

# CIVIL COVER SHEET

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

<p><b>I. (a) PLAINTIFFS</b></p> <p><b>(b)</b> County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i></p>	<p style="text-align: center;"><b>DEFENDANTS</b></p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"></td> <td style="width: 10%; text-align: center;"><b>PTF</b></td> <td style="width: 10%; text-align: center;"><b>DEF</b></td> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;"><b>PTF</b></td> <td style="width: 10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated <i>or</i> Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)* Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty	<p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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

1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from Another District *(specify)*  
  6 Multidistrict Litigation - Transfer  
  8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

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

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$** \_\_\_\_\_

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**DESIGNATION FORM**

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: \_\_\_\_\_

Address of Defendant: \_\_\_\_\_

Place of Accident, Incident or Transaction: \_\_\_\_\_

**RELATED CASE, IF ANY:**

Case Number: \_\_\_\_\_ Judge: \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes  No
- 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes  No
- 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? Yes  No
- 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes  No

I certify that, to my knowledge, the within case  is /  is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: \_\_\_\_\_ /s/ Sol H. Weiss \_\_\_\_\_  
Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)

**CIVIL: (Place a ✓ in one category only)**

**A. Federal Question Cases:**

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
- 2. FEELA
- 3. Jones Act-Personal Injury
- 4. Antitrust
- 5. Patent
- 6. Labor-Management Relations
- 7. Civil Rights
- 8. Habeas Corpus
- 9. Securities Act(s) Cases
- 10. Social Security Review Cases
- 11. All other Federal Question Cases  
(Please specify): \_\_\_\_\_

**B. Diversity Jurisdiction Cases:**

- 1. Insurance Contract and Other Contracts
- 2. Airplane Personal Injury
- 3. Assault, Defamation
- 4. Marine Personal Injury
- 5. Motor Vehicle Personal Injury
- 6. Other Personal Injury (Please specify): \_\_\_\_\_
- 7. Products Liability
- 8. Products Liability – Asbestos
- 9. All other Diversity Cases  
(Please specify): \_\_\_\_\_

**ARBITRATION CERTIFICATION**

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, \_\_\_\_\_, counsel of record or pro se plaintiff, do hereby certify:

- Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:
- Relief other than monetary damages is sought.

DATE: \_\_\_\_\_ /s/ Sol H. Weiss \_\_\_\_\_  
Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

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In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

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<b>Date</b>	<b>Attorney-at-law</b>	<b>Attorney for</b>
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<b>Telephone</b>	<b>FAX Number</b>	<b>E-Mail Address</b>

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

	)	
<b>RITA WARD</b>	)	<b>CIVIL ACTION NO.</b>
	)	
<b>v.</b>	)	
	)	
<b>JANSSEN PHARMACEUTICALS, INC.</b>	)	<b>COMPLAINT</b>

COMES NOW THE PLAINTIFF, Rita Ward (“Plaintiff”), and by and for her Complaint against Defendant, states and alleges upon information and belief and based upon the investigation of counsel, as follows:

**INTRODUCTION**

This is a personal injury action for damages arising from Plaintiff’s use of Defendant’s dangerously defective prescription drug, Elmiron (pentosyn polysulfate sodium), prescribed for the treatment of interstitial cystitis and bladder pain. Defendant designed, marketed, and distributed Elmiron in the United States, all the while knowing significant risks that were never disclosed to the medical and healthcare community, including Plaintiff’s prescribing doctor, Food and Drug Administration (hereinafter referred to as "FDA"), to Plaintiff, and/or the public in general. Further, Defendant failed to provide adequate warnings to patients and the medical community, including Plaintiff’s prescribing physician, of the risks associated with using the drug.

Throughout the time Defendant marketed Elmiron, Defendant withheld material adverse events from the public, medical community and FDA. Defendant failed to disclose the serious link between Elmiron use and significant visual damage, including pigmentary maculopathy. Ultimately, tens of thousands of patients, including Plaintiff, were placed at risk and harmed as a result of this misleading conduct.

### **PARTIES**

1. At all times relevant hereto, Plaintiff Rita Ward was a citizen and resident of Floyd County, in the State of Indiana.

