

COPY

SUM-100

SUMMONS
(CITACION JUDICIAL)NOTICE TO DEFENDANT: ACTAVIS, PLC; [see Additional Parties Attachment]
(AVISO AL DEMANDADO):YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
ROY H. SMYER and SABRINA M. SMYERFOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

FEB. 26 2014

Sherri R. Carter, Executive Officer/Clerk
By Shaunya Bolden, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegerán. Su respuesta por escrito tiene que estar en formato legal correcto si deseas que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte lo podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumple con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar al gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of Los Angeles
Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, CA 90012
Los Angeles, California 90005CASE NUMBER:
(Número del Caso):

BC 537755

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

WEITZ & LUXENBERG, P.C.

1880 Century Park East, Suite 700, Los Angeles, CA 90067

DATE:
(Fecha)

(10) 247-0921

Clerk, by
(Secretario), Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación usa el formulario Proof of Service of Summons, (POS-010).)

NOTICE TO THE PERSON SERVED: You are served

SEAL

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservator)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov
Westlaw Doc & Form Builder

SHORT TITLE: Smyer v. Actavis, PLC, et al.	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant

ACTAVIS, PLC;
 ACTAVIS, INC. f/k/a WATSON PHARMACEUTICALS, INC.;
 WATSON LABORATORIES, INC. individually and as subsidiary to ACTAVIS INC.;
 ANDA, INC. individually and as subsidiary to ACTAVIS INC.;
 McKESSEN CORPORATION; and
 DOES 1 through 50, inclusive

COPY

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): An Friedman WEITZ & LUXENBERG, P.C. 1830 Century Park East, Suite 700, Los Angeles, CA 90067 TELEPHONE NO.: (310) 247-0921 FAX NO.: (310) 786-9927 ATTORNEY FOR (Name): Plaintiffs Roy H. Smyer and Sabrina M. Smyer		FOR COURT USE ONLY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, 90012 BRANCH NAME: Stanley Mosk Courthouse on Hill St.		CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles	
CASE NAME: Roy Smyer and Sabrina Smyer v. Actavis, PLC, et al.		FEB 26 2014 Sherri R. Carter, Executive Officer/Clerk By Shaunya Bolden, Deputy	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: BC 537755
		JUDGE:	DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:			
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input checked="" type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (26) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (18) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)		Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (06) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 8

5. This case is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 26, 2014

An Friedman

(TYPE OR PRINT NAME)	(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)
NOTICE <ul style="list-style-type: none"> • Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions. • File this cover sheet in addition to any cover sheet required by local court rule. • If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding. • Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only. 	

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

Auto Tort

- Auto (22)–Personal Injury/Property
- Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death)

Tort

- Asbestos (04)
- Asbestos Property Damage
- Asbestos Personal Injury/
- Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
- Medical Malpractice–
- Physicians & Surgeons
- Other Professional Health Care
- Malpractice
- Other PI/PD/WD (23)
- Premises Liability (e.g., slip and fall)
- Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
- Intentional Infliction of
- Emotional Distress
- Negligent Infliction of
- Emotional Distress
- Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
- Legal Malpractice
- Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

CASE TYPES AND EXAMPLES

Contract

- Breach of Contract/Warranty (06)
- Breach of Rental/Lease
- Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach–Seller
- Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/
- Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case–Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
- Auto Subrogation
- Other Coverage
- Other Contract (37)
- Contractual Fraud
- Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
- Writ of Possession of Real Property
- Mortgage Foreclosure
- Quiet Title
- Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
- Writ–Administrative Mandamus
- Writ–Mandamus on Limited Court Case
- Case Matter
- Writ–Other Limited Court Case Review
- Other Judicial Review (39)
- Review of Health Officer Order
- Notice of Appeal–Labor
- Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
- Abstract of Judgment (Out of County)
- Confession of Judgment (*non-domestic relations*)
- Sister State Judgment
- Administrative Agency Award (*not unpaid taxes*)
- Petition/Certification of Entry of Judgment on Unpaid Taxes
- Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
- Declaratory Relief Only
- Injunctive Relief Only (*non-harassment*)
- Mechanics Lien
- Other Commercial Complaint Case (*non-tort/non-complex*)
- Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
- Civil Harassment
- Workplace Violence
- Elder/Dependent Adult Abuse
- Election Contest
- Petition for Name Change
- Petition for Relief From Late Claim
- Other Civil Petition

COPY

SHORT TITLE: Smoyer v. Actavis, PLC, et al.

CASE NUMBER

BC 59 7755

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? YES CLASS ACTION? YES LIMITED CASE? YES TIME ESTIMATED FOR TRIAL 20+ HOURS DAYS

Item II. Indicate the correct district and courthouse location (4 steps – if you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

1. Class actions must be filed in the Stanley Mosk Courthouse, central district.	6. Location of property or permanently garaged vehicle.
2. May be filed in central (other county, or no bodily injury/property damage).	7. Location where petitioner resides.
3. Location where cause of action arose.	8. Location where defendant/respondent functions wholly.
4. Location where bodily injury, death or damage occurred.	9. Location where one or more of the parties reside.
5. Location where performance required or defendant resides.	10. Location of Labor Commissioner Office

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

Column A		Column B	Column C
Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.	
Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.	
Asbestos (04)	<input type="checkbox"/> A6070 Asbestos & Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2.	2.
Product Liability (24)	<input checked="" type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., a.	
Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4.	1., 4.
Other Personal Injury/Property Damage/Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 4. 1., 4. 1., 3. 1., 4.	

A Civil Case Cover Sheet Category No.		B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/ Property Damage/ Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Contract	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Real Property	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation	Number of parcels _____ 2.
	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

A Civil Case Cover Sheet Category No.		B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above	
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.	
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.	
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.	
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.	
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.	
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1., 2., 3.	
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.	
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.	
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.	
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.	
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2., 9.	
		<input type="checkbox"/> A6160 Abstract of Judgment	2., 6.	
Miscellaneous Civil Complaints		<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2., 9.	
		<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2., 8.	
		<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.	
		<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 8., 9.	
Miscellaneous Civil Petitions	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.	
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1., 2., 8.	
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.	
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.	
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.	
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2., 3., 9.	
		<input type="checkbox"/> A6123 Workplace Harassment	2., 3., 9.	
		<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.	
		<input type="checkbox"/> A6190 Election Contest	2.	
		<input type="checkbox"/> A6110 Petition for Change of Name	2., 7.	
		<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.	
		<input type="checkbox"/> A6100 Other Civil Petition	2., 9.	

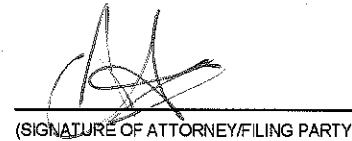
SHORT TITLE: Smyer v. Actavis, PLC, et al.	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.		ADDRESS: 818 W. 7th Street
<input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input checked="" type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.		
CITY: Los Angeles	STATE: CA	ZIP CODE: 90017

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: February 26, 2014



(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

COPY

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF LOS ANGELES
17 UNLIMITED JURISDICTION

18 ROY H. SMYER and SABRINA M. SMYER,

19 Plaintiffs,

20 vs.

