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17 UNITED STATES DISTRICT COURT

18 FOR THE CENTAL DISTRICT OF CALIFORNIA

19 GONZALO MENENDEZ and
20 KRISTIE MENENDEZ, h/w

21 Plaintiffs,

22 v.

23 PFIZER, INC.,

24 Defendant.

Case No. 2:14-cv-06026

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

1. **STRICT LIABILITY – FAILURE TO WARN**
2. **NEGLIGENCE**
3. **BREACH OF IMPLIED WARRANTY**
4. **BREACH OF EXPRESS WARRANTY**
5. **FRAUD**
6. **NEGLIGENT MISREPRESENTATION**
7. **VIOLATION OF CONSUMER PROTECTION LAW**
8. **LOSS OF CONSORTIUM**

1 **COMPLAINT**

2 Plaintiffs, Gonzalo Menendez and Kristie Menendez (“Plaintiffs”), residing in
3 Studio City, California by and through their undersigned counsel, hereby sue Defendant
4 Pfizer Inc. (“Defendant”) and allege as follows:

5 **INTRODUCTION**

6 1. This case involves the prescription drug Depo-Testosterone, which is
7 manufactured, sold, distributed and promoted by Defendant, Pfizer Inc., as a
8 testosterone replacement therapy.

9 2. Defendant misrepresented that Depo-Testosterone is a safe and effective
10 treatment for hypogonadism or "low testosterone," when in fact the drug causes serious
11 medical problems, including life threatening cardiac events, strokes, and thrombolytic
12 events.

13 3. Testosterone Replacement Therapy Manufacturers have engaged in
14 aggressive advertising campaigns for Testosterone drugs.

15 4. As a result, diagnoses of low testosterone have increased exponentially.
16 This has directly related to Depo-Testosterone’s sales increasing. Testosterone
17 replacement therapy drugs have over a \$2 billion market.

18 5. However, consumers of Depo-Testosterone were misled as to the drug’s
19 safety and efficacy, and as a result have suffered injuries including life-threatening
20 cardiac events, strokes, and thrombolytic events.

21 **PARTIES**

22 6. Plaintiffs are natural persons and citizens of the State of California and
23 Plaintiff, Gonzalo Menendez, used the prescription Depo-Testosterone as prescribed
24 and directed by his physician in the State of California. .

25 7. At all times herein mentioned, Defendant, Pfizer Inc., was and is a
26 corporation existing under the laws of incorporation of the State of Delaware, with its
27 principal place of business in New York, New York, and doing business within the
28 State of California

1 8. At all times herein mentioned, Defendant, Pfizer Inc., in interstate
2 commerce and in the State of California, advertised, promoted, supplied, and sold to
3 distributors and retailers for resale to physicians, hospitals, medical practitioners, and
4 the general public a certain pharmaceutical product, Depo-Testosterone.

5 9. By way of background, Depo-Testosterone (testosterone cypionate
6 injection) received original approval by the Food and Drug Administration (FDA) on
7 July 25, 1979, by the company Pharmacia and Upjohn. Depo-Testosterone is currently
8 approved and available in two strengths: (i) 100 mg/mL solution containing testosterone
9 cypionate, benzyl benzoate, cottonseed oil and benzyl alcohol (as preservative); and (ii)
10 200 mg/mL solution containing testosterone cypionate, benzyl benzoate, cottonseed oil
11 and benzyl alcohol (as preservative). Pfizer Inc. currently owns all rights to Depo-
12 Testosterone.

13 **JURISDICTION AND VENUE**

14 10. This Court has jurisdiction over Defendant and this action pursuant to 28
15 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiffs and
16 Defendant and because the amount in controversy between Plaintiffs and Defendant
17 exceeds \$75,000, exclusive of interest and cost, and because, among other reasons,
18 Defendant has significant contacts with this district by virtue of doing business within
19 this judicial district.

20 11. Venue is proper within this district pursuant to 28 U.S.C. § 1391(b)(1)
21 because Plaintiffs reside in and are citizens of the State of California.