2. Upon information and belief, Plaintiff consumed and regularly used Defendant's Elmiron (pentosyn polysulfate sodium) product. As a result of her use of Defendant's Elmiron product, Plaintiff suffered from severe physical and emotional injuries, including but not limited to loss of vision, including a diagnosis of macular degeneration. Based on information and belief, Plaintiff's ingestion of Elmiron caused her injuries.

3. Defendant Janssen Pharmaceuticals, Inc, is a Pennsylvania corporation with a principal place of business located at 800 Ridgeview Drive, Horsham, Pennsylvania 19044.

4. Defendant directly or through their agents or employees designed, manufactured, marketed, and sold Elmiron in the United States which is used to manage symptoms of interstitial cystitis and painful bladder syndrome.

### **JURISDICTION AND VENUE**

5. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. §1332, because the amount in controversy exceeds \$75,000.00 and the Parties are citizens of different states.

6. This Court has supplemental jurisdiction over the remaining common law and state claims pursuant to 28 U.S.C. §1367.

7. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because Defendant Janssen Pharmaceuticals is a Pennsylvania Corporation.

8. Defendant currently transacts business in within this District by selling their products within this District and throughout the United States.

## **GENERAL ALLEGATIONS**

### ***A. Interstitial Cystitis***

9. Interstitial cystitis is a medical condition in the bladder that causes bladder pressure, bladder pain, and sometimes pelvic pain. There is no known cause of interstitial cystitis. The symptoms can range from mild to debilitating. The disease is known to affect women more often than men. There is no known cure for interstitial cystitis or painful bladder syndrome.

10. The American Urological Association has established guidelines to provide a clinical framework for the diagnosis and treatment of interstitial cystitis. These guidelines were created by a comprehensive review of the literature. The guidelines include principles for the diagnosis of interstitial cystitis. The AUA guidelines further state that initial treatment type and level should depend on symptom severity, clinician judgment, and patient preferences. Treatments that may be offered are divided into first-, second-, third-, fourth-, fifth-, and sixth-line groups based on the balance between potential benefits to the patient, potential severity of adverse events (AEs) and the reversibility of the treatment. Second-line treatment of interstitial cystitis includes multi-modal pain management approaches including manual therapy and pharmacological options including amitriptyline, cimetidine, hydroxyzine, or pentosyn polysulfate.

***B. Elmiron***

11. Elmiron (pentosyn polysulfate sodium) was approved in 1996 to be used as a treatment for interstitial cystitis and painful bladder symptoms.

12. Upon information and belief, Elmiron was granted an Orphan Drug designation in 1995. The original NDA was submitted in 1991 which was deemed non-approvable in 1993. A second non-approvable letter was sent in 1994 over concerns about the lack of data on efficacy of the drug. Elmiron was originally submitted to by Baker Norton Pharmaceuticals, a division of Ivax Pharmaceuticals that has since been purchased by Teva Pharmaceuticals, Inc.

13. Elmiron (Pentosan polysulfate sodium) is a low molecular weight heparin-like compound. It has anticoagulant and fibrinolytic effects, but the mechanism of action of pentosan polysulfate sodium in interstitial cystitis is not known.

14. Upon information and belief, Elmiron was first approved by FDA in September, 1996 for painful bladder symptoms at which time Baker Norton Pharmaceuticals was the sponsor of the New Drug Application.

15. Upon information and belief, in 1997 Elmiron was purchased from Baker Norton Pharmaceuticals and Ivax by Alza Pharmaceuticals.

16. Upon information and belief, in 2002, Alza Corporation was acquired by Ortho-McNeil Pharmaceuticals, Inc, a subsidiary of Janssen Pharmaceuticals. Janssen Pharmaceuticals has been the sponsor of the NDA since that time.

17. The label and prescribing information that accompany Elmiron when prescribed to patients contains the following: "Warnings: None."

18. According to the Drugs@FDA website, the label for Elmiron has been updated on approximately five occasions, at no time has it contained any information about vision loss,

including pigmentary maculopathy, in any section of the label. The only mention in the label of any visual adverse events is a disclosure in the Adverse Reactions section that reveals clinical trial patients reported conjunctivitis, optic neuritis, amblyopia, and retinal hemorrhage. However, none of these adverse events are related to pigmentary maculopathy.

19. Elmiron is known to take long time to exert an effect and patients who are prescribed Elmiron are advised to take the drug for at least six months in order to determine if there is an effect. For those patients who take the drug, the drug is known to be used for long-term use and in many patients, use is expected to last years, if not decades.