21 ACTAVIS, PLC;
22 ACTAVIS, INC. f/k/a WATSON
23 PHARMACEUTICALS, INC.;
24 WATSON LABORATORIES, INC.
25 individually and as subsidiary to ACTAVIS
26 INC.;
27 ANDA, INC. individually and as subsidiary to
28 ACTAVIS INC.;
29 McKESSON CORPORATION; and
30 DOES 1 through 50,

31 Defendants.

32 Case No.:

33 PLAINTIFFS' COMPLAINT FOR
34 DAMAGES AND DEMAND FOR JURY
35 TRIAL

- 36 1) STRICT LIABILITY: FAILURE
37 TO WARN
- 38 2) NEGLIGENCE
- 39 3) NEGLIGENT
40 MISREPRESENTATION
- 41 4) FRAUD: MISREPRESENTATION
- 42 5) FRAUD: CONCEALMENT,
43 SUPPRESSION OR OMISSION OF
44 MATERIAL FACTS
- 45 6) BREACH OF IMPLIED
46 WARRANTIES
- 47 7) BREACH OF EXPRESS
48 WARRANTIES
- 49 8) LOSS OF CONSORTIUM

50 DEMAND FOR JURY TRIAL

1 Plaintiffs, Roy H. Smyer and Sabrina M. Smyer, (hereinafter "Plaintiff" or jointly
2 "Plaintiffs") by and through undersigned counsel, hereby file this Complaint for Damages and
3 Jury Demand against Defendants Actavis, Plc., Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.,
4 Watson Laboratories, Inc., Anda, Inc., McKesson Corporation, and DOES 1 through 50, and
5 each of them, inclusive (hereinafter jointly "Defendants") and in support, state as follows:
6

7 **I. PROCEDURAL AND FACTUAL BACKGROUND**

8 **A. INTRODUCTION**

9 1. This case involves the prescription drug Androderm®, which is a patch
10 manufactured, promoted, sold, and distributed by the Defendants as a form of testosterone
11 replacement therapy.

12 2. Defendants failed to conduct adequate pre- and post-market safety testing and
13 research to ensure that Androderm® was safe for its intended use and failed to adequately warn
14 physicians about each of the risks associated with Androderm® and the monitoring regimen
15 required to ensure patient safety.

16 3. Defendants misrepresented, concealed, and omitted material facts regarding the
17 safety and efficacy of Androderm® in treating hypogonadism and a condition they refer to
18 simply as "low testosterone."

19 4. Androderm® can cause serious injury and bodily harm. For example,
20 Androderm® causes the hematocrit level to increase, thereby thickening the blood. This effect,
21 if not monitored regularly and controlled properly, can lead to life threatening heart attacks,
22 strokes, and thrombotic events.

23 5. Defendants engaged in an aggressive direct-to-consumer and physician
24 marketing and advertising campaign to grow the market for Androderm®. For example,
25

1 Defendants' Androderm® website indicates that it is "For men with low testosterone," a
2 condition which the Androderm® website claims is largely caused by the aging process. The
3 Androderm® website also represents that Androderm® is "highly effective" and that its design
4 ensures proper dosing and minimized risks.
5

6. As a result of Defendants' aggressive and misleading marketing campaign, taken
7 together with the marketing campaigns of other testosterone supplement manufacturers, medical
8 diagnoses of "Low T" have increased exponentially. It is estimated that between 2001 and 2011,
9 testosterone prescriptions tripled among men older than 40. Walk-in-clinics have sprung up
10 across the country and sales are expected to more-than triple from \$1.6 million to \$5 billion by
11 2017. Yet the New England Journal of Medicine has warned that only about 2 percent of men
12 older than 40 should actually be receiving testosterone replacement therapy.
13

7. As recent safety studies demonstrate, consumers of Androderm® were misled as
15 to the drug's safety and efficacy. In fact, a study released in November 2013 of more than
16 8,000 men treated in the Veterans Health Administration found testosterone therapy increased
17 the risk of heart attack, stroke, and death by almost 30 percent.
18

8. As a result of Defendants' misconduct, thousands of men, including Plaintiff,
19 have suffered severe injuries, including but not limited to life-threatening cardiac events, strokes,
20 and thrombotic events.
21

22 **B. PARTIES**
23

9. Plaintiffs Roy Smyer and Sabrina Smyer are and were at all times relevant herein,
24 residents of Long Beach, Los Angeles County, California. Sabrina Smyer is, and at all times
25 relevant herein, was the spouse of Roy Smyer. Plaintiffs have one minor child.
26
27

1 10. Defendant Actavis, Plc is a foreign corporation organized and existing under the
2 laws of Ireland with its global headquarters located at 1 Grand Canal Square, Docklands, Dublin
3 2, Ireland. Actavis, Plc also has administrative headquarters located at Morris Corporate Center
4 III, 400 Interpace Parkway, Parsippany, New Jersey 07054. At all relevant times herein,
5 Actavis, Plc was engaged in the research, development, manufacture, sales, marketing, and/or
6 distribution of pharmaceutical products, including Androderm® in the State of California,
7 County of Los Angeles and is therefore subject to the jurisdiction and venue of the State of
8 California and the County of Los Angeles.

9
10 11. Defendant Actavis, Inc., formerly known as Watson Pharmaceuticals, Inc., is a
11 domestic corporation organized and existing under the laws of Nevada with its principal place
12 of business located at Morris Corporate Center III, 400 Interpace Parkway, Parsippany, New
13 Jersey 07054. By way of background, Watson Pharmaceuticals, Inc. acquired Actavis Group in
14 2012 and announced shortly thereafter that, as of January 2013, it would change its name to
15 Actavis, Inc. Watson Pharmaceuticals, Inc. acquired the original manufacturer of Androderm®,
16 TheraTech, Inc., in 1999. At all relevant times herein, Actavis, Inc. f/k/a Watson
17 Pharmaceuticals, Inc. was engaged in the research, development, manufacture, sales, marketing,
18 and/or distribution of pharmaceutical products, including Androderm®, in the State of
19 California, County of Los Angeles and is therefore subject to the jurisdiction and venue of the
20 State of California and the County of Los Angeles.

21
22 12. Defendant Watson Laboratories, Inc., is a domestic corporation organized and
23 existing under the laws of Nevada with its principal place of business located at Morris
24 Corporate Center III, 400 Interpace Parkway, Parsippany, New Jersey 07054. At all times
25 relevant herein, Defendant Watson Laboratories, Inc., a subsidiary of Actavis, Plc, was engaged
26
27
28

1 in the research, development, manufacture, sales, marketing, and/or distribution of
2 pharmaceutical products, including Androderm®, in the State of California, County of Los
3 Angeles and is therefore subject to the jurisdiction and venue of the State of California and the
4 County of Los Angeles.