22 **GENERAL ALLEGATIONS**

23 12. This action is for damages brought on behalf of Plaintiff Kristie Menendez
24 and Plaintiff, Gonzalo Menendez, who was prescribed and has taken the prescription
25 drug Depo-Testosterone, as tested, studied, researched, evaluated, endorsed, designed,
26 formulated, compounded, manufactured, produced, processed, assembled, inspected,
27 distributed, marketed, labeled, promoted, packaged, advertised for sale, prescribed, sold
28 or otherwise placed in the stream of interstate commerce by Defendant. This action

1 seeks, among other relief, general and special damages and equitable relief in order to
2 enable Plaintiff Gonzalo Menendez to treat and monitor the dangerous, severe and life-
3 threatening side effects caused by this drug.

4 13. Defendant's wrongful acts, omissions, and fraudulent misrepresentations
5 caused Plaintiffs' injuries and damages.

6 14. At all times herein mentioned, the Defendant was engaged in the business
7 of, or was successor in interest to, entities engaged in the business of research,
8 licensing, designing, formulating, compounding, testing, manufacturing, producing,
9 processing, assembling, inspecting, distributing, marketing, labeling, promoting,
10 packaging and/or advertising for sale or selling the prescription drug Depo-Testosterone
11 for the use and application by Plaintiff, Gonzalo Menendez.

12 15. At all times herein mentioned, Defendant was authorized to do business
13 within the state of residence of Plaintiffs.

14 16. At all times herein mentioned, the officers and directors of Defendant
15 participated in, authorized, and directed the production and promotion of the
16 aforementioned product when they knew, or with the exercise of reasonable care should
17 have known, of the hazards and dangerous propensities of said product and thereby
18 actively participated in the tortious conduct which resulted in the injuries suffered by
19 Plaintiffs herein.

20 17. Plaintiffs file this lawsuit within the applicable limitations period of first
21 suspecting that said drugs caused the appreciable harm sustained by Plaintiff, Gonzalo
22 Menendez. Plaintiffs could not, by the exercise of reasonable diligence, have discovered
23 the wrongful cause of Plaintiff Gonzalo Menendez's injuries at an earlier time because
24 the injuries were caused without perceptible trauma or harm, and when Plaintiff's
25 injuries were discovered their cause was unknown to Plaintiff. Plaintiff did not suspect,
26 nor did Plaintiff have reason to suspect, that Plaintiff had been injured, the cause of the
27 injuries, or the tortious nature of the conduct causing the injuries, until less than the
28 applicable limitations period prior to the filing of this action. Additionally, Plaintiff was

1 prevented from discovering this information sooner because Defendant herein
2 misrepresented and continue to misrepresent to the public and to the medical profession
3 that the drug Depo-Testosterone is safe and free from serious side effects, and
4 Defendant has fraudulently concealed facts and information that could have led
5 Plaintiffs to discover a potential cause of action.

6 **OVERVIEW**

7 18. Pfizer asserts, “Depo-Testosterone: Use for more than 30 years in the
8 treatment of males with low testosterone.”

9 19. Depo-Testosterone is a testosterone replacement therapy indicated for use
10 in men with hypogonadism. Hypogonadism is a specific condition of the sex glands,
11 which in men may involve the diminished production or nonproduction of testosterone.

12 20. While Defendant emphasizes safe use in men with “low testosterone,” a
13 study published in the *Journal of the American Medical Association* (“JAMA”) in
14 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
17 of fatigue, and one quarter of men did not even have their testosterone levels tested
18 before they received a testosterone prescription.

19 21. Manufacturers of testosterone replacement therapy drugs have coordinated
20 an aggressive advertising campaign designed to convince men that they suffered from
21 low testosterone.

22 22. The advertising campaigns suggest that various symptoms often associated
23 with other conditions may be caused by low testosterone and encourage men to discuss
24 testosterone replacement therapy with their doctors if they experienced any of the
25 "symptoms" of low testosterone. These “symptoms” include listlessness, increased body
26 fat, and moodiness—all general symptoms that are often a result of aging, weight gain,
27 or lifestyle, rather than low testosterone.

1 23. Since the FDA approved Depo-Testosterone, Defendant has also sought to
2 convince primary care physicians that low testosterone levels are widely under-
3 diagnosed, and that conditions associated with normal aging could be caused by low
4 testosterone levels.

5 24. Defendant has promoted its product Depo-Testosterone as easy and safe,
6 “used for more than 30 years in the treatment of males with low testosterone.”