### ***C. Drug-Induced Retinal Toxicity***

20. The administration of drugs that are physiologically foreign to the body can lead to adverse side effects or toxicity with significant consequences. The retina is especially susceptible to the effects of systemic drugs. It has an extensive dual blood supply from the retina and is one of the most metabolically active tissues in the body. The retina has minimal ability to regenerate and is therefore at high risk of drug toxicity. Thus, it is critical that eye care professionals are aware and monitor for adverse drug effects, especially those affecting the retina.

21. For example, the anti-malarial drug Plaquenil (hydroxychloroquine) is known to be associated with retinal toxicity. The label that accompanies that drug contains explicit instructions of the risk of injury and monitoring for signs of toxicity.

Irreversible retinal damage has been observed in some patients who had received hydroxychloroquine sulfate. Significant risk factors for retinal damage include daily doses of hydroxychloroquine sulfate greater than 6.5 mg/kg (5 mg/kg base) of actual body weight, durations of use greater than five years, subnormal glomerular filtration, use of some concomitant drug products such as tamoxifen citrate and concurrent macular disease.

A baseline ocular examination is recommended within the first year of starting PLAQUENIL. The baseline exam should include: best corrected distance visual acuity (BCVA), an automated threshold visual field (VF) of the central 10 degrees



(with retesting if an abnormality is noted), and spectral domain ocular coherence tomography (SD-OCT).

For individuals with significant risk factors (daily dose of hydroxychloroquine sulfate greater than 5.0 mg/kg base of actual body weight, subnormal glomerular filtration, use of tamoxifen citrate or concurrent macular disease) monitoring should include annual examinations which include BCVA, VF and SD-OCT. For individuals without significant risk factors, annual exams can usually be deferred until five years of treatment.

In individuals of Asian descent, retinal toxicity may first be noticed outside the macula. In patients of Asian descent, it is recommended that visual field testing be performed in the central 24 degrees instead of the central 10 degrees.

It is recommended that hydroxychloroquine be discontinued if ocular toxicity is suspected and the patient should be closely observed given that retinal changes (and visual disturbances) may progress even after cessation of therapy.

#### ***D. Elmiron-Induced Macular Toxicity***

22. In November, 2018, *Pearce, et al.*, reported a case series of patients known to be long term users of Elmiron that presented with an atypical maculopathy that resulted in significant vision loss.

23. A follow-up study by the same authors (*Hanif, et al.*) included a retrospective review of 219 patients seen at Emory and evaluated vision loss as additional support for the association between Elmiron use and vision loss.

24. In *Jain et al.*, the authors reported a large, administrative, U.S. database was used to examine the association of PPS use and a diagnosis of a macular disorder. Their exposure cohort (PPS users) was matched 1:5 with an unexposed cohort of patients (not necessarily IC/BPS patients). The primary outcome was any new diagnosis of a hereditary or secondary pigmentary retinopathy or any new diagnosis of dry age-related macular degeneration (AMD) or drusen in addition to the previously described retinopathy. At seven years, there was a statistically significant

increase in the exposed group in multivariate analysis (odds ratio [OR] 1.41; 95% confidence interval [CI] 1.09–1.83;  $p=0.009$ ).

25. At a recent meeting of the American Academy of Ophthalmologists in San Francisco, Vora et al., presented their findings using data from Kaiser Permanente and identified 140 patients (from the database of 4.3 million) who had taken an average of 5000 pills over a 15-year period. Of the 140 exposed patients, 91 agreed to an examination and of those, 22 patients showed clear evidence of this specific maculopathy, which authors believe was associated with PPS exposure. This work has since been published in the journal, *Ophthalmology* in January 2020. According to Dr. Vora,

You have a patient with a chronic condition like interstitial cystitis, for which there is no cure and no effective treatment. They get put on these medications because it's thought to have few side effects and few risks, and no one thinks about it again. And year after year, the number of pills they're taking goes up and up.

Because it's unclear how much medication is too much, Dr. Vora is reported to recommend patients who show no signs of toxicity be screened for retina damage at least once a year. For those who do show some signs of damage, he recommends they speak with their urologist or OB/GYN about discontinuing the medication.