5
6 13. Defendant Anda, Inc., is a corporation organized and existing under the laws of
7 Florida, with its principal place of business located at 2915 Weston Road, Weston, Florida
8 33331. At all times relevant herein, Defendant Anda, Inc., a subsidiary of Actavis, Plc, was
9 engaged in the research, development, manufacture, sales, marketing, and/or distribution of
10 pharmaceutical products, including Androderm® in the State of California, County of Los
11 Angeles and is therefore subject to the jurisdiction and venue of the State of California and the
12 County of Los Angeles.

13
14 14. Defendant McKesson Corporation is a Delaware corporation with its principal
15 place of business in San Francisco, California. Defendant McKesson Corporation was engaged
16 in the research, development, manufacture, sales, marketing, and/or distribution of
17 pharmaceutical products, including Androderm®, in the State of California, County of Los
18 Angeles and is therefore subject to the jurisdiction and venue of the State of California and the
19 County of Los Angeles.

20
21 15. The true names and/or capacities, whether individual, corporate, partnership,
22 associate, governmental, or otherwise, of defendant DOES 1 through 50, inclusive, are
23 unknown to Plaintiffs at this time, who therefore sue said Defendants by such fictitious names.
24 Plaintiffs are informed and believe Does 1 through 50, inclusive, each engaged in the research,
25 development, manufacture, sales, marketing, and/or distribution of pharmaceutical products,
26 including Androderm®, in the State of California, County of Los Angeles and are therefore
27
28

subject to the jurisdiction and venue of the State of California and the County of Los Angeles and thereon allege that each Defendant designated herein as a DOE caused injuries and damages proximately thereby to Plaintiffs as hereinafter alleged and that each DOE Defendant is liable to the Plaintiffs for the acts and omissions alleged herein below and the resulting injuries to Plaintiffs and damages sustained by Plaintiffs. Plaintiffs will amend this Complaint to allege the true names and capacities of said DOE Defendants when that same is ascertained.

16. Plaintiffs are informed, believe, and thereon allege that at all times herein mentioned, that Defendants and DOES 1 through 50, and each of them, inclusive, were and are corporations organized and existing under the laws of the State of California or the laws of some state or foreign jurisdiction; that each of the said Defendants and DOE Defendants were and are authorized to do and are doing business in the State of California and regularly conducted business in the County of Los Angeles; and that certain Defendants and DOES designate or have maintained principle places of business in the County of Los Angeles.

C. JURISDICTION AND VENUE

17. Jurisdiction and venue are proper in the Superior Court of California – Los Angeles County for the following reasons:

18. At all times relevant hereto, Defendants were in the business of researching, designing, formulating, compounding, testing, manufacturing, producing, processing, assembling, inspecting, distributing, marketing, labeling, promoting, packaging, and/or advertising the pharmaceutical products, including Androderm® in the State of California, County of Los Angeles and are therefore subject to the jurisdiction and venue of the State of California and the County of Los Angeles.

1 19. Plaintiffs Roy Smyer and Sabrina Smyer are and were at all times relevant herein,
2 residents of Long Beach, Los Angeles County, California.
3

4 20. Defendant McKesson Corporation is a resident of California because its principal
5 place of business is located in San Francisco, California.
6

7 21. This is an action for damages, which exceeds twenty-five thousand dollars
8 (\$25,000.00), the minimum jurisdictional requirements.
9

10 **D. FACTUAL BACKGROUND**
11

12 **1. General Allegations**
13

14 22. This action is for damages brought on behalf of the Plaintiff Roy Smyer, who
15 was prescribed and took the prescription drug Androderm®, as tested, studied, researched,
16 evaluated, endorsed, designed, formulated, compounded, manufactured, produced, processed,
17 assembled, inspected, distributed, marketed, labeled, promoted, packaged, advertised for sale,
18 prescribed, sold or otherwise placed in the stream of interstate commerce by Defendants.
19

20 23. At all times relevant herein, the Defendants were engaged in the business of, or
21 were successors in interest to, entities engaged in the business of research, licensing, designing,
22 formulating, compounding, testing, manufacturing, producing, processing, assembling,
23 inspecting, distributing, marketing, labeling, promoting, packaging and/or advertising for sale or
24 selling the prescription drug Androderm® for the use and application by men, including, but not
25 limited to, Plaintiff.
26

27 24. At all times relevant herein, Defendants were authorized to do business within
28 the state of California.
29

30 25. Defendants designed, manufactured, promoted, sold, and distributed
31 Androderm® when they knew, or with the exercise of reasonable care should have known, of
32

1 the hazards and dangerous propensities of said product and thereby actively participated in the
2 tortious conduct which resulted in the injuries suffered by Plaintiff.

3 26. Defendants' wrongful acts, fraudulent misrepresentations, intentional
4 concealment, and omissions caused Plaintiffs' injuries and damages.

5 27. This action seeks, among other relief, general, special, and punitive damages to
6 enable Plaintiff to treat and monitor the dangerous, severe, and life-threatening side effects and
7 injuries caused by Androderm®.

8 28. Plaintiffs file this lawsuit within the applicable limitations period which did not
9 start to run until after they first learned that Plaintiff Roy Smyer was injured by Defendants'
10 wrongful conduct. Plaintiffs could not, by the exercise of reasonable diligence, have discovered
11 that Defendants' wrongful conduct caused Plaintiff's injuries until early 2014, at the earliest,
12 when the conduct of testosterone supplement manufacturers first came under public review by
13 the FDA and others. Additionally, Plaintiffs were prevented from discovering this information
14 sooner because Defendants herein misrepresented and continue to misrepresent to the public
15 and to the medical profession that the drug Androderm® is safe and free from serious side
16 effects. In fact, Defendants are still actively promoting Androderm® as safe and effective to
17 treat low testosterone to this day. Defendants have also fraudulently concealed facts and
18 information that could have led Plaintiff to discover a potential cause of action.

22 2. Overview

23 29. Hypogonadism is a specific and recognized condition of the endocrine system,
24 which in men may involve the severely diminished production or nonproduction of testosterone.

1 30. In 1994, when Theratech, Inc., the original manufacturer of Androderm, asked
2 for FDA approval of Androderm®, hypogonadism was considered to be a relatively uncommon
3 condition among American men.
4

5 31. However, after Androderm® was approved by the FDA in 1995, Defendants and
6 other testosterone supplement manufacturers engaged in media campaigns to convince men who
7 were experiencing the typical effects of the aging process that they were suffering from low
8 testosterone, which could be treated with testosterone supplements, including Androderm®. The
9 marketing campaign consisted of advertisements, promotional literature placed in healthcare
10 providers' offices and distributed to potential Androderm® users, and online media including
11 Defendants' website for Androderm®: www.myandroderm.com.
12

13 32. Myandroderm.com asserts that 4 to 5 million otherwise healthy men experience
14 low testosterone and encourages male visitors to get "a simple blood test" to determine whether
15 they have low T or testosterone. The site also identifies a number of "symptoms" that it
16 associates with low testosterone which are symptoms that are more commonly associated with
17 aging, weight gain, and lifestyle.
18

19 33. Defendants have also sought to convince primary care physicians that low
20 testosterone levels are widely under-diagnosed and that conditions associated with normal aging
21 could be caused by low testosterone levels.
22

23 34. As part of their marketing campaign, Defendants promoted Androderm® as an
24 easy to apply patch for testosterone replacement therapy. Defendants contrast their product's
25 at-home patch with other topical testosterone supplements in that the patch protects against the
26 transfer of testosterone to others and assures proper dosing. *See Androderm Patches, available*
27
28

1 at http://www.myandroderm.com/androderm_patches.aspx#Highly Effective (last visited Fed.
2 23, 2014).