7 25. Defendant has convinced millions of men to discuss testosterone
8 replacement therapy with their doctors, and consumers and their physicians relied on
9 Defendant’s promises of safety and ease. Although prescription testosterone
10 replacement therapy had been available for years, millions of men who had never been
11 prescribed testosterone flocked to their doctors and pharmacies.

12 26. What consumers received, however, were not safe drugs, but a product
13 which causes life-threatening problems, including strokes and heart attacks.

14 27. Testosterone drug manufacturers have successfully promoted and increased
15 sales for testosterone, including Depo-Testosterone, which already had prominent
16 existence in the market of testosterone replacement therapy drugs. Reports on
17 advertising for testosterone stated that spending on print and television advertisements
18 rose by more than 170% in a span of three years – to more than \$14 million in 2011,
19 according to advertising tracker Kantar Media. Matthew Perrone, *Testosterone Gets*
20 *Marketing Push, But Long Term Unknown*, Sept. 10, 2012, available at:
21 [http://usatoday30.usatoday.com/money/business/story/2012/09/10/testosterone-](http://usatoday30.usatoday.com/money/business/story/2012/09/10/testosterone-getsmarketing-push-but-long-term-unknown/57715666/1)
22 [getsmarketing- push-but-long-term-unknown/57715666/1](http://usatoday30.usatoday.com/money/business/story/2012/09/10/testosterone-getsmarketing-push-but-long-term-unknown/57715666/1).

23 28. *Consumer Reports* cited “drugmakers' big-time spending on marketing the
24 [testosterone] products, with promotional expenses up to \$100 million in 2012 from \$14
25 million in 2011.” For 2013, that figure was expected to grow substantially. Moreover,
26 reports contend sales of testosterone drugs growing by 90% over 5 years, and reaching
27 \$1.9 billion in 2011. By 2017, the entire testosterone market is expected to hit \$5
28 billion. Tracy Stanton, *JAMA Study Raises Red Flag on Big-Selling Testosterone*

1 *Drugs*, Nov. 6, 2013, FiercePharma, *available at*:
2 [http://www.fiercepharma.com/story/jama-study-raises-red-flagbig-selling-testosterone-](http://www.fiercepharma.com/story/jama-study-raises-red-flagbig-selling-testosterone-
3 drugs/2013-11-06#ixzz2yyFeLEXd)

4 29. Furthermore, sales of replacement therapies had more than doubled by
5 2006, and is expected to triple to \$5 billion by 2017, according to forecasts by Global
6 Industry Analysts. Shannon Pettypiece, *Are Testosterone Drugs the Next Viagra?*, May
7 10, 2012, Bloomberg Businessweek, *available at*:
8 [http://www.businessweek.com/articles/2012-05-10/are-testosterone-drugs-the-next-](http://www.businessweek.com/articles/2012-05-10/are-testosterone-drugs-the-next-
9 viagra)

10 30. The overall marketing program sought to create the image and belief by
11 consumers and physicians that low testosterone affected a large number of men in the
12 United States and that the use of testosterone, including Depo-Testosterone, is safe for
13 human use, even though Defendant knew these to be false, and even though Defendant
14 had no reasonable grounds to believe them to be true.

15 31. There have been a number of studies suggesting that testosterone in men
16 increases the risk of heart attacks and strokes.

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

20 33. In November of 2013, a JAMA study was released entitled “Association of
21 Testosterone Therapy with Mortality, Myocardial Infarction, and Stroke in Men with
22 Low Testosterone Levels” which indicated that testosterone therapy raised the risk of
23 death, heart attack and stroke by about 30%.

24 34. On January 29, 2014, a study was released in PLOS ONE entitled
25 “Increased Risk of Non-Fatal Myocardial Infarction Following Testosterone Therapy
26 Prescription in Men” which indicated that testosterone use doubled the risk of heart
27 attacks in men over sixty five years old and tripled the risk of heart attacks in men
28 younger than sixty five with a previous diagnosis of heart disease.

1 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

2 35. The FDA approved Depo-Testosterone (testosterone cypionate injection)
3 on July 25, 1979. Depo-Testosterone Injection is indicated for replacement therapy in
4 males for conditions associated with a deficiency or absence of endogenous
5 testosterone: i.e., (i) primary hypogonadism; and (ii) hypogonatropic hypogonadism.
6 After FDA approval, Depo- Testosterone was widely branded by Defendant as a safe
7 and effective testosterone replacement therapy.