26. *Greenlee et al.* postulated that the mechanism of toxicity of pentosan polysulfate may relate to the antagonist properties of pentosan polysulfate towards the fibroblast growth factors 1, 2, and 4. The authors of that publication reported that several known FGF antagonists are associated with significant ocular side effects.

27. In *Lyons, et al.*, published in *Obstetrics and Gynecology* in 2020, the authors made the following screening and follow-up recommendations:

- a. Providers discuss the risks associated with pentosan polysulfate with their patients and prescribe the lowest necessary dose and duration of pentosan polysulfate

for patients who require long-term treatment. Providers may discuss alternative treatments for interstitial cystitis at their discretion.

- b. A baseline examination with fundus photography, optical coherence tomography, and fundus autofluorescence imaging.
- c. Testing is repeated within 5 years after pentosan polysulfate initiation and annually, thereafter. Some patients may be at higher risk for developing pentosan polysulfate maculopathy and may benefit from either more frequent screening examinations or drug avoidance.
- d. We recommend that patients diagnosed with pentosan polysulfate maculopathy stop taking the drug and discuss alternative interstitial cystitis management options with their treating physician

28. Since the original report, there have been more than a dozen papers published in the medical literature regarding the atypical maculopathy associated with Elmiron use. Despite these publications, Defendant has made no change to the label in the United States or taken any steps to warn the medical community and users of the drug regarding these effects.

29. More troubling, Defendant made label changes in other countries to warn users of these injuries. For example, in September, 2019, Defendant changed the label of Elmiron in Canada to reflect the following warning:

#### **Ophthalmologic**

Post-market cases of pigmentary maculopathy have been reported with chronic use of pentosan polysulfate sodium (PPS). Visual symptoms in these cases included difficulty reading and prolonged dark adaptation. All patients should have regular ophthalmic examinations for early detection of pigmentary maculopathy, particularly those with long-term use of PPS. If pigmentary maculopathy is confirmed, treatment discontinuation should be considered.

#### **PLAINTIFF SPECIFIC FACTS**

30. Upon information and belief, in or about 2004, Plaintiff's treating medical physician prescribed Elmiron to Plaintiff due to Plaintiff's medically diagnosed painful bladder and/or interstitial cystitis. Defendant represented Elmiron to be an appropriate and suitable product for such purposes.

31. In or about 2020, Plaintiff began to experience visual symptoms, and on August 25, 2020, was diagnosed with Toxic Maculopathy associated with Elmiron use.

32. As a result of Defendant's actions and inactions, Plaintiff was injured due to Elmiron which caused Plaintiff various injuries and damages due to her vision loss. Plaintiff accordingly seeks damages associated with these injuries.

33. Defendant ignored reports from patients and health care providers throughout the United States of Elmiron's failure to perform as intended, and injuries associated with long term use which led to the severe and debilitating injuries suffered by Plaintiff, and numerous other patients. Rather than doing adequate testing to determine the cause of these injuries or rule out Elmiron's design as the cause of the injuries, Defendant continued to market Elmiron as a safe and effective prescription drug for interstitial cystitis.

34. Defendant did not timely or adequately apprise the public and physicians, including Plaintiff's physicians, of the adverse effect or defects in Elmiron despite Defendant's knowledge that it was associated with visual effects following use. Defendant did not timely or adequately apprise the public and physicians, including Plaintiff's physicians, to monitor Elmiron users' vision and eyes with regular examination.

35. Defendant's Elmiron was at all times utilized and prescribed in a manner foreseeable to Defendant, as Defendant generated the instructions for use for Plaintiff to take Elmiron.

36. Plaintiff and Plaintiff's physicians foreseeably used the Defendant's Elmiron, and did not misuse, or alter the Elmiron in an unforeseeable manner.

37. Through their affirmative misrepresentations and omissions, Defendant actively concealed from Plaintiff and his/her physicians the true and significant risks associated with Elmiron consumption.

38. As a result of Defendant's actions, Plaintiff and her physicians were unaware, and could not have reasonably known or have learned through reasonable diligence that Plaintiff would be exposed to the risks identified in this Complaint and that those risks were the direct and proximate result of Defendant's conduct.

39. As a direct result of being prescribed and consuming Elmiron, Plaintiff has been permanently and severely injured, having suffered serious consequences.