3 35. Defendants' marketing campaign encouraged men to discuss testosterone
4 replacement therapy with their doctors and consumers and their physicians relied on Defendants'
5 promises of safety, effectiveness, and ease of use. Although prescription testosterone
6 replacement therapy has been available for years, millions of men who had never been
7 prescribed testosterone flocked to their doctors and pharmacies.

8 36. As a direct result of this marketing campaign, sales of replacement therapies
9 have more than doubled since 2006 and are expected to triple to \$5 billion by 2017 according to
10 forecasts by Global Industry Analysts. *See* Shannon Pettypiece, Are Testosterone Drugs the
11 Next Viagra?, May 10, 2012, Bloomberg BusinessWeek, *available at*:
12 <http://www.businessweek.com/articles/2012-05-10/are-testosterone-drugs-the-next-viagra>.

13 37. However, a study published in the Journal of the American Medical Association
14 ("JAMA") in August 2013 entitled "Trends in Androgen Prescribing in the United States, 2001
15 - 2011" indicated that many men who get testosterone prescriptions have no evidence of
16 hypogonadism. For example, one third of men prescribed testosterone had a diagnosis of
17 fatigue and one quarter of men had not had their testosterone levels tested before being
18 prescribed with testosterone replacement therapy.

19 38. The marketing campaign was successful in creating the belief by consumers and
20 physicians that low testosterone affected a large number of men in the United States and that the
21 use of Androderm® is safe for human use, even though Defendants knew or should have known
22 this to be false, and even though Defendants had no reasonable grounds to believe them to be
23 true.

39. What consumers received, however, were not safe drugs, but a product which causes life-threatening injuries, including heart attacks, strokes, and thrombotic events.

40. There have been a number of studies associating testosterone use in men with an increased risk of heart attacks and strokes.

41. In 2010, a New England Journal of Medicine Study entitled “Adverse Events Associated with Testosterone Administration” was discontinued after an exceedingly high number of men in the testosterone group suffered adverse events.

42. In November of 2013, a JAMA study entitled "Association of Testosterone Therapy with Mortality, Myocardial Infarction, and Stroke in Men with Low Testosterone Levels" was released and indicated that testosterone therapy raised the risk of death, heart attack, and stroke by approximately 30%.

43. On January 29, 2014, a study was released in PLOS ONE entitled "Increased Risk of Non-Fatal Myocardial Infarction Following Testosterone Therapy Prescription in Men," which indicated that testosterone use doubled the risk of heart attacks in men over sixty five years of age and men younger than sixty five with a previous diagnosis of heart disease.

3. Factual Allegations Common to All Causes of Action.

44. The U.S. Food and Drug Administration approved Androderm® on September 29, 1995, for the treatment of adult males who have low or no testosterone. Since receiving FDA approval, the Defendants, their subsidiaries, and their predecessors advertised and marketed Androderm® as a safe and effective to treat low testosterone in men.

45. Androderm® is a patch containing 2, 2.5, 4, or 5 mg of testosterone, applied to the stomach, arms, back, or thighs and enters the body through transdermal absorption.

1 46. Testosterone is a primary androgenic hormone responsible for normal growth,
2 development of the male sex organs, and maintenance of secondary sex characteristics. The
3 hormone plays a role in sperm production, fat distribution, maintenance of muscle strength and
4 mass, and sex drive.
5

6 47. In men, testosterone levels normally begin a gradual decline after the age of
7 thirty.
8

9 48. The average testosterone levels for most men range from 300 to 1,000
10 nanograms per deciliter (ng/dl) of blood. However, testosterone levels can fluctuate greatly
11 depending on many factors, including sleep, time of day, and medication. Many men who have
12 testosterone levels below 300 ng/dL on one day will have normal testosterone levels the next
13 day.
14

15 49. Androderm® may produce undesirable side effects to patients who use the drug,
16 including but not limited to death, cardiovascular events, stroke, and thrombotic events.
17

18 50. In addition to the above, Androderm® has been linked to several severe and life
19 changing medical disorders in both users and those who come into physical contact with users.
20 Patients taking Androderm® may also experience enlarged prostates and increased serum
21 prostate-specific antigen levels.
22

23 51. Secondary exposure to testosterone supplements such as Androderm® can cause
24 side effects in others, including women and children. For example, testosterone may also cause
25 physical changes in women exposed to the drug and cause fetal damage with pregnant women
26 who come into contact with Androderm®.
27

28 52. Defendants' marketing strategy has been to aggressively market and sell
Androderm® by misleading potential users about the prevalence and symptoms of low

testosterone and by failing to protect users from serious dangers that Defendants knew or should have known to result from use of Androderm®.

53. Defendants' advertising campaign sought to create the image and belief by consumers and their physicians that the use of Androderm® was a safe method of alleviating their symptoms, had few side effects, and would not interfere with their daily lives, even though Defendants knew or should have known these to be false, and even though the Defendants had no reasonable grounds to believe them to be true.

54. Defendants purposefully downplayed, understated, and outright ignored the health hazards and risks associated with using Androderm®. Defendants deceived potential Androderm® users by relaying positive information through the press, including testimonials, to suggest widespread disease prevalence, while downplaying known adverse and serious health effects.

55. Defendants concealed material relevant information from potential Androderm® users and minimized user and prescriber concern regarding the safety of Androderm®.

56. In particular, in the warnings provided by Defendants in their advertisements, Defendants fail to mention any potential risk of cardiac event, stroke, pulmonary embolism, or other dangerous side effects and falsely represent and/or fail to disclose that Defendants adequately tested Androderm® for all likely side effects. The Defendants also failed to provide adequate warnings and instructions regarding the importance of adequate monitoring of hematocrit levels.

57. As a result of Defendants' advertising and marketing representations about Androderm®, men in the United States have pervasively sought out prescriptions for Androderm®. If Plaintiff had known the risks and dangers associated with Androderm®,

1 Plaintiff would not have taken Androderm® and consequently would not have been subject to
2 its serious side effects.

3 **4. Case Specific Facts**

4 58. Plaintiff Roy Smyer, a Central Office Equipment Maintainer technician for
5 Verizon, was 61 years old when he was prescribed and began using Androderm® 4 mg patches
6 to treat symptoms he and his health care providers attributed to low testosterone as a result of
7 Defendants' advertisements.