8 36. Depo-Testosterone is a testosterone injection. It contains a strength/dose of
9 either 100 mg/mL solution of testosterone cypionate or 200 mg/mL testosterone
10 cypionate. Its prescribed dose, accordingly, is administered every 2 to 4 weeks, given as
11 an intramuscular injection.

12 37. Testosterone is a primary androgenic hormone responsible for normal
13 growth, development of the male sex organs, and maintenance of secondary sex
14 characteristics.

15 38. The hormone plays a role in sperm production, fat distribution,
16 maintenance of muscle strength and mass, and sex drive.

17 39. In men, testosterone levels normally begin a gradual decline after the age
18 of thirty.

19 40. The average testosterone levels for most men range from 300 to 1,000
20 nanograms per deciliter of blood. However, testosterone levels can fluctuate greatly
21 depending on many factors, including sleep, time of day, and medication. Resultantly,
22 many men who fall into the hypogonadal range one day will have normal testosterone
23 levels the next.

24 41. Depo-Testosterone may produce undesirable side effects to patients who
25 use the drug, including but not limited to, myocardial infarction, stroke, and death.

26 42. In some patient populations, Depo-Testosterone use may increase the
27 incidence of myocardial infarctions and death by over 500%.

1 43. In addition to the above, Depo-Testosterone has been linked to several
2 severe and life changing medical disorders in both users and those who come into
3 physical contact with users or the unwashed clothes of someone who injected Depo-
4 Testosterone. Patients taking testosterone may experience enlarged prostates and
5 increased serum prostate-specific antigen levels.

6 44. Testosterone replacement therapy drug manufacturers' strategy has been to
7 aggressively market and sell their products by misleading potential users about the
8 prevalence and symptoms of low testosterone and by failing to protect users from
9 serious dangers that Defendant knew or should have known to result from use of its
10 products.

11 45. Defendant's program sought to create the image and belief by consumers
12 and their physicians that the use of Depo-Testosterone was a safe method of alleviating
13 their symptoms, had few side effects and would not interfere with their daily lives, even
14 though Defendant knew or should have known these to be false, and even though the
15 Defendant had no reasonable grounds to believe them to be true.

16 46. Defendant purposefully downplayed, understated and outright ignored the
17 health hazards and risks associated with using Depo-Testosterone. Defendant deceived
18 potential Depo-Testosterone users by relaying positive information through the press
19 and manipulating hypogonadism statistics to suggest widespread disease prevalence,
20 while downplaying known adverse and serious health effects.

21 47. Defendant concealed material relevant information from potential Depo-
22 Testosterone users and minimized user and prescriber concern regarding the safety of
23 Depo-Testosterone.

24 48. In particular, the warnings Defendant gives fail to mention any potential
25 cardiac or stroke side effects and falsely represents that Defendant adequately tested
26 Depo-Testosterone for all likely side effects.

27 49. As a result of these representations about its product, men in the United
28 States pervasively seek out prescriptions for testosterone replacement therapy drugs. If

1 Plaintiff, Gonzalo Menendez, had known the risks and dangers associated with Depo-
2 Testosterone, Plaintiff would not have taken Depo-Testosterone and consequently
3 would not have been subject to its serious side effects.

4 **SPECIFIC FACTUAL ALLEGATIONS**

5 50. Plaintiff, Gonzalo Menendez, was prescribed Depo-Testosterone 200
6 mg/ml and used it as directed from approximately May 25, 2011 to August 29, 2012.

7 51. Plaintiff was approximately thirty nine (39) years of age when he was
8 prescribed and used testosterone for symptoms he attributed to low testosterone.

9 52. Plaintiff was healthy prior to taking testosterone. In keeping with his
10 healthy and proactive lifestyle, Plaintiff agreed to initiate testosterone treatment.

11 53. Plaintiff was diagnosed with multiple acute infarctions on or about August
12 6, 2012. As a result, he was hospitalized for a prolonged period of time. Due to his
13 injuries, he is at a markedly increased risk of additional cerebrovascular accidents and
14 death.

15 54. Had Defendant properly disclosed the risks associated with testosterone,
16 Plaintiff would have avoided the risk of injury by either not using testosterone at all,
17 severely limiting the dosage and length of use, and/or by closely monitoring the degree
18 to which the drugs were adversely affecting his health.