40. Plaintiff, as a direct and proximate result of Elmiron, suffered severe mental and physical pain and suffering and has sustained permanent injuries and emotional distress, along with economic loss due to medical expenses and living-related expenses due to her new lifestyle.

41. Plaintiff's physicians would not have prescribed Elmiron had Defendant properly disclosed the risks associated with its use or in the alternative, would have actively monitored her vision with regular eye exams.

#### **EQUITABLE TOLLING OF STATUTE OF LIMITATIONS**

42. Defendant failed to disclose a known defect and affirmatively misrepresented that Elmiron was safe for its intended use. Further, Defendant actively concealed the true risks associated with the use of Elmiron. Neither Plaintiff nor the prescribing physician had knowledge that Defendant was engaged in the wrongdoing alleged herein.

43. Because of Defendant's concealment of and misrepresentations regarding the true risks associated with Elmiron, Plaintiff could not have reasonably discovered Defendant's

wrongdoing at any time prior to the commencement of this action.

44. Thus, because Defendant fraudulently concealed the defective nature of Elmiron and the risks associated with its use, the running of any statute of limitations has been tolled. Likewise, Defendant is estopped from relying on any statute of limitations.

45. Additionally, and alternatively, Plaintiff files this lawsuit within the applicable limitations period of first suspecting that Elmiron caused the appreciable harm sustained by Plaintiff. Plaintiff did not have actual or constructive knowledge of acts indicating to a reasonable person that Plaintiff was the victim of a tort. Plaintiff was unaware of the facts upon which a cause of action rests until less than the applicable limitations period prior to the filing of this action. Plaintiff's lack of knowledge was not willful, negligent, or unreasonable.

**COUNT 1**  
**STRICT LIABILITY**

46. Plaintiff incorporates by referenced each and every preceding paragraph as though fully set forth herein.

47. At all times relevant hereto, Defendant manufactured, designed, distributed, and/or sold Elmiron.

48. At all times relevant hereto, the dangerous propensities of Elmiron were known to Defendant, or reasonably and scientifically knowable to them, through appropriate research and testing by known methods, at the time they distributed, supplied, or sold their respective products, and not known to ordinary physicians who would be expected to prescribe the drug to their patients.

49. The Elmiron product as distributed by Defendant was a defective and unreasonably dangerous product, as Defendant failed to provide appropriate and adequate warnings and

instructions to render the products reasonably safe for its ordinary, intended, and reasonably foreseeable uses; in particular the common, foreseeable and intended use of Elmiron to treat painful bladder syndrome and interstitial cystitis.

50. Defendant failed to properly and adequately warn and instruct Plaintiff and Plaintiff's treating physician that Defendant's Elmiron product was designed and/or manufactured in a way that could cause injuries and damages, including lasting and permanent visual injuries.

51. Defendant failed to properly and adequately warn and instruct Plaintiff and Plaintiff's treating physician as to the risks of the Defendant's Elmiron product. To the contrary, Defendant withheld information from Plaintiff and Plaintiff's physician regarding the true risks related to prescribing the Elmiron product.

52. The Elmiron product, as distributed by Defendant, was dangerous in design at the time it left the Defendant's control.

53. Plaintiff did not misuse or materially alter the Elmiron as prescribed and dispensed to Plaintiff and used by Plaintiff.

54. At the time the Elmiron product left Defendant's control, there existed feasible and suitable alternative design for the treatment of interstitial cystitis that was capable of preventing Plaintiff's damages or alternatively a plan for monitoring ocular health in association with use of Elmiron.

55. When compared to other feasible alternatives, the Elmiron product greatly results in a much higher risk of visual injuries and side effects. Other feasible alternative treatments exist which do not present the same frequency and severity of risks.

56. At all times relevant to this action, Defendant manufactured, supplied, distributed, and/or sold Elmiron in a defective and dangerous condition, as described above, to Plaintiff.

57. The Elmiron received by Plaintiff did not perform safely as an ordinary consumer would have expected it to perform when used in a reasonably foreseeable way.

58. Furthermore, a reasonable patient would conclude the possibility and seriousness of harm outweighs the benefit from it's normal, intended use.

59. As a direct, foreseeable and proximate result of Defendant's defective Elmiron product, Plaintiff suffered grievous bodily injuries and consequent economic and other losses, as referenced above, when his physicians, lacking adequate warnings and other appropriate facts that were misrepresented or omitted from the information (if any) Defendant provided to physicians for their respective products. Plaintiff has suffered injury of a personal and pecuniary nature, including pain and suffering, medical expenses, lost income and disability.