8 59. After taking multiple doses of Androderm®, Plaintiff began experiencing
9 shortness of breath. On or about February 27, 2012, Plaintiff was hospitalized for these
10 symptoms. After performing several diagnostic tests, Plaintiff was diagnosed with a bilateral
11 pulmonary embolism. Plaintiff had no prior history of blood clots.

12 60. As a result of these injuries, Plaintiff was hospitalized and was unable to work
13 for approximately three weeks following his discharge from the hospital. Plaintiff was also
14 prescribed a regimen of blood thinning medications as part of anti-coagulation therapy.
15 Plaintiff was required to take these medications for approximately six months, during which
16 time he was instructed by his health care providers that his physical activities must be limited to
17 reduce the risk of injury and bleeding.

18 61. As described herein, the Androderm® Plaintiff consumed caused physical and
19 emotional impairment, which affected his personal and professional life.

20 62. Plaintiffs incurred significant past and/or future medical expenses as a result of
21 the treatment received for Plaintiff's injuries and lost wages. Plaintiff is also at an increased
22 risk for future health problems and disability, and suffered physical pain and mental anguish.

1 63. Had Plaintiff known the true risks associated with the use of testosterone
2 supplements, including Androderm®, he would not have incurred the injuries or damages he did
3 as a result of his use of Androderm®.
4

5 **II. CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**
7 **(Against All Defendants)**
8 **STRICT PRODUCTS LIABILITY**

9 64. Plaintiffs incorporate by reference each and every paragraph of this Complaint as
10 though set forth in full in this cause of action and further allege:
11

12 65. At all times relevant and material to this action, the Defendants designed, tested,
13 manufactured, packaged, marketed, advertised, distributed, promoted, and sold Androderm®,
14 placing the product into the stream of commerce.
15

16 66. The Androderm® manufactured and/or supplied by Defendants was defective
17 and unreasonably dangerous due to inadequate warnings or instructions because, after
18 Defendants knew or should have known that the product created significant risks of serious
19 bodily harm to consumers, they failed to adequately warn consumers and/or their health care
20 providers of such risks.
21

22 67. For example, Defendants failed to adequately warn consumers and/or their health
23 care providers that while a patient was taking Androderm® it was necessary to frequently
24 monitor hematocrit levels to prevent heart attacks, strokes, and thrombotic events.
25

26 68. Moreover, information given by Defendants to the medical community and to
27 consumers concerning the safety and efficacy of Androderm®, especially the information
28 contained in the advertising and promotional material, did not accurately reflect the real risks
associated with using the product.
29

1 69. Despite the fact that Defendants knew or should have known of the defective
2 nature of Androderm®, Defendants continued to design, manufacture, promote, and sell
3 Androderm® so as to maximize sales and profits at the expense of the public health and safety.
4 Defendant thus acted with conscious and deliberate disregard of the foreseeable harms that can
5 be caused by Androderm®.

6 70. Androderm® was defective and unreasonably dangerous when it entered the
7 stream of commerce in one or more of the following particulars:

- 8 a. Androderm® contained design defects in that it caused and/or increased
9 the risk of experiencing an adverse cardiovascular event, including but
10 not limited to heart attack, stroke, and thrombotic events;
- 11 b. Defendants failed to conduct sufficient and adequate clinical trials,
12 testing, and studies to determine whether Androderm® was safer for its
13 reasonably foreseeable applications;
- 14 c. Defendants failed to disclose their failure to conduct adequate safety
15 testing and clinical trials and disclose the results of the clinical trials,
16 testing, and/or studies they did conduct;
- 17 d. As designed, the risks of serious injury inherent in the design of
18 Androderm® outweighed any benefits the product might in fact bestow;
- 19 e. Androderm® was marketed and promoted for use in men when it carried
20 an unreasonable and unnecessary risk of serious injury;
- 21 f. As designed, Androderm® failed to perform as safely as an ordinary
22 consumer would expect when used in an intended or reasonably
23 foreseeable manner;

- g. Androderm® was not safe due, in part, to inadequate and/or defective instructions and inadequate and defective warnings provided by Defendants;
- h. Androderm® was marketed and promoted as a safe treatment of low testosterone in men, when in fact it was not safe for such use;
- i. Androderm® was defective in design in that the product neither bore, nor was packaged with or accompanied by, warnings adequate to alert users, including Plaintiff, of the increased risks associated with using the product including, but not limited to, the risk of serious injury, about which Defendants knew or should have known given the scientific knowledge at the time but which were not readily recognizable to an ordinary consumer;
- j. Androderm® was not accompanied by adequate warnings and/or instructions for use that included adequate information to fully apprise the medical, pharmaceutical and/or scientific communities, and users and/or consumers of the potential risks and serious side effects associated with using the product;
- k. Androderm® was unsafe for normal or reasonably anticipated use. Said product was defective and/or unreasonably dangerous in design, construction and/or composition; and
- l. Androderm® was defective and unreasonably dangerous because the product did not conform to an express warranty of the manufacturer about the product.

1 71. Androderm® was expected to reach and did reach users and/or consumers,
2 including Plaintiff, without substantial change in the defective and/or unreasonably dangerous
3 condition.

4 72. Androderm® was used by Plaintiff in the foreseeable manner normally intended,
5 recommended, promoted, and/or marketed by Defendants.

6 73. Plaintiff and his health care providers could not, through the exercise of
7 reasonable care, have discovered the risk of serious injury associated with and/or caused by
8 Androderm®.

9 74. A reasonable person with actual knowledge of the increased risks associated with
10 using Androderm® would have concluded that Androderm® should not have been marketed
11 and/or used for treatment of symptoms commonly associated with the aging process.

12 75. Had adequate information, warnings, or instructions regarding the safety of the
13 product been provided to Plaintiff or Plaintiff's healthcare providers, Plaintiff would not have
14 used Androderm®.

15 76. Defendants' conduct in this regard was malicious, willful, wanton, oppressive,
16 and fraudulent such that it evidenced a willful and conscious disregard of the rights and safety
17 of others.

18 77. As a direct and proximate cause of the defective and unreasonably dangerous
19 condition of Androderm®, the product was prescribed and Plaintiff used it in a reasonably
20 anticipated manner. As a result, Plaintiff suffered serious injury, harm, damages, economic and
21 non-economic loss, and will continue to suffer such harm, damages, and losses in the future.

22 //

23 //

SECOND CAUSE OF ACTION
(Against All Defendants)
NEGLIGENCE

78. Plaintiffs incorporate by reference each and every paragraph of this Complaint as though set forth in full in this cause of action and further allege:

79. At all times relevant herein, Defendants had a duty to properly manufacture, design, formulate, compound, test, produce, process, assemble, inspect, research, distribute, market, promote, label, package, distribute, prepare for use, sell, prescribe, and adequately warn of the risks and dangers of Androderm®.