19 55. Plaintiff files this lawsuit within two (2) years of first suspecting that
20 Depo-Testosterone was the cause of appreciable harm sustained by Plaintiff, within two
21 (2) years of first suspecting or having reason to suspect any wrongdoing, and within the
22 applicable limitations period of first discovering his injuries and the wrongful conduct
23 that caused such injuries. Plaintiff could not by the exercise of reasonable diligence
24 have discovered any wrongdoing, nor could Plaintiff have discovered the causes of his
25 injuries at an earlier time because some injuries occurred without initial perceptible
26 trauma or harm, and when Plaintiff's injuries were discovered, their causes were not
27 immediately known.

1 56. Plaintiff did not suspect, nor did he have reason to suspect, that
2 wrongdoing had caused his injuries, nor did Plaintiff have reason to suspect the tortious
3 nature of the conduct causing the injuries, until recently and has filed the herein action
4 well within the applicable statute of limitations period. Plaintiff had no knowledge of
5 the defects in Depo-Testosterone and the wrongful conduct of the Defendant as set forth
6 herein, nor did Plaintiff have access to the information regarding other injuries and
7 complaints in the possession of Defendant. Additionally, Plaintiff was prevented from
8 discovering this information sooner because Defendant herein misrepresented and
9 continue to misrepresent to the public, to the medical profession and to Plaintiff that
10 Depo-Testosterone is safe and free from serious defects and side effects and Defendant
11 has fraudulently concealed facts and information that could have led Plaintiff to an
12 earlier discovery of potential causes of action.

13 57. As alleged herein, as a direct, proximate, and legal result of Defendant's
14 negligence and wrongful conduct, and the unreasonably dangerous and defective
15 characteristics of the drug testosterone, Plaintiff has suffered severe and permanent
16 physical and emotional injuries, including, but not limited to multiple acute infarctions.
17 Plaintiff has endured pain and suffering, has suffered economic loss, including incurring
18 significant expenses for medical care and treatment and will continue to incur such
19 expenses in the future. Plaintiffs seek actual and punitive damages from Defendant as
20 alleged herein.

21 **FIRST CAUSE OF ACTION**
22 **STRICT LIABILITY – FAILURE TO WARN**

23 58. Plaintiffs incorporate by reference herein each of the allegations heretofore
24 set forth in this Complaint as though fully set forth herein.

25 59. The Depo-Testosterone manufactured and/or supplied by Defendant was
26 defective due to inadequate warnings or instructions because Defendant knew or should
27 have known that the product created significant risks of serious bodily harm to
28 consumers, and they failed to adequately warn consumers and/or their health care

1 providers of such risks. The Depo-Testosterone manufactured and/or supplied by
2 Defendant was defective due to inadequate post-marketing warnings or instructions
3 because, after Defendant knew or should have known of the risk of serious bodily harm
4 from the use of Depo-Testosterone, Defendant failed to provide an adequate warning to
5 consumers and/or their health care providers of the product, knowing the product could
6 cause serious injury.

7 60. As a direct and proximate result of Plaintiff's reasonably anticipated use of
8 Depo-Testosterone as manufactured, designed, sold, supplied, marketed and/or
9 introduced into the stream of commerce by Defendant, Plaintiffs suffered serious injury,
10 harm, damages, economic and non-economic loss and Plaintiffs will continue to suffer
11 such harm, damages and losses in the future.

12 **SECOND CAUSE OF ACTION**
13 **NEGLIGENCE**

14 61. Plaintiffs incorporate by reference herein each of the allegations set forth in
15 this Complaint as though set forth herein.

16 62. At all times herein mentioned, Defendant had a duty to properly
17 manufacture, design, formulate, compound, test, produce, process, assemble, inspect,
18 research, distribute, market, label, package, distribute, prepare for use, sell, prescribe
19 and adequately warn of the risks and dangers of Depo-Testosterone.

20 63. At all times herein mentioned, Defendant negligently and carelessly
21 manufactured, designed, formulated, distributed, compounded, produced, processed,
22 assembled, inspected, distributed, marketed, labeled, packaged, prepared for use and
23 sold Depo-Testosterone and failed to adequately test and warn of the risks and dangers
24 of Depo-Testosterone.

25 64. Despite the fact that Defendant knew or should have known that Depo-
26 Testosterone caused unreasonable, dangerous side effects, Defendant continued to
27 market Depo-Testosterone to consumers including Plaintiff, Gonzalo Menendez, when
28 there were safer alternative methods of treating loss of energy, libido erectile

1 dysfunction, depression, loss of muscle mass and other conditions Depo-Testosterone
2 claims are caused by low testosterone.

3 65. Defendant knew or should have known that consumers such as Plaintiff
4 would foreseeably suffer injury as a result of Defendant's failure to exercise ordinary
5 care as described above.

6 66. Defendant's negligence was a proximate cause of Plaintiffs' injuries, harm
7 and economic loss which Plaintiffs suffered, and will continue to suffer, as described
8 and prayed for herein.

9
10 **THIRD CAUSE OF ACTION**
FOR BREACH OF IMPLIED WARRANTY

11 67. Plaintiffs incorporate by reference here each of the allegations heretofore
12 set forth in this Complaint as though fully set forth herein.

13 68. Prior to the time that the aforementioned products were used by Plaintiff,
14 Gonzalo Menendez, Defendant impliedly warranted to Plaintiff and Plaintiff's agents
15 and physicians that Depo-Testosterone was of merchantable quality and safe and fit for
16 the use for which it was intended.

17 69. Plaintiff was unskilled in the research, design and manufacture of the
18 products and reasonably relied entirely on the skill, judgment and implied warranty of
19 the Defendant in using Depo-Testosterone.

20 70. Depo-Testosterone was neither safe for its intended use nor of
21 merchantable quality, as warranted by Defendant, in that Depo-Testosterone has
22 dangerous propensities when used as intended and will cause severe injuries to users.

23 71. As a result of the above mentioned breach of implied warranties by
24 Defendant, Plaintiffs suffered injuries and damages as alleged herein.

25
26 **FOURTH CAUSE OF ACTION**
FOR BREACH OF EXPRESS WARRANTY

27 72. Plaintiffs incorporate by reference here each of the allegations set forth in
28 this Complaint as though fully set forth here.

1 73. At all times mentioned, Defendant expressly represented and warranted to
2 Plaintiff and Plaintiff's agents and physicians, by and through statements made by
3 Defendant or its authorized agents or sales representatives, orally and in publications,
4 package inserts and other written materials intended for physicians, medical patients
5 and the general public, that Depo-Testosterone is safe, effective, fit and proper for its
6 intended use. Plaintiff, Gonzalo Menendez, purchased Depo-Testosterone relying upon
7 these warranties.

8 74. In utilizing Depo-Testosterone, Plaintiff relied on the skill, judgment,
9 representations, and foregoing express warranties of Defendant. These warranties and
10 representations were false in that Depo-Testosterone is unsafe and unfit for its intended
11 uses.

12 75. As a result of the abovementioned breach of express warranties by
13 Defendant, Plaintiffs suffered injuries and damages as alleged herein.

14 **FIFTH CAUSE OF ACTION**
15 **FRAUD**

16 76. Plaintiffs incorporate by reference here each of the allegations set forth in
17 this Complaint as though set forth fully herein.

18 77. Defendant, from the time it first tested, studied, researched, evaluated,
19 endorsed, manufactured, marketed and distributed Depo-Testosterone, and up to the
20 present, willfully deceived Plaintiff, Gonzalo Menendez, by concealing from him,
21 Plaintiff's physicians and the general public, the true facts concerning Depo-
22 Testosterone, which the Defendant had a duty to disclose.

23 78. At all times herein mentioned, Defendant conducted a sales and marketing
24 campaign to promote the sale of Depo-Testosterone and willfully deceive Plaintiff,
25 Plaintiff's physicians and the general public as to the benefits, health risks and
26 consequences of using Depo-Testosterone. Defendant knew of the foregoing, that Depo-
27 Testosterone is not safe, fit and effective for human consumption, that using Depo-
28 Testosterone is hazardous to health, and that Depo-Testosterone has a serious

1 propensity to cause serious injuries to its users, including but not limited to the injuries
2 Plaintiff suffered.

3 79. Defendant concealed and suppressed the true facts concerning Depo-
4 Testosterone with the intent to defraud Plaintiff, in that Defendant knew that Plaintiff's
5 physicians would not prescribe Depo-Testosterone, and Plaintiff would not have used
6 Depo-Testosterone, if they were aware of the true facts concerning its dangers.