**COUNT II**  
**NEGLIGENCE**

60. Plaintiff incorporates by referenced each and every preceding paragraph as though fully set forth herein.

61. At all times relevant hereto, it was the duty of Defendant to use reasonable care in the manufacturing, design, distribution, and/or sale of Elmiron.

62. Defendant failed to exercise ordinary care in the manufacture, sale, labeling, and marketing Elmiron in that Defendant know or should have known that Elmiron created a high risk of unreasonable harm to Plaintiffs and other users.

63. In disregard of its duty, Defendant committed one or more of the following negligent acts or omissions:

- a. Manufacturing, producing, promoting, formulating, creating, developing, designing, selling, and distributing Elmiron without thorough and adequate pre- and post-market testing of the product;
- b. Manufacturing, producing, promoting, advertising, formulating, creating,



developing, and designing, and distributing Elmiron while negligently and intentionally concealing and failing to disclose clinical data which demonstrated the risk of serious harm associated with the use of Elmiron;

- c. Failing to undertake sufficient studies and conduct necessary tests to determine whether or not Elmiron was safe for its intended use;
- d. Failing to disclose and warn of the product defect to the regulatory agencies, the medical community, and consumers that Defendant knew and had reason to know that Elmiron was indeed unreasonably unsafe and unfit for use by reason of the product's defect and risk of harm to its users;
- e. Failing to warn Plaintiff, the medical and healthcare community, and consumers that the product's risk of harm was unreasonable and that there were safer and effective alternative products available to Plaintiff and other consumers;
- f. Failing to provide adequate instructions, guidelines, and safety precautions to those persons to whom it was reasonably foreseeable would use Elmiron;
- g. Advertising, marketing, and recommending the use of Elmiron, while concealing and failing to disclose or warn of the dangers known by Defendant to be connected with, and inherent in, the use of Elmiron;
- h. Representing that Elmiron was safe for its intended use when in fact Defendant knew and should have known the product was not safe for its intended purpose;
- i. Failing to disclose to and inform the medical community and consumers that other forms of safer and effective alternative products were available for use for the purpose for which Elmiron was manufactured;
- j. Continuing to manufacture and sell Elmiron with the knowledge that Elmiron was unreasonably unsafe and dangerous;
- k. Failing to use reasonable and prudent care in the design, research, manufacture, and development of Elmiron so as to avoid the risk of serious harm associated with the use of Elmiron. Failing to design and manufacture Elmiron so as to ensure the drug was at least as safe and effective as other similar products;
- l. Failing to ensure the product was accompanied by proper and accurate warnings about requiring baseline visual examinations and regular eye examinations while using the drug to monitor for retinal or macular toxicity

associated with the use of Elmiron;

- m. Failing to ensure the product was accompanied by proper and accurate warnings about possible adverse side effects associated with the use of Elmiron and that use of Elmiron created a high risk of severe injuries; and
- n. Failing to conduct adequate testing, including pre-clinical and clinical testing, and post-marketing surveillance to determine the safety of Elmiron.

64. As a direct and proximate result of one or more of the above-stated negligent acts by Defendant, Plaintiff suffered grievous bodily injuries and consequent economic and other losses, including pain and suffering, loss of a normal life, medical expenses, lost income and disability.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff incorporates by reference each preceding and succeeding paragraph as though set forth fully at lengthy herein, and prays judgment in her favor and against the Defendant awarding the following:

- 1. A monetary award, sufficient to compensate Plaintiff for the following categories of damages:
  - a. General damages for severe physical pain, mental suffering, inconvenience, and loss of the enjoyment of life;
  - b. Past, present, and future damages for costs of medical and rehabilitative treatment and care for Plaintiff;
  - c. Past wage loss and future loss of earning capacity.
- 2. Plaintiff's cost of this action, together with interest on past and future special and general damage amounts from the date of injury at the legal rate until paid, interest on any judgment awarded herein at the legal rate until paid, and such other and further relief as the Court deems equitable and just.

3. Any other award this Court deems equitable and just.
4. Plaintiff demands a jury trial.

Date: October 8, 2020

**ANAPOL WEISS**

**s/ SOL H. WEISS**

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