80. At all times relevant herein, Defendants negligently and carelessly manufactured, designed, formulated, distributed, compounded, produced, processed, assembled, inspected, distributed, marketed, promoted, labeled, packaged, prepared for use, and sold Androderm® and failed to adequately test and warn of the risks and dangers of Androderm®.

81. Defendants breached their duty and were negligent in their actions, misrepresentations, and omissions in numerous ways including the following:

- a. Failing to conduct adequate pre- and post-market safety testing and research regarding Androderm;
- b. Failing to properly and thoroughly analyze the data resulting from pre- and post-market safety tests and research regarding Androderm® and other testosterone supplements;
- c. Failing to report and disclose to the FDA, the medical community, and the general public the limitations of, scope of, and data resulting from pre- and post-market testing, research, and surveillance regarding

1 Androderm® and other testosterone supplements which indicated risks
2 associated with using the product;

3 d. Failing to use due care in the preparation, design, and development of
4 Androderm® to prevent and/or avoid and/or minimize the risk of injury
5 to individuals when the product was used;

6 e. Designing, manufacturing, marketing, advertising, distributing, and
7 selling Androderm® to consumers, including Plaintiff, without an
8 adequate warning of risks associated with using the product and without
9 proper and/or adequate instructions to avoid the harm which could
10 foreseeably occur as a result of using the product;

11 f. Failing to use due care in the manufacture, inspection, and labeling of
12 Androderm® to prevent risk of injuries to individuals who used the
13 product;

14 g. Failing to provide proper and adequate warnings regarding all possible
15 risks associated with using Androderm;

16 h. Failing to exercise due care when promoting and advertising
17 Androderm® so as to prevent the risk of injury to individuals when the
18 product was used as intended;

19 i. Recklessly and/or negligently failing to disclose to Plaintiff and others,
20 important safety and efficacy information, thereby suppressing material
21 facts about Androderm®;

22 j. Failing to provide adequate and accurate training and information to the
23 sales representatives who sold the product;

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- k. Failing to conduct adequate post-market monitoring and surveillance of Androderm® and analysis of adverse event reports; and
- l. Negligently continuing to manufacture, market, advertise, and distribute Androderm® after Defendants knew or should have known of the risks of serious injury and/or death associated with using it.

82. Defendants knew or should have known that Androderm® was defective and unreasonably dangerous and caused serious side effects about which Plaintiff and his health care providers would not have been aware, yet Defendants nevertheless continued to manufacture, market, advertise, promote, sell, and distribute Androderm®.

83. Defendants' conduct in this regard was malicious, willful, wanton, oppressive, and fraudulent such that it evidenced a willful and conscious disregard of the rights and safety of others.

84. As a direct and proximate consequence of Defendants' negligent, willful, wanton, and/or intentional acts, omissions, misrepresentations, and/or otherwise culpable acts described herein, the Plaintiffs sustained injuries and damages as alleged herein.

85. In particular, Plaintiffs would show that, as alleged here in this cause of action and throughout this complaint, that such intentional, grossly wanton acts and omissions by Defendants were substantial factors in causing his disease and injuries. As the above referenced conduct complained of in this complaint of Defendants, and each of them, inclusive, was and is vile, willful, malicious, fraudulent, oppressive, outrageous, and Defendants, demonstrated such an entire want of care as to establish that their acts and omissions were the result of actual conscious indifference to the rights, safety and welfare of Plaintiff such that Plaintiffs, for the

1 sake of example and by way of punishing said Defendants, seek punitive damages according to
2 proof.

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4 **THIRD CAUSE OF ACTION**
(Against All Defendants)
NEGLIGENT MISREPRESENTATION

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6 86. Plaintiffs incorporate by reference each and every paragraph of this Complaint as
7 though set forth in full in this cause of action and further allege:

8 87. Defendants had a duty to disclose relevant and truthful information regarding the
9 safety of Androderm® to Plaintiff and his medical providers.

10 88. However, Defendants, in the course of their business, negligently misrepresented
11 and failed to disclose material facts concerning the risks that Androderm® posed to patients.

12 89. Defendants recklessly and/or negligently represented to the Plaintiff, as well as
13 his health care providers and other persons and professionals, that Androderm® was safe and
14 that the utility of the product outweighed any risk in use for its intended purposes. Plaintiff and
15 Plaintiff's health care providers justifiably relied upon these representations.

16 90. Defendants' false representations were recklessly and/or negligently made in that
17 Androderm® was safe, but had no reasonable grounds to believe that representation was true at
18 any and all times, and that Androderm® in fact causes injury, was unsafe, and the benefits of its
19 use are far outweighed by the risk associated with use thereof.

20 91. Defendants knew or should have known that its representations and/or omissions
21 were false. Defendants made such false, negligent, and/or reckless representations with the
22 intent or purpose that Plaintiff and his health care providers would rely upon such
23 representations, leading to the use of Androderm® as described.

92. Defendants omitted, suppressed, and/or concealed material facts concerning the dangers and risk of injuries associated with the use of Androderm®, including serious injury and death. Defendants' purpose in concealing and understanding the serious nature of the risks associated with the use of Androderm® was to increase sales.

93. At the time Defendants made these misrepresentations and/or omissions, they knew or should have known that Androderm® was unreasonably dangerous and not what Defendants had represented to Plaintiff, the medical community, and the consuming public.

94. Defendants' misrepresentations and/or omissions were undertaken with an intent that doctors and patients, including Plaintiff, rely upon them.

95. Plaintiff and Plaintiff's health care providers relied on and were induced by Defendants' misrepresentations, omissions, and/or active concealment of the dangers of Androderm®, to employ this product.

96. Had Plaintiff and Plaintiff's health care providers been aware of the increased risk of side effects associated with Androderm® and the relative efficacy of Androderm® compared with other readily available products, this product would not have been used.

97. Defendants' conduct in this regard was malicious, willful, wanton, oppressive, and fraudulent such that it evidenced a willful and conscious disregard of the rights and safety of others.

98. As a direct and proximate consequence of Defendants' negligent, willful, wanton, and/or intentional acts, omissions, misrepresentations, and/or otherwise culpable acts described herein, Plaintiff sustained injuries and damages as alleged herein.

99. This wrongful conduct of Defendants was done with the advance knowledge, authorization, or ratification of an officer, director, or managing agent of each Defendant and its

1 predecessors. In doing the acts alleged in this Complaint, Defendants acted with oppression,
2 fraud, and malice, and Plaintiff is therefore entitled to punitive damages in an amount
3 reasonably related to Plaintiff's actual damages and to Defendants' wealth, and sufficiently
4 large to be an example to others and to deter Defendants and others from engage in similar
5 conduct in the future.

