuropathy;
- (b) There had been insufficient studies by Defendants and/or their predecessors regarding the safety and efficacy of Levaquin before and after its product launch;
- (c) Levaquin was not fully and adequately tested by Defendants and/or their predecessor for the risk of developing irreversible peripheral neuropathy; and
- (d) Testing and studies by other entities as reported in the scientific literature has shown that the use of Levaquin increases the risk of irreversible peripheral neuropathy.

132. These negligent or reckless misrepresentations and/or negligent or reckless

failures to disclose were perpetuated directly and/or indirectly by Defendants.

133. Defendants knew or should have known under the circumstances and through the exercise of due care, that those representations were false, and they made the representations without the exercise of due care leading to the deception of Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, and the healthcare industry.

134. Defendants made these false representations without the exercise of due care knowing that it was reasonable and foreseeable that Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, and the healthcare industry would rely on them, leading to the use of Levaquin by Plaintiff as well as the general public.

135. At all times herein mentioned, neither Plaintiff nor Plaintiff's physicians, or Plaintiff's healthcare providers were aware of the falsity or incompleteness of the statements being made by Defendants and believed them to be true. Had they been aware of said facts, Plaintiff's prescribing physicians would not have prescribed Levaquin and Plaintiff would not have utilized the subject product.

136. Plaintiff, Plaintiff's prescribing physicians, and Plaintiff's healthcare providers justifiably relied on and/or was induced by Defendants' negligent or reckless misrepresentations and/or negligent or reckless failure to disclose the dangers of Levaquin and relied on the absence of information regarding the dangers of Levaquin which Defendants negligently or recklessly suppressed, concealed, or failed to disclose to Plaintiff' detriment.

137. Defendants had a pecuniary interest in making these statements about Levaquin to Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, and the healthcare industry as Defendants stood to lose a significant amount in sales and revenue if consumers and medical providers discovered there were safety issues with Levaquin.

138. Defendants had a post-sale duty to warn Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers and the general public about the potential risks and complications associated with Levaquin in a timely manner.

139. Defendants made the representations and actively concealed information about the defects and dangers of Levaquin with the absence of due care such that Plaintiff's prescribing physicians and the consuming public would rely on such information, or the absence of information, in selecting Levaquin as a treatment.

140. The false information supplied by Defendants to Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, and the healthcare industry was that Levaquin was safe, effective, and would not harm or adversely affect patients' health, including Plaintiff, when used as directed.

141. The representations and false information communicated by Defendants to Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, and the healthcare industry were material and Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, and the healthcare industry justifiably relied on the misrepresentations and concealments.

142. As a direct and proximate result of Defendants negligent or reckless conduct, Plaintiff ingested Levaquin and suffered and will continue to suffer severe and permanent physical and emotional injuries, including, but not limited to irreversible peripheral neuropathy. Plaintiff have endured and will continue to endure pain, suffering, and loss of enjoyment of life; and has suffered and will continue to suffer economic loss, including incurring significant expenses for medical care and treatment. Plaintiff seek actual and punitive damages from Defendants as alleged herein.

WHEREFORE, Plaintiff respectfully request that this court enter judgment against Defendants in a sum in excess of \$75,000, for costs herein incurred, for attorney's fees, and for such other and further relief as this Court deems just and proper.

**COUNT VI-Breach of Express Warranty**

143. Plaintiff incorporates all paragraphs of this Complaint as if set forth herein.

144. Before Plaintiff was first prescribed Levaquin and during the period in which

Plaintiff used Levaquin, Defendants expressly warranted that Levaquin was safe.

145. Plaintiff either directly or indirectly through Plaintiff's prescribing physicians did in fact see and hear these representations and justifiably relied on these representations that Levaquin was safe and effective for the treatment of Plaintiff's infections health.

146. Levaquin did not conform to these express representations because Levaquin was not safe and had an increased risk of serious side effects, including irreversible peripheral neuropathy, whether taken individually or in conjunction with other therapies.

147. As a direct and proximate result of this wrongful conduct, Plaintiff was injured as described above.

WHEREFORE, Plaintiff respectfully requests that this court enter judgment against Defendants in a sum in excess of \$75,000, for costs herein incurred, for attorney's fees, and for such other and further relief as this Court deems just and proper.

**COUNT VII-Breach of Implied Warranty**

148. Plaintiff re-allege all prior paragraphs of the Complaint as if set out here in full.

149. At all times mentioned herein, Defendants manufactured, compounded, packaged, distributed, recommended, merchandised, advertised, promoted, supplied, and/or sold Levaquin, and prior to the time that Levaquin was prescribed to Plaintiff, Defendants impliedly warranted to Plaintiff that Levaquin was of merchantable quality and safe and fit for the use for which they were intended.

150. Plaintiff, individually and through Plaintiff's prescribing physicians, reasonably relied upon the skill, superior knowledge, and judgment of Defendants.

151. Plaintiff was prescribed, purchased, and used the subject products for their intended purpose.

152. Due to Defendants' wrongful conduct as alleged herein, Plaintiff could not have known about the nature of the risks and side effects associated with the subject product until after she used them.

153. Contrary to the implied warranty for the subject product, Levaquin is not of merchantable quality, and it was neither safe nor fit for its intended use and purpose, as alleged herein.

154. As a direct and proximate result of Defendants' breach of implied warranty, Plaintiff suffered severe and permanent physical and emotional injuries, including, but not limited to, irreversible peripheral neuropathy. Plaintiff has endured pain and suffering, has suffered economic loss, including incurring significant expenses for medical care and treatment, and will continue to incur such expenses in the future. Plaintiff seeks actual and punitive damages from Defendants as alleged herein.

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

#### **COUNT VIII-Fraud**

155. Plaintiff incorporates all paragraphs of this Complaint as if set forth herein.

156. Defendants misrepresented to Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, and the healthcare industry that Levaquin was safe and effective. Defendants fraudulently, intentionally, and/or negligently concealed material information, including adverse information, regarding the safety and effectiveness of Levaquin.

157. Defendants made misrepresentations and actively concealed adverse information when Defendants knew, or should have known, that Levaquin had defects, dangers, and characteristics that were different than what Defendants had represented to Plaintiff, Plaintiff's physicians, Plaintiff's healthcare providers, and the healthcare industry generally. Specifically, Defendants actively concealed from Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, the health care industry, and the consuming public that:

(a) Since at least 1996 Defendant Johnson & Johnson and/or its predecessors were in



- possession of data demonstrating that Levaquin increases the risk of irreversible peripheral neuropathy;
- (b) There had been insufficient studies by Defendants and/or their predecessors regarding the safety and efficacy of Levaquin before and after its product launch;
  - (c) Levaquin was not fully and adequately tested by Defendants and/or their predecessor for the risk of developing irreversible peripheral neuropathy; and
  - (d) Testing and studies by other entities as reported in the scientific literature has shown that the use of Levaquin increases the risk of irreversible peripheral neuropathy.

158. These misrepresentations and/or active concealment alleged were perpetuated directly and/or indirectly by Defendants.

159. Defendants knew and/or showed reckless disregard for the truth and should have known that these representations were false, and they made the representations with the intent or purpose of deceiving Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, and the healthcare industry.

160. Defendants made these false representations with the intent or purpose that Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, and the healthcare industry would rely on them, leading to the use of Levaquin by Plaintiff as well as the general public.

161. At all times herein mentioned neither Plaintiff nor Plaintiff's prescribing physicians were aware of the falsity or incompleteness of the statements being made by Defendants and believed them to be true. Had they been aware of said facts, Plaintiff's prescribing physicians would not have prescribed and Plaintiff would not have utilized the subject product.

162. Plaintiff relied on and/or was induced by Defendant's representations and/or active concealment and relied on the absence of safety information which Defendant did

suppress, conceal, or fail to disclose in purchasing and using Levaquin.

163. Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, and the healthcare industry justifiably relied on and/or were induced by Defendants' misrepresentations and/or active concealment and relied on the absence of information regarding the dangers of Levaquin that Defendants did suppress, conceal, or fail to disclose to Plaintiff's detriment. Plaintiff justifiably relied, directly or indirectly, on Defendants' misrepresentations and/or active concealment regarding the true dangers of Levaquin. Based on the nature of the physician-patient relationship, Defendants had reason to expect that Plaintiff would indirectly rely on Defendants' misrepresentations and/or active concealment.

164. Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, and the healthcare industry, justifiably relied on Defendants representations that Levaquin was safe and effective as it is reasonable that Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, and the healthcare industry would rely on the statements of Defendants whether Levaquin was safe because as the manufacturer of Levaquin, they are held to the level of knowledge of an expert in the field.

165. Defendants had a post-sale duty to warn Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, and the general public about the potential risks and complications associated with Levaquin in a timely manner.

166. Defendants made the representations and actively concealed information about the defects and dangers of Levaquin with the intent and specific desire that Plaintiff's prescribing physicians and the consuming public would rely on such information, or the absence of information, in selecting Levaquin as a treatment.

167. As a result of the concealment and/or suppression of the material facts set forth above, Plaintiff ingested Levaquin and suffered severe and permanent physical and emotional injuries, as set forth herein.

WHEREFORE, Plaintiff respectfully requests that this court enter judgment against

Defendants in a sum in excess of \$75,000, for costs herein incurred, for attorney's fees, and for such other and further relief as this Court deems just and proper.

**COUNT IX-Constructive Fraud/Fraudulent Concealment**

168. Plaintiff incorporates all paragraphs of this Complaint as if set forth herein.

169. Defendants committed actual fraud by making material representations that were false, knowing that such material representations were false, and/or with reckless disregard for the truth or falsity of such material representations with the intent that Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, the healthcare industry, and the consuming public would rely on such material representations.

170. Plaintiff, Plaintiff's prescribing physicians, and Plaintiff's healthcare providers were unaware of the falsity of these representations, they acted in actual and justifiable reliance on such material representations, and Plaintiff was injured as a direct and proximate result.

171. Additionally, Defendants knowingly omitted material information and remained silent regarding said misrepresentations despite the fact that they had a duty to inform Plaintiff, Plaintiff's healthcare providers, and the general public of the inaccuracy of said misrepresentations. Defendants' omission constitutes a positive misrepresentation of material fact, with the intent that Plaintiff and Plaintiff's prescribing physicians would rely on Defendants' misrepresentations. Plaintiff, Plaintiff's prescribing physicians, and Plaintiff's healthcare providers did, in fact, act in actual and justifiable reliance on Defendants' representations, and Plaintiff was injured as a result.

172. At all times herein mentioned, Defendants had a duty to Plaintiff, Plaintiff's prescribing physicians, Plaintiff's healthcare providers, and the general public to accurately inform them of risks associated with Levaquin because Defendants, as the manufacturer and/or distributor of the subject product, were in a position of superior knowledge and judgment regarding any potential risks associated with Levaquin.

173. Defendants committed constructive fraud by breaching one or more legal or

equitable duties owed to Plaintiff relating to the Levaquin at issue in this lawsuit, said breach or breaches constituting fraud because of the propensity to deceive others or constitute an injury to public interests or public policy.

174. In breaching their duties to Plaintiff, Defendants used their position of trust as the manufacturer and/or distributor of Levaquin to increase sales of the drug at the expense of informing Plaintiff that, by ingesting Levaquin, Plaintiff was had a significant-increased risk of developing irreversible peripheral neuropathy.

WHEREFORE, Plaintiff respectfully requests that this court enter judgment against Defendants in a sum in excess of \$75,000, for costs herein incurred, for attorney's fees, and for such other and further relief as this Court deems just and proper.

#### **PUNITIVE DAMAGES**

175. Plaintiff incorporates all paragraphs of this Complaint as if set forth herein.

176. At all times material hereto, Defendants knew or should have known that Levaquin was inherently dangerous with respect to the risk of irreversible peripheral neuropathy.

177. At all times material hereto, Defendants attempted to misrepresent and did misrepresent facts concerning the safety of Levaquin.

178. Defendants' misrepresentations included knowingly withholding material information from the medical community and the public, including Plaintiff and Plaintiff's prescribing physicians, concerning the safety of the subject product. Defendants' conduct was outrageous so as to be malicious, willful, wanton, or oppressive and shows a reckless indifference to the interests of others.

179. At all times material hereto, Defendants knew and recklessly disregarded the fact that Levaquin causes the chronic illness irreversible peripheral neuropathy.

180. Notwithstanding the foregoing, Defendants continued to aggressively market the subject product to consumers, including Plaintiff herein, without disclosing the aforesaid side

effect.

181. Defendants knew of the subject product's lack of warnings regarding the risk of irreversible peripheral neuropathy, but they intentionally concealed and/or recklessly failed to disclose that risk and continued to market, distribute, and/or sell Levaquin without said warnings so as to maximize sales and profits at the expense of the health and safety of the public, including Plaintiff herein, in conscious and/or negligent disregard of the foreseeable harm caused by Levaquin.

182. Defendants' intentional and/or reckless failure to disclose information deprived Plaintiff of necessary information to enable them to weigh the true risks of using Levaquin against its benefits and this willful and wanton conduct created an unreasonable risk of physical harm to Plaintiff and other users of the product.

183. As a direct and proximate result of Defendants' outrageous, malicious, willful, wanton, oppressive conduct so as to show a reckless indifference to the interests of others, Plaintiff suffered severe and permanent physical and emotional injuries, including, but not limited to, irreversible peripheral neuropathy. Plaintiff have endured pain and suffering, have suffered economic loss, including incurring significant expenses for medical care and treatment, and will continue to incur such expenses in the future. Plaintiff' injuries and damages are permanent and will continue into the future.

184. Defendants' aforesaid conduct was committed with knowing, malicious, willful, wanton, oppressive, reckless, careless and deliberate disregard for the rights and safety of consumers, including Plaintiff, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish Defendants and deter them from similar conduct in the future.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- (a) For general (non-economic) and special (economic) 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 full refund of all purchase costs Plaintiff paid for Levaquin;
- (e) For compensatory and general damages in excess of the jurisdictional minimum of this Court;
- (f) For consequential damages in excess of the jurisdictional minimum of this Court;
- (g) For punitive damages in an amount in excess of any jurisdictional minimum of this Court and in an amount sufficient to impress upon Defendants the seriousness of their conduct and to deter similar conduct in the future;
- (h) For attorneys' fees, treble damages, expenses, and costs of this action; and
- (i) For such further relief as this Court deems necessary, just, and proper.

**DEMAND FOR JURY TRIAL**

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

Dated: August 19, 2016

Respectfully submitted,

s//:Marc Grossman

Marc Grossman, Esq.

Randi Kassan, Esq.

**SANDERS PHILLIPS GROSSMAN LLC**

100 Garden City Plaza, Suite 500

Garden City, N.Y. 11501

Telephone: (516) 741-5600

Facsimile: (516) 741-0128

mgrossman@thesandersfirm.com

rkassan@thesandersfirm.com

**Attorneys for Plaintiff**



## CIVIL COVER SHEET

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

**I. (a) PLAINTIFFS**  
John McDaniel**DEFENDANTS**

Johnson &amp; Johnson et al.

**(b)** County of Residence of First Listed Plaintiff Lexington  
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant Middlesex  
(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, Email and Telephone Number)  
Sanders Phillips Grossman, LLC,  
100 Garden City Plaza, Suite 500  
Garden City, NY 11530

Attorneys (If Known)

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

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

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

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input 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)

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 (Excludes 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	<b>PERSONAL INJURY</b> <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 - Medical Malpractice	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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 <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management 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 Employee Retirement Income Security Act <b>IMMIGRATION</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <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
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**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 - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 US 1332Brief description of cause:  
Product Liability Pharmaceutical Litigation**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/22/2016

SIGNATURE OF ATTORNEY OF RECORD

s//:Marc Grossman

**FOR OFFICE USE ONLY**

RECEIPT #

AMOUNT

APPLYING 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.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 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.  
 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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.