7 80. As a result of Defendant's fraudulent and deceitful conduct, Plaintiffs
8 suffered injuries and damages as alleged herein.

9
10 **SIXTH CAUSE OF ACTION**
NEGLIGENT MISREPRESENTATION

11 81. Plaintiffs incorporate by reference herein each of the allegations set forth in
12 this Complaint as though fully set forth herein.

13 82. From the time Depo-Testosterone was first tested, studied, researched,
14 evaluated, endorsed, manufactured, marketed and distributed, and up to the present,
15 Defendant made misrepresentations to Plaintiff, Gonzalo Menendez, Plaintiff's
16 physicians and the general public, including but not limited to the misrepresentation that
17 Depo-Testosterone was safe, fit and effective for human consumption. At all times
18 mentioned, Defendant conducted a sales and marketing campaign to promote the sale of
19 Depo-Testosterone and willfully deceive Plaintiff, Plaintiff's physicians and the general
20 public as to the health risks and consequences of the use of the abovementioned
21 product.

22 83. The Defendant made the foregoing representation without any reasonable
23 ground for believing them to be true. These representations were made directly by
24 Defendant, by sales representatives and other authorized agents of Defendant, and in
25 publications and other written materials directed to physicians, medical patients and the
26 public, with the intention of inducing reliance and the prescription, purchase and use of
27 the subject product.

1 84. The representations by the Defendant were in fact false, in that Depo-
2 Testosterone is not safe, fit and effective for human consumption, using Depo-
3 Testosterone is hazardous to health, and Depo-Testosterone has a serious propensity to
4 cause serious injuries to users, including but not limited to the injuries suffered by
5 Plaintiff.

6 85. The foregoing representations by Defendant, and each of them, were made
7 with the intention of inducing reliance and the prescription, purchase and use of Depo-
8 Testosterone.

9 86. In reliance of the misrepresentations by the Defendant, and each of them,
10 Plaintiff, Gonzalo Menendez, was induced to purchase and use Depo-Testosterone. If
11 Plaintiff had known of the true facts and the facts concealed by the Defendant, Plaintiff
12 would not have used Depo-Testosterone. The reliance of Plaintiff upon Defendant's
13 misrepresentations was justified because such misrepresentations were made and
14 conducted by individuals and entities that were in a position to know the true facts.

15 87. As a result of the foregoing negligent misrepresentations by Defendant,
16 Plaintiffs suffered injuries and damages as alleged herein.

17 **SEVENTH CAUSE OF ACTION**
18 **VIOLATION OF CONSUMER PROTECTION LAW**

19 88. Plaintiffs incorporate by reference the paragraphs above, as though fully
20 set forth herein.

21 89. This Complaint is filed and these proceedings are instituted pursuant to
22 applicable consumer protection law including (without limitations) California Civil
23 Code section 1750, *et seq.*, to obtain injunctive relief, any other relief this Court deems
24 proper, and attorneys' fees from Defendants.

25 90. Defendant's acts and business practices constitute unlawful methods of
26 competition and unfair or deceptive acts within the meaning of applicable law including
27 but not limited to the following:
28

- 1 a. Representing to Plaintiff, Plaintiff's physicians and the general
2 public that Depo-Testosterone was safe, fit and effective for all
3 patients, knowing that said representations were false;
- 4 b. Concealing from Plaintiff, Plaintiff's physicians and the general
5 public that Depo-Testosterone had a serious propensity to cause
6 injuries to users;
- 7 c. Engaging in advertising programs designed to create the image,
8 impression and belief by consumers and physicians that the use of
9 Depo-Testosterone was safe, and had fewer side effects and adverse
10 reactions than other options for treating symptoms of low
11 testosterone, even though the Defendant knew these to be false,
12 and/or had no reasonable grounds to believe them to be true;
- 13 d. Purposely downplaying and understating the health hazards and risks
14 associated with Depo-Testosterone;
15

16 91. Defendant's acts and business practices constitute unlawful methods of
17 competition and unfair or deceptive acts within the meaning of applicable law.
18 Plaintiffs demand that Defendant immediately cease the illegal conduct alleged herein.

19 92. The illegal conduct alleged herein is continuing and there is no indication
20 that Defendant will refrain from such activity in the future.

21 93. Pursuant to the applicable law, Plaintiffs are entitled to injunctive relief,
22 attorneys' fees and any other relief this Court deems proper.

23 **EIGHTH CAUSE OF ACTION**
24 **LOSS OF CONSORTIUM**

25 94. Plaintiffs incorporate by reference the paragraphs above, as though fully
26 set forth herein.

27 95. Plaintiff, Kristie Menendez, is the wife of Plaintiff, Gonzalo Menendez,
28 and is entitled to his care, comfort, companionship, services, and consortium.

1 96. As a direct and proximate result of the foregoing, Kristie Menendez was
2 deprived of the comfort and enjoyment of the services and society of her spouse,
3 Gonzalo Menendez, and has suffered and will continue to suffer economic loss, and has
4 otherwise been emotionally and economically injured. The Plaintiff's injuries and
5 damages are permanent and will continue into the future. The Plaintiffs seek actual and
6 punitive damages from the Defendant as alleged herein.

7 **PUNITIVE DAMAGES ALLEGATIONS**

8 97. Plaintiffs incorporate by reference here each of the allegations set forth in
9 this Complaint as though fully set forth herein.

10 98. The acts, conduct, and omissions of Defendant, as alleged throughout this
11 Complaint were willful and malicious. Defendant committed these acts with a conscious
12 disregard for the rights of Plaintiff and other Depo-Testosterone users and for the
13 primary purpose of increasing Defendant's profits from the sale and distribution of
14 Depo-Testosterone. Defendant's outrageous and unconscionable conduct warrants an
15 award of exemplary and punitive damages against Defendant in an amount appropriate
16 to punish and make an example of Defendant.

17 99. Prior to the manufacturing, sale, and distribution of Depo-Testosterone,
18 Defendant knew that said medication was in a defective condition as previously
19 described herein and knew that those who were prescribed the medication would
20 experience and did experience severe physical, mental, and emotional injuries. Further,
21 Defendant, through its officers, directors, managers, and agents, knew that the
22 medication presented a substantial and unreasonable risk of harm to the public,
23 including Plaintiff and as such, Defendant unreasonably subjected consumers of said
24 drugs to risk of injury or death from using Depo-Testosterone.

25 100. Despite its knowledge, Defendant, acting through its officers, directors and
26 managing agents for the purpose of enhancing Defendant's profits, knowingly and
27 deliberately failed to remedy the known defects in Depo-Testosterone and failed to
28 warn the public, including Plaintiff, of the extreme risk of injury occasioned by said

1 defects inherent in Depo-Testosterone. Defendant and its agents, officers, and directors
2 intentionally proceeded with the manufacturing, sale, and distribution and marketing of
3 Depo-Testosterone knowing these actions would expose persons to serious danger in
4 order to advance Defendant's pecuniary interest and monetary profits.

5 101. Defendant's conduct was despicable and so contemptible that it would be
6 looked down upon and despised by ordinary decent people, and was carried on by
7 Defendant with willful and conscious disregard for the safety of Plaintiffs, entitling
8 Plaintiffs to exemplary damages.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs prays for relief and judgment against Defendant as
11 follows:

12 (a) For general damages in a sum in excess of the jurisdictional minimum of
13 this Court;

14 (b) For an injunction prohibiting Defendant from engaging in conduct which
15 violates the applicable consumer protection laws;

16 (c) For medical, incidental, and hospital expenses according to proof;

17 (d) For pre-judgment and post-judgment interest as provided by law;

18 (e) For full refund of all purchase costs Plaintiff paid for testosterone;

19 (f) For compensatory damages in excess of the jurisdictional minimum of this
20 Court;

21 (g) For consequential damages in excess of the jurisdictional minimum of this
22 Court;

23 (h) For punitive damages in an amount in excess of any jurisdictional
24 minimum of this Court and in an amount sufficient to impress upon Defendant
25 the seriousness of their conduct and to deter similar conduct in the future;

26 (i) For attorneys' fees, expenses, and costs of this action; and

27 (j) For such further relief as this Court deems necessary, just, and proper.
28

DEMAND FOR JURY TRIAL

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

DATED: July 31, 2014

KAISER GORNICK LLP

By: /s/ Lawrence J. Gornick
Lawrence J. Gornick
Attorneys for Plaintiffs

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