7 **FOURTH CAUSE OF ACTION**
8 **(Against All Defendants)**
9 **FRAUD: MISREPRESENTATION**

100. Plaintiffs incorporate by reference each and every paragraph of this Complaint as
10 though set forth in full in this cause of action and further allege:

101. At all relevant and material times, Defendants falsely and fraudulently
11 represented to Plaintiff's physicians, and through them, to Plaintiff and members of the general
12 public, that Androderm® was safe for use to treat "Low-T," that it had few side effects and
13 would not interfere with their daily lives. These representations were, in fact, false. The true
14 fact is that Androderm® was and is not safe for that purpose, and was, in fact, dangerous to the
15 health and body of Plaintiff.

102. At all relevant and material times, Defendants expressly and/or impliedly
11 warranted that its Androderm® product was safe, of merchantable quality, fit for use in treating
12 low testosterone in men, and had minimal side effects.

103. At all times relevant herein, Defendants engaged in a sales and marketing
11 campaign to promote the sale of Androderm® and willfully deceive Plaintiff, Plaintiff's health
12 care providers, and the general public as to the benefits, health risks, and consequences of using
13 Androderm®. Defendants knew or should have known that Androderm® was and is not safe,
14 not fit and effective for human consumption, hazardous to health, and that Androderm® has a
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1 serious propensity to cause serious injuries to its users, including but not limited to the injuries
2 Plaintiff suffered.

3 104. Defendants also, from the time they first tested, studied, researched, evaluated,
4 endorsed, manufactured, marketed, and distributed Androderm®, and up to the present,
5 willfully deceived Plaintiff by concealing from Plaintiff, Plaintiff's health care providers, and
6 the general public, the true facts concerning the dangers and risk of injury associated with the
7 use of Androderm®, including the increased risk of injury, which the Defendants had a duty to
8 disclose.

9 105. Despite their knowledge, Defendants misrepresented, concealed, and suppressed
10 the true facts concerning Androderm®. For example, Defendants made public and false
11 misrepresentations of material fact regarding the safety of their product, Androderm®,
12 including that it is safe to "treat males with low or no testosterone," "highly effective," that its
13 "side effects are minimal and easily managed."

14 106. Defendants made these material misrepresentations to induce and/or cause
15 Plaintiff and Plaintiff's health care providers to rely on those material misrepresentations, while
16 also withholding and concealing important safety information with the intent to defraud and
17 deceive Plaintiff and Plaintiff's health care providers in that Defendants knew that Plaintiff's
18 health care providers would not prescribe Androderm®, and Plaintiff would not have used
19 Androderm®, if they were aware of the true facts concerning the dangers associated with
20 Androderm®.

21 107. Defendants made these misrepresentations and omissions and otherwise engaged
22 in a course of conduct that included the concealment of information about the true risks
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1 associated with Androderm® with the intent that doctors and patients, including Plaintiff and
2 his health care providers, would rely upon them.

3 108. Plaintiff and Plaintiff's health care providers, as well as the treating medical
4 community, did not know that these representations and omissions were false and/or misleading
5 and therefore justifiably relied upon them.

6 109. Had Defendants not fraudulently concealed such information, Androderm®
7 would not have been used to treat Plaintiff's low testosterone.

8 110. Had Plaintiff or his health care providers been made aware of the increased risks
9 of serious injury associated with Androderm®, Plaintiff would not have used Androderm®.

10 111. Defendants' conduct in this regard was malicious, willful, wanton, oppressive,
11 and fraudulent such that it evidenced a willful and conscious disregard of the rights and safety
12 of others.

13 112. As a direct and proximate result of Defendants' fraudulent misrepresentations,
14 omissions, and intentional concealment of facts, upon which Plaintiff and Plaintiff's health care
15 providers reasonably relied, Plaintiff suffered injuries and damages as alleged herein.

16 113. This wrongful conduct of Defendants was done with the advance knowledge,
17 authorization, or ratification of an officer, director, or managing agent of each Defendant and its
18 predecessors. In doing the acts alleged in this Complaint, Defendants acted with oppression,
19 fraud, and malice, and Plaintiff is therefore entitled to punitive damages in an amount
20 reasonably related to Plaintiff's actual damages and to Defendants' wealth, and sufficiently
21 large to be an example to others and to deter Defendants and others from engage in similar
22 conduct in the future.

23 //

FIFTH CAUSE OF ACTION
(Against All Defendants)

FRAUD: CONCEALMENT, SUPPRESSION
OR OMISSION OF MATERIAL FACT

114. Plaintiffs incorporate by reference each and every paragraph of this Complaint as though set forth in full in this cause of action and further allege:

115. At all relevant and material times, Defendant had the duty and obligation to disclose to Plaintiff and to Plaintiff's health care providers the true facts concerning Androderm®, in that Androderm® was dangerous and defective and how likely it was to cause serious consequences to Plaintiff and other users, and that the true level of risk involved in prescribing Androderm® for the purpose indicated. Defendants made the affirmative representations set forth above to Plaintiff and Plaintiff's health care providers and the general public prior to the day Plaintiff was first prescribed and used Androderm® while concealing material facts.

116. At all relevant and material times, Defendants has the duty and obligation to disclose to Plaintiff and to Plaintiff's health care providers the true facts concerning Androderm®, that the use of and exposure to Androderm® could cause severe injuries, including but not limited to life-threatening cardiac events, strokes, and thrombotic events. At all times mentioned in this Complaint, Defendants, and their predecessors and successors in interest, intentionally, willfully, and maliciously concealed or suppressed the facts set forth above from Plaintiff and Plaintiff's health care providers with the intent to defraud as alleged in this Complaint.

117. At all relevant and material times, neither Plaintiff nor Plaintiff's health care providers were aware of the facts set forth above. Had Defendants not concealed such information, Androderm® would not have been used to treat Plaintiff's low testosterone.

118. Had Plaintiff or his health care providers been made aware of the increased risks of serious injury associated with Androderm®, Plaintiff would not have used Androderm®.

119. Defendants' conduct in this regard was malicious, willful, wanton, oppressive, and fraudulent such that it evidenced a willful and conscious disregard of the rights and safety of others.

120. As a direct and proximate result of Defendants' intentional concealment of facts, upon which Plaintiff and Plaintiff's health care providers reasonably relied, Plaintiff suffered injuries and damages as alleged herein.

121. This wrongful conduct of Defendants was done with the advance knowledge, authorization, or ratification of an officer, director, or managing agent of each Defendant and its predecessors. In doing the acts alleged in this Complaint, Defendants acted with oppression, fraud, and malice, and Plaintiff is therefore entitled to punitive damages in an amount reasonably related to Plaintiff's actual damages and to Defendants' wealth, and sufficiently large to be an example to others and to deter Defendants and others from engage in similar conduct in the future.

SIXTH CAUSE OF ACTION
(Against All Defendants)
BREACH OF IMPLIED WARRANTIES

122. Plaintiffs incorporate by reference each and every paragraph of this Complaint as though set forth in full in this cause of action and further allege:

123. At all relevant and material times, Defendants manufactured, distributed, advertised, promoted, sold, and distributed Androderm®.

124. Defendants knew and intended that Androderm® be used by men to who were experiencing symptoms common with aging to treat low testosterone when the product was placed into the stream of commerce.

125. Defendants knew and intended that Androderm® be used as it was used by Plaintiff.

126. Defendants expressly and/or impliedly warranted to Plaintiff that Androderm® was of merchantable quality and that it was fit and safe for use to treat the symptoms of low testosterone.

127. Plaintiff and his health care providers reasonably relied upon the expertise, skill, judgment, and knowledge of the Defendants and upon the express and/or implied warranty that Androderm® was safe, of merchantable quality, and fit for use to treat Plaintiff's low testosterone.

128. Androderm® was expected to reach and did in fact reach consumers, including Plaintiff, without substantial change in the condition in which the product was manufactured and sold by Defendants.

129. The Androderm® used by Plaintiff was not safe, of merchantable quality, and/or not fit for use to treat low testosterone.

130. Defendants were aware that consumers, including Plaintiff, would use Androderm® to treat low testosterone; which is to say that Plaintiff was a foreseeable user of Defendants' product, Androderm®.

131. Defendants' conduct in this regard was malicious, willful, wanton, oppressive, and fraudulent such that it evidenced a willful and conscious disregard of the rights and safety of others.

132. As a direct and proximate result of the breach of warranties by the Defendants, Plaintiff sustained injuries and damages alleged herein.

SEVENTH CAUSE OF ACTION
(Against All Defendants)
BREACH OF EXPRESS WARRANTIES

133. Plaintiffs incorporate by reference each and every paragraph of this Complaint as though set forth in full in this cause of action and further allege:

134. At all times relevant herein, Defendants expressly represented and warranted to Plaintiff, Plaintiff's health care providers, the medical community, and the public at large that Androderm® is safe, effective, fit, and proper for its intended use. Plaintiff purchased Androderm® relying upon these warranties.

135. In utilizing Androderm®, Plaintiff relied on the skill, judgment, representations, and foregoing express warranties of Defendants.

136. Androderm® did not conform to Defendants' express representations and warranties.

137. Defendants breached these warranties in that Androderm® is unsafe and unfit for its intended uses

138. Defendants further breached these warranties in that Defendants misrepresented, withheld, and intentionally concealed information regarding the safety of and risks associated with Androderm® in the product's labeling, advertising, marketing materials, detail persons, seminar presentations, publications, notice letters, and/or regulatory submissions.

139. Defendants also misrepresented that Androderm® was safer than other similar products used to treat low testosterone when in fact it was not

140. At all relevant times, including during the period that Plaintiff used Androderm®, Androderm® did not perform in accordance with Defendants' representations or as safely as an ordinary consumer would expect when used as intended or in a reasonably foreseeable manner.

141. Defendants' conduct in this regard was malicious, willful, wanton, oppressive, and fraudulent such that it evidenced a willful and conscious disregard of the rights and safety of others.

142. As a result of the above mentioned breaches of express warranties by Defendants, Plaintiff suffered injuries and damages as alleged herein.

EIGHTH CAUSE OF ACTION
(Against All Defendants)
LOSS OF CONSORTIUM

143. Plaintiffs incorporate by reference each and every paragraph of this Complaint as though set forth in full in this cause of action and further allege:

144. At all relevant times stated herein, the Plaintiff Sabrina Smyer, was and is the wife and spouse of Plaintiff Roy Smyer.

145. As a result of the injuries sustained by Plaintiff Roy Smyer, as set forth above, Plaintiff Sabrina Smyer has suffered loss of consortium, including but not limited to, mental anguish and the loss of her husband's society, comfort, protection, love, companionship, affection, sexual relations, and solace.

146. As a result of the injuries sustained by Plaintiff Roy Smyer, as set forth above, Plaintiffs Roy Smyer and Sabrina Smyer have sustained damage to their marital relationship.

PUNITIVE DAMAGES ALLEGATIONS

147. Plaintiffs incorporate by reference each and every paragraph of this Complaint as though set forth in full in this cause of action and further allege:

148. The acts, conduct, and omissions of Defendants, as alleged throughout this Complaint were malicious, willful, wanton, oppressive, and fraudulent such that it evidenced a willful and conscious disregard of the rights and safety of Plaintiff and other Androderm® users and for the primary purpose of increasing Defendants' profits from the sale and distribution of Androderm®. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages against Defendants in an amount appropriate to punish Defendants.

149. Prior to the manufacturing, sale, and distribution of Androderm®, Defendants 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 did experience severe physical, mental, and emotional injuries. Further, Defendants, through their officers, directors, managers, and agents, knew that the medication presented a substantial and unreasonable risk of harm to the public, including Plaintiff and as such, Defendants unreasonably subjected consumers of said drugs to risk of injury or death from using Androderm®.

150. Despite its knowledge, Defendants, acting through its officers, directors and managing agents for the purpose of enhancing Defendants' profits, knowingly and deliberately failed to remedy the known defects in Androderm® and failed to warn the public, including Plaintiff, of the extreme risk of injury occasioned by said defects inherent in Androderm®. Defendants and their agents, officers, and directors intentionally proceeded with the manufacturing, sale, and distribution and marketing of Androderm® knowing these actions would expose persons to serious danger in order to advance Defendants' pecuniary interest and monetary profits.

151. Defendants' conduct was despicable and so contemptible that it would be looked down upon and despised by ordinary decent people and was carried on by Defendants with willful and conscious disregard for the safety of Plaintiff, entitling Plaintiffs to exemplary damages.

PRAYER FOR DAMAGES

WHEREFORE, Plaintiffs Roy and Sabrina Smyer pray for damages on the entire Complaint as follows:

- a. Compensatory damages for the described losses with respect to each cause of action including, but not limited to past and future pain, suffering, emotional distress, loss of enjoyment of life, loss of consortium, and other non-economic damages in an amount to be determined at trial of this action;
- b. Past and future medical expenses, as well as other economic damages in an amount to be determined at trial of this action;
- c. Past and future lost wages and loss of earning capacity;
- d. Past and future emotional distress, loss of consortium, loss of enjoyment of life, and pain and suffering;
- e. Consequential damages;
- f. Punitive damages with respect to each cause of action;
- g. Reasonable attorneys' fees where recoverable;
- h. Costs of this action;
- i. Pre and post-judgment and all other interest recoverable; and
- j. Such other additional and further relief as Plaintiffs may be entitled to in law or equity.

Dated this 26th day of February, 2014.

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DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial

Dated this 26th day of February, 2014.

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL PERSONAL INJURY CASE**

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT.

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 3.3(e)).

Given to the Plaintiff/Cross-Complainant/Attorney of Record on 2/14/2014 SHERRI R. CARTER, Executive Officer/Clerk

SHERRI R. CARTER, Executive Officer/Clerk

LACIV PI 190 (Rev09/13)
LASC Approved 05-06
For Optical Use

By *UNV* Deputy Clerk

**NOTICE OF CASE ASSIGNMENT -
UNLIMITED CIVIL CASE**