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7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10
11 MATTHEW SCIABACUCCHI, On Behalf of
Himself and All Others Similarly Situated,

12 Plaintiff,

13 v.

14 SCICLONE PHARMACEUTICALS, INC.,
15 JON S. SAXE, FRIEDHELM BLOBEL,
NANCY T. CHANG, RICHARD J.
16 HAWKINS, GREGG ANTHONY LAPOINTE,
SIMON LI, SILVER BIOTECH
17 INVESTMENT LIMITED, and SILVER
DELAWARE INVESTMENT LIMITED,

18 Defendants.
19

Case No. 3:17-cv-04799

CLASS ACTION

**COMPLAINT FOR VIOLATION OF
THE SECURITIES EXCHANGE ACT
OF 1934**

JURY TRIAL DEMANDED

20 Plaintiff, by and through his attorneys, alleges upon personal knowledge as to himself,
21 and upon information and belief based upon, among other things, the investigation of counsel as
22 to all other allegations herein, as follows:

23 **SUMMARY OF THE ACTION**

24 1. This action stems from a proposed transaction announced on June 8, 2017 (the
25 “Proposed Transaction”), pursuant to which SciClone Pharmaceuticals, Inc. (“SciClone” or the
26 “Company”) will be acquired by Silver Biotech Investment Limited (“Parent”) and its wholly-
27 owned subsidiary, Silver Delaware Investment Limited (“Merger Sub,” and together with Parent,
28 “Silver”), which were formed by a consortium consisting of entities affiliated with GL Capital

1 Management GP Limited, Bank of China Group Investment Limited, CDH Investments,
2 Ascendent Capital Partners, and Boying Investment Limited (collectively, “Buyer Consortium”).

3 2. On June 7, 2017, SciClone’s Board of Directors (the “Board” or “Individual
4 Defendants”) caused the Company to enter into an agreement and plan of merger (the “Merger
5 Agreement”) with Silver. Pursuant to the terms of the Merger Agreement, if the Proposed
6 Transaction is approved by SciClone’s stockholders, Merger Sub will merge with and into
7 SciClone, with SciClone continuing as the surviving corporation and subsidiary of Parent, and
8 SciClone’s stockholders will receive \$11.18 in cash for each share of SciClone they own.

9 3. On August 2, 2017, defendants filed a Preliminary Proxy Statement (the “Proxy
10 Statement”) with the United States Securities and Exchange Commission (“SEC”) in connection
11 with the Proposed Transaction.

12 4. The Proxy Statement omits material information with respect to the Proposed
13 Transaction, which renders the Proxy Statement false and misleading. Accordingly, plaintiff
14 alleges herein that defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act
15 of 1934 (the “1934 Act”) in connection with the Proxy Statement.

16 **JURISDICTION AND VENUE**

17 5. This Court has jurisdiction over all claims asserted herein pursuant to Section 27
18 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the
19 1934 Act and Rule 14a-9.

20 6. This Court has jurisdiction over defendants because each defendant is either a
21 corporation that conducts business in and maintains operations within this District, or is an
22 individual with sufficient minimum contacts with this District so as to make the exercise of
23 jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

24 7. Venue is proper under 28 U.S.C. § 1391 because a substantial portion of the
25 transactions and wrongs complained of herein occurred in this District.

1 **PARTIES**

2 8. Plaintiff is, and has been continuously throughout all times relevant hereto, the
3 owner of SciClone common stock.

4 9. Defendant SciClone is a Delaware corporation and maintains its principal
5 executive offices at 950 Tower Lane, Suite 900, Foster City, California 94404. SciClone
6 common stock is traded on the NasdaqGS under the ticker symbol “SCLN.”

7 10. Defendant Jon S. Saxe (“Saxe”) has served as a director of SciClone since August
8 2000 and as Chairman of the Board since July 2009.

9 11. Defendant Friedhelm Blobel (“Blobel”) has served as a director, President, and
10 Chief Executive Officer (“CEO”) of SciClone since June 2006.

11 12. Defendant Nancy T. Chang (“Chang”) has served as a director of SciClone since
12 September 2013.

13 13. Defendant Richard J. Hawkins (“Hawkins”) has served as a director of SciClone
14 since October 2004.

15 14. Defendant Gregg Anthony LaPointe (“LaPointe”) has served as a director of
16 SciClone since March 2009.

17 15. Defendant Simon Li (“Li”) has served as a director of SciClone since January
18 2013.

19 16. The defendants identified in paragraphs 10 through 15 are collectively referred to
20 herein as the “Individual Defendants.”

21 17. Defendant Parent is a company organized under the laws of the Cayman Islands
22 and a party to the Merger Agreement.

23 18. Defendant Merger Sub is a Delaware corporation, a wholly-owned subsidiary of
24 Parent, and a party to the Merger Agreement.

25 **CLASS ACTION ALLEGATIONS**

26 19. Plaintiff brings this action as a class action on behalf of himself and the other
27 public stockholders of SciClone (the “Class”). Excluded from the Class are defendants herein
28 and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

1 20. This action is properly maintainable as a class action.

2 21. The Class is so numerous that joinder of all members is impracticable. As of
3 July 25, 2017, there were approximately 52,191,854 shares of SciClone common stock
4 outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout
5 the country.

6 22. Questions of law and fact are common to the Class, including, among others,
7 whether defendants violated the 1934 Act and whether defendants will irreparably harm plaintiff
8 and the other members of the Class if defendants' conduct complained of herein continues.

9 23. Plaintiff is committed to prosecuting this action and has retained competent
10 counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the
11 other members of the Class and plaintiff has the same interests as the other members of the
12 Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and
13 adequately protect the interests of the Class.

14 24. The prosecution of separate actions by individual members of the Class would
15 create the risk of inconsistent or varying adjudications that would establish incompatible
16 standards of conduct for defendants, or adjudications that would, as a practical matter, be
17 dispositive of the interests of individual members of the Class who are not parties to the
18 adjudications or would substantially impair or impede those non-party Class members' ability to
19 protect their interests.

20 25. Defendants have acted, or refused to act, on grounds generally applicable to the
21 Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on
22 behalf of the Class is appropriate.

23 **SUBSTANTIVE ALLEGATIONS**

24 ***Background of the Company***

25 26. SciClone is a revenue-generating, specialty pharmaceutical company with a
26 substantial commercial business in China and a product portfolio spanning major therapeutic
27 markets including oncology, infectious diseases, and cardiovascular disorders. SciClone's
28 proprietary lead product, ZADAXIN (thymalfasin), is approved in over 30 countries and may be

1 used for the treatment of hepatitis B (HBV), hepatitis C (HCV), and certain cancers, and as an
2 immune system enhancer, according to the local regulatory approvals. Product sales
3 of \$41.6 million or 93% and \$36.5 million or 94%, for the three months ended June 30, 2017 and
4 2016, respectively, related to consolidated sales of ZADAXIN. The Company has successfully
5 in-licensed and commercialized products with the potential to become future market leaders and
6 to drive the Company's long-term growth, including DC Bead, a novel treatment for liver cancer.
7 Through its promotion business with pharmaceutical partners, SciClone also markets multiple
8 branded products in China.

9 ***The Proxy Statement Omits Material Information, Rendering It False and Misleading***

10 27. Defendants filed the Proxy Statement with the SEC in connection with the
11 Proposed Transaction.

12 28. The Proxy Statement omits material information with respect to the Proposed
13 Transaction, which renders the Proxy Statement false and misleading.

14 29. *First*, the Proxy Statement omits material information regarding the Company's
15 financial projections and the valuation analyses performed by the Company's financial advisor,
16 Lazard Frères & Co. LLC ("Lazard"). The disclosure of projected financial information is
17 material because it provides stockholders with a basis to project the future financial performance
18 of a company, and allows stockholders to better understand the financial analyses performed by
19 the company's financial advisor in support of its fairness opinion. Moreover, when a banker's
20 endorsement of the fairness of a transaction is touted to stockholders, the valuation methods used
21 to arrive at that opinion as well as the key inputs and range of ultimate values generated by those
22 analyses must also be fairly disclosed.

23 30. For example, the Proxy Statement indicates that Lazard performed its Sum-of-the-
24 Parts Discounted Cash Flow Analysis by using the "estimated unlevered free cash flows to be
25 generated by each of the Company's products and product candidates, estimated future net cash
26 and the estimated future general and administrative expenses, which we refer to herein as
27 unallocated G&A, to be incurred by the Company, in each case from June 30, 2017 through
28 December 31 of the terminal year." Specifically, Lazard used the following unlevered free cash

1 flows for the following: (i) For Zadaxin, Lazard used the Company's estimated unlevered
2 Zadaxin-based free cash flows through 2024; (ii) For the product pipeline of the Company,
3 Lazard used the Company's estimated unlevered free cash flow for the product pipeline for 2027;
4 (iii) For the products the Company distributes on behalf of Pfizer and Baxter, Lazard apparently
5 performed a discounted cash flow analysis through December 31, 2019, and for DC Bead,
6 Lazard performed an eight-year discounted cash flow analysis; and (iv) For unallocated G&A,
7 Lazard used the Company's estimated unlevered free cash flow for the unallocated G&A for
8 2027.

9 31. The Proxy Statement, however, fails to disclose any the Company's unlevered
10 free cash flows for each of the Company's products and product candidates, estimated future net
11 cash, and the estimated future general and administrative expenses. The Proxy Statement must
12 disclose these unlevered free cash flows, as well as the line items used to calculate the unlevered
13 free cash flows.

14 32. With respect to Lazard's Sum-of-the-Parts Discounted Cash Flow Analysis, the
15 Proxy Statement fails to disclose: (i) the Company's unlevered free cash flows to be generated
16 by each of the Company's products and product candidates, estimated future net cash, and the
17 estimated future general and administrative expenses, as well as the line items used to calculate
18 the unlevered free cash flows; (ii) the inputs and assumptions underlying the discount rate range
19 of 9.5% to 11.5%; (iii) Lazard's bases for applying each of the terminal growth rate ranges for
20 each of the Company's products and product candidates, and the estimated future general and
21 administrative expenses; (iv) the exit multiples implied from the analysis; and (v) the Company's
22 estimated cash balance as of July 30, 2017, as used by Lazard in its analysis.

23 33. With respect to Lazard's 2018 Selected Companies Analysis and 2017 Selected
24 Companies Analysis, the Proxy Statement fails to disclose the individual multiples and financial
25 metrics for the companies observed by Lazard in the analyses.

26 34. With respect to Lazard's Selected Precedent Transactions Analysis, the Proxy
27 Statement fails to disclose the individual multiples and financial metrics for the transactions
28 observed by Lazard in the analysis.

1 35. With respect to Lazard's Premia Paid Analysis, the Proxy Statement fails to
2 disclose the "specialty pharmaceutical transactions" that Lazard selected in its analysis, as well
3 as the individual premium observed for each transaction.

4 36. The omission of this material information renders the Proxy Statement false and
5 misleading, including, *inter alia*, the following section of the Proxy Statement: (i) "Opinion of
6 the Company's Financial Advisor"; and (ii) "Certain Financial Projections."

7 37. *Second*, the Proxy Statement omits material information regarding potential
8 conflicts of interest of the Company's officers.

9 38. For example, the Proxy Statement states that: "The parties did not discuss any
10 employment or similar arrangements for any of the Company's executives after the transaction
11 during the negotiations between the parties. As such, while certain members of management
12 may continue to remain employees of the Company after the completion of the transaction, no
13 employment agreements or similar arrangements were or have been implemented in connection
14 with discussions with the Buyer Consortium." It also states that "the officers of the Company
15 immediately prior to the effective time will continue their employment as the officers of the
16 surviving corporation until their respective successors have been duly elected or appointed and
17 qualified or until their earlier death, resignation or removal in accordance with the surviving
18 charter and the by-laws."

19 39. Thus, defendants acknowledge that the Company's officers will continue to be
20 employed after the closing of the Proposed Transaction, but the Proxy Statement fails to disclose
21 the timing and nature of all communications regarding the continued employment of SciClone's
22 officers, including who participated in all such communications.

23 40. Communications regarding post-transaction employment during the negotiation of
24 the underlying transaction must be disclosed to stockholders. This information is necessary for
25 stockholders to understand potential conflicts of interest of management and the Board, as that
26 information provides illumination concerning motivations that would prevent fiduciaries from
27 acting solely in the best interests of the Company's stockholders.

28 41. The omission of this material information renders the Proxy Statement false and

1 misleading, including, *inter alia*, the following section of the Proxy Statement: (i) “Background
2 of the Merger”; and (ii) “Interests of our Directors and Executive Officers in the Merger —
3 Quantification of Potential Payments to our Named Executive Officers in Connection with the
4 Merger.”

5 42. *Third*, the Proxy Statement omits material information regarding potential
6 conflicts of interest of the Company’s financial advisor, Lazard.

7 43. The Proxy Statement fails to disclose whether Lazard has provided any services to
8 SciClone or any members of the Buyer Consortium in the past three years and, if so, the amount
9 of compensation Lazard has earned for those services.

10 44. The full disclosure of all potential conflicts is required due to the central role
11 played by investment banks in the evaluation, exploration, selection, and implementation of
12 strategic alternatives.

13 45. The omission of this material information renders the Proxy Statement false and
14 misleading, including, *inter alia*, the following section of the Proxy Statement: (i) “Background
15 of the Merger”; and (ii) “Opinion of the Company’s Financial Advisor.”

16 46. *Fourth*, the Proxy Statement omits material information relating the background
17 leading to the Proposed Transaction.

18 47. For example, the Proxy Statement indicates that the Company entered into
19 confidentiality agreements with approximately 47 potential bidders, but it fails to disclose
20 whether those confidentiality agreements contained standstill and/or “don’t ask, don’t waive”
21 provisions that are preventing those counterparties from submitting topping bids to acquire the
22 Company or requesting a waiver of standstill provisions.

23 48. The omission of this material information renders the “Background of the
24 Merger” section of the Proxy Statement false and misleading.

25 49. The above-referenced omitted information, if disclosed, would significantly alter
26 the total mix of information available to SciClone’s stockholders.

27
28

COUNT I

Claim for Violation of Section 14(a) of the 1934 Act and Rule 14a-9 Promulgated Thereunder Against the Individual Defendants and SciClone

50. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

51. The Individual Defendants disseminated the false and misleading Proxy Statement, which contained statements that, in violation of Section 14(a) of the 1934 Act and Rule 14a-9, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not materially false or misleading. SciClone is liable as the issuer of these statements.

52. The Proxy Statement was prepared, reviewed, and/or disseminated by the Individual Defendants. By virtue of their positions within the Company, the Individual Defendants were aware of this information and their duty to disclose this information in the Proxy Statement.

53. The Individual Defendants were at least negligent in filing the Proxy Statement with these materially false and misleading statements.

54. The omissions and false and misleading statements in the Proxy Statement are material in that a reasonable stockholder will consider them important in deciding how to vote on the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available in the Proxy Statement and in other information reasonably available to stockholders.

55. The Proxy Statement is an essential link in causing plaintiff and the Company's stockholders to approve the Proposed Transaction.

56. By reason of the foregoing, defendants violated Section 14(a) of the 1934 Act and Rule 14a-9 promulgated thereunder.

57. Because of the false and misleading statements in the Proxy Statement, plaintiff and the Class are threatened with irreparable harm.

COUNT II

**Claim for Violation of Section 20(a) of the 1934 Act
Against the Individual Defendants and Silver**

58. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

59. The Individual Defendants and Silver acted as controlling persons of SciClone within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their positions as officers and/or directors of SciClone and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Proxy Statement, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that plaintiff contends are false and misleading.

60. Each of the Individual Defendants and Silver was provided with or had unlimited access to copies of the Proxy Statement alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

61. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Proxy Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly in the making of the Proxy Statement.

62. Silver also had direct supervisory control over the composition of the Proxy Statement and the information disclosed therein, as well as the information that was omitted and/or misrepresented in the Proxy Statement.

63. By virtue of the foregoing, