

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

ROY ROGER FAIRCLOTH,

Plaintiff,

v.

PFIZER, INC.,

Defendant.

)
) **CASE NO.:** _____
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)
)
)

COMPLAINT AND DEMAND
FOR JURY TRIAL

CIVIL ACTION COMPLAINT

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

PARTIES

2. Plaintiff, Roy Roger Faircloth ("Plaintiff"), at all times relevant to this action, was an adult resident and citizen of Davidson County, residing in Lexington, North Carolina.

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

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

JURISDICTION AND VENUE

5. This Court has jurisdiction over Defendant and this action pursuant to 28 U.S.C. § 1332.

a. There is complete diversity of citizenship between Plaintiff and Defendant.

b. The amount in controversy between Plaintiff and Defendant exceeds \$75,000.00, exclusive of interest and cost.

6. This court has personal jurisdiction over this Defendant.

a. Defendant maintains significant contacts with this judicial district by virtue of conducting business within the district.

7. Venue is proper within this district and division pursuant to 28 U.S.C. § 1391.

- a. A substantial part of the events or omissions giving rise to the claim occurred in this judicial district because Plaintiff resides here, ingested Viagra here, and was injured here.
- b. Defendant marketed, advertised, and distributed Viagra in this judicial district, thereby receiving substantial financial benefit and profits from the dangerous product in this district.

FACTUAL BACKGROUND

Facts Regarding Pfizer, Viagra, and Melanoma

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.¹

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 get or maintain an erection sufficient for satisfactory sexual activity. Since reaching and maintaining an erection involves the brain, nerves, hormones, and blood vessels, any condition that interferes with any of these functional areas

¹ See FDA, *Historical Information on Sildenafil Citrate (Marketed as Viagra)*, available at <http://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm162847.htm> (last visited June 15, 2015).

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. 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.

13. Pfizer has engaged in increasingly aggressive marketing techniques and strategies to promote the use of Viagra in the face of increasing pharmaceutical competition. In 2004, Pfizer and competing drug manufacturers each spent "tens of millions of dollars each month on direct-to-consumer advertising []."²

² Bruce Japsen, *Viagra's 2 Rivals Grab Market Share In A Year*, CHICAGO TRIBUNE, Sept. 23, 2004, available at http://articles.chicagotribune.com/2004-09-23/business/0409230283_1_v Viagra-erectile-levitra (last visited May 29, 2015).

14. In 2014, Pfizer spent approximately \$1.4 billion advertising its drugs, including over \$150 million on direct-to-consumer advertisements for Viagra.³

15. Pfizer spends additional amounts on doctors who prescribe its products. In the first five months of 2013, drug and medical device makers paid doctors and hospitals \$3.5 billion in grants, fees, and royalties, amounting to about \$8 billion annually.⁴

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

17. In 2012, Viagra delivered “at least \$2 billion in revenues” for Pfizer. Revenues maintained at \$1.881 billion in 2013 even though Pfizer lost patent exclusivity in most major markets in Europe.⁶

³ Cynthia Koons, *It's Like Viagra for Pharma Ads: Pfizer's \$1.4 Billion Marketing Blitz*, BloombergBusiness, Mar. 30, 2015, available at <http://www.bloomberg.com/news/articles/2015-03-30/pain-and-erectile-dysfunction-make-pfizer-biggest-in-drug-ads> (last visited May 29, 2015).

⁴ Cynthia Koons, *It's Like Viagra for Pharma Ads: Pfizer's \$1.4 Billion Marketing Blitz*, BloombergBusiness, Mar. 30, 2015, available at <http://www.bloomberg.com/news/articles/2015-03-30/pain-and-erectile-dysfunction-make-pfizer-biggest-in-drug-ads> (last visited May 29, 2015).

⁵ 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 (last visited May 29, 2015).

⁶ Pfizer 10-K (2013) at Financial Report pp. 18, 20, 24.

18. As of 2013, Viagra held approximately 45% of the U.S. market share for erectile dysfunction medications. In 2012, doctors wrote 8 million Viagra prescriptions with total sales at approximately \$2 billion.⁷

19. Pfizer estimates that Viagra has been prescribed to more than 35 million men worldwide.⁸

20. Despite the billions of dollars Pfizer spent in advertising and on prescribers, Pfizer has not spent any resources notifying or otherwise educating consumers or the medical community that Viagra use may be associated with the development or exacerbation of melanoma.

21. Pfizer does not note on the current label for Viagra that the drug may be associated with the development or exacerbation of melanoma.

22. Nor has Pfizer noted on any prior version of the label for Viagra that the drug may be associated with the development or exacerbation of melanoma.

23. The American Cancer Society states that melanoma is “the most serious type of skin cancer.”⁹

⁷ 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> (last visited May 29, 2015).

⁸ Hilary Stout, *Viagra: The Thrill That Was*, N.Y. TIMES, June 5, 2011, available at: <http://query.nytimes.com/gst/fullpage.html?res=9B06E3DF173FF936A35755C0A9679D8B63> (last visited May 29, 2015).

24. 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.¹⁰

25. Several studies have provided Pfizer with notice that Viagra use may be associated with the development or exacerbation of melanoma.

26. Studies have linked the mechanism of action for Viagra to cell mutation cultivating melanomagenesis.

27. A study published in 2011 found that treatment with Viagra can promote melanoma cell invasion.¹¹ Specifically, by inhibiting PDE5A, Viagra mimics an effect of gene activation and therefore may potentially function as a trigger for the creation of melanoma cells.

⁹ American Cancer Society, *Skin Cancer Fact Sheet*, available at: <http://www.cancer.org/acs/groups/content/@nho/documents/document/skincancerpdf.pdf> (last visited May 29, 2015).

¹⁰ National Cancer Institute, *Types of Skin Cancer* (website); National Cancer Institute, *What You Need To Know About Melanoma & Other Skin Cancers*, available at: <http://www.cancer.gov/cancertopics/wyntk/skin/page4> (last visited June 12, 2015).

¹¹ I. Aozarena, et al., *Oncogenic BRAF Induces Melanoma Cell Invasion by Downregulating the cGMP-Specific Phosphodiesterase PDE5A*, 19 *CANCER CELL* 45 (Jan. 18, 2011).

28. A 2012 study published in the Journal of Cell Biochemistry also found that PDE5 inhibitors were shown to promote melanin synthesis.¹² Such promotion may exacerbate melanoma development.¹³

29. On April 7, 2014, an original study was published on the website for the Journal of the American Medical Association Internal Medicine (“the JAMA study”) which, in light of the previous studies, sought to examine the direct relationship between sildenafil and melanoma in men in the United States.¹⁴ The JAMA study was published in the journal’s June 2014 edition.

30. 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 (with a 95% CI, 1.04-3.22). In other words, the study participants who had recently used sildenafil exhibited an 84% increase in risk of developing or encouraging invasive melanoma.¹⁵

31. The JAMA study also found a hazard ratio over 2.00 when it excluded participants reporting major chronic diseases at baseline (2.24 HR with a 95% CI,

¹² X. Zhang, et al., *PDE5 Inhibitor Promotes Melanin Synthesis Through the PKG Pathway in B16 Melanoma Cells*, 113 J. CELLULAR BIOCHEM. 2738 (2012).

¹³ F.P. Noonan, et al., *Melanoma Induction by Ultraviolet A But Not Ultraviolet B Radiation Requires Melanin Pigment*, 3 NATURE COMMUNICATIONS 884 (2012).

¹⁴ Wen-Qing Li, et al., *Sildenafil Use and Increased Risk of Incident Melanoma in U.S. Men: A Prospective Cohort Study*, 174 JAMA INTERNAL MED. 964 (2014).

¹⁵ *Id.*

1.05-4.78 for sildenafil use at baseline and 2.77 with a 95% CI, 1.32-5.85 for ever use).¹⁶

32. Despite these significant findings, Pfizer has made no efforts in its ubiquitous Viagra advertisements to warn users about the potential risk of developing melanoma.

33. Upon information and belief, labeling and advertising for Viagra does not mention melanoma.

34. Upon information and belief, Pfizer has not mentioned Viagra and its possible link or relation to melanoma to treating physicians who prescribe Viagra, despite opportunity to do so through “dear doctor” letters, labeling, package inserts, pharmaceutical sales representatives, promotional materials, or otherwise.

35. 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.

¹⁶ *Id.*

36. For the duration of these efforts, Pfizer directed its advertising efforts to consumers and health care providers located across the nation, including individuals in the state of North Carolina.

37. 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, that Viagra use increases the risk of developing melanoma. 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.

38. Pfizer purposefully downplayed, understated and outright ignored the melanoma-related health hazards and risks associated with Viagra use. Pfizer also deceived potential and actual 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.

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

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

41. As a result of Pfizer's advertising, marketing, and representations about Viagra, men in the United States pervasively seek out prescriptions for Viagra.

42. Pfizer's decision to not inform consumers and health care providers about the melanoma and its association with Viagra has resulted in increased revenues for Pfizer at the expense of patient safety.

43. This is especially true because Viagra is an "elective" drug. That is, Viagra is a medication not necessary to treat potentially life threatening illness or disease. Due to its elective nature, consumers and health care professionals have less incentive to incur risks of potential adverse effects—even small risks may outweigh benefits of elective drug use by a healthy consumer.

44. If Plaintiff in this action had known the potential risks and dangers associated with Viagra, Plaintiff would not have taken Viagra and consequently would not have been subject to its serious side effects.

Facts Regarding Plaintiff

45. Plaintiff was diagnosed with erectile dysfunction in April 2005.

46. To treat his erectile dysfunction, Plaintiff was prescribed Viagra by his physician and used it as directed beginning in April 2005 or shortly thereafter.

47. On June 28, 2012, William Webb, Jr., MD, of Salisbury Dermatology, treated Plaintiff for a spot on the left dorsal aspect of his forearm. Fearful it might

be melanoma, a biopsy was performed. Pathology revealed malignant melanoma measuring 1.28 mm in thickness.

48. On July 2, 2012, Dr. Webb discussed the results with Plaintiff and referred Plaintiff for a wide excision and sentinel node test.

49. On July 13, 2012, Plaintiff underwent surgery to remove his melanoma.

50. Thereafter, Plaintiff have returned to various health care providers for follow up care and precautionary treatment related to his melanoma diagnosis and excision.

51. Due to being diagnosed with melanoma, Plaintiff will be required to visit a dermatologist regularly for the rest of his life to see if his melanoma has recurred.

52. Due to being diagnosed with melanoma, Plaintiff is at an increased risk for re-developing melanoma and other cancers in the future. One study in 2010 reports that melanoma survivors have an approximately 9-fold increased risk of developing subsequent melanoma compared with the general population and the risk remains elevated more than 20 years after the initial diagnosis.¹⁷

53. Had Pfizer properly studied, analyzed, disclosed, and/or addressed the melanoma-related risks associated with Viagra use, Plaintiff would have avoided

¹⁷ P.T. Bradford, et al., *Increased Risk of Second Primary Cancers After a Diagnosis of Melanoma*, 146 Archives of Dermatology 265 (Mar. 2010).

the risk by not using Viagra at all or would have used Viagra in such a manner to have significantly reduced or effectively eliminated the risk (if possible).

54. 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, including, but not limited to melanoma. Plaintiff has endured physical pain and suffering as well as economic loss, including significant expenses for medical care and treatment. Because of the nature of his diagnosis, he will continue to incur such medical expenses in the future. As a result of these damages, Plaintiff seeks actual and punitive damages from Pfizer.

CAUSES OF ACTION

COUNT I **NEGLIGENCE**

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

56. Pfizer manufactured, designed and/or sold Viagra and intentionally placed it into the stream of interstate commerce.

57. Viagra was in an unreasonably safe condition when it left the control and possession of Pfizer and reached Plaintiff in a condition substantially unaltered therefrom.

58. Because of its unreasonably unsafe condition, Viagra injured the Plaintiff when such product was put to its intended use.

59. Pfizer failed to adequately warn the Plaintiff of the unreasonably dangerous nature of Viagra, particularly with respect to the drug's association with an elevated risk of developing melanoma.

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

61. At all times relevant hereto, Pfizer negligently and carelessly manufactured, designed, formulated, distributed, compounded, produced, processed, assembled, inspected, distributed, marketed, labeled, packaged, prepared for use and sold Viagra while failing to adequately test and warn of the risks and dangers associated with the use of the drug.

62. 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.

63. 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.

64. Pfizer's negligence proximately caused the injuries, harm and economic loss which Plaintiff has and will continue to suffer. Plaintiff has suffered and will continue to suffer from personal injury, emotional distress, and economic loss.

COUNT II
DEFECTIVE MANUFACTURING AND DESIGN

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

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

67. Viagra was defective when it left Pfizer's control insofar as the drug presented foreseeable risks that exceeded the benefits of the product and/or that it deviated from product specifications, thereby posing a risk of serious injury and death.

68. Specifically, Viagra substantially increases the user's risk of subsequent melanoma development and/or exacerbation.

69. 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.

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

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

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

73. 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, is significant in light of the drug's intended and reasonably foreseeable use.

74. 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.

75. 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.

76. 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.

77. It is highly unlikely that Viagra users would be aware of the risks associated with Viagra through warnings, general knowledge or other sources of information, 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.

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

79. By placing Viagra into the stream of interstate commerce, Pfizer acted with wanton and reckless disregard for the safety of its users, including Plaintiff.

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

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

82. 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 III
FAILURE TO WARN

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

84. 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.

85. 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.

86. 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 warnings which indicated the risk of developing and/or exacerbating the spread of cancerous melanoma cells associated with the drug's use.

87. The warnings that were given by Pfizer were not accurate or clear in that they failed to disclose the significant risk of developing and/or exacerbating the spread of cancerous melanoma cells associated with using Viagra.

88. Pfizer failed to provide warnings or instructions that a manufacturer exercising reasonable care would have provided concerning the risk of developing and/or exacerbating the spread of cancerous melanoma cells, in light of the likelihood that its product would cause these injuries.

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

90. 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.

91. 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, but chose to disseminate the product without adequate warnings or instructions despite this knowledge.

92. 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.

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

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

95. 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.

96. 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.

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

98. 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 IV
BREACH OF IMPLIED WARRANTIES

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

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

101. 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.

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

103. 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 V
BREACH OF EXPRESS WARRANTIES

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

105. 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.

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

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

108. 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.

PUNITIVE DAMAGES ALLEGATIONS

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

110. 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.

111. 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.

112. 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.

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

114. Pfizer's outrageous and unconscionable conduct warrants an award of exemplary and punitive damages against Defendants in an amount appropriate to punish and make an example of Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays 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.

VIII. DEMAND FOR JURY TRIAL

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

Date: June 16, 2015

/s/Brian L. Kinsley

Local Counsel

CRUMLEY ROBERTS

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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

Roy Roger Faircloth

DEFENDANTS

Pfizer, Inc

(b) County of Residence of First Listed Plaintiff **Davidson, North Carolina**
(EXCEPT IN U.S. PLAINTIFF CASES)

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)

Brian L. Kinsley

2400 Freeman Mill Road, Greensboro NC 27406

336-333-9899

Attorneys (If Known)

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

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

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	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 - Medical Malpractice	PERSONAL INJURY <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/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 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/DJWW (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"/> 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
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS Habeas Corpus: <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 Other: <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 (SP-117) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

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

Brief description of cause:
Pharmaceutical Product Liability Action

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

06/16/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/ Brian L. Kinsley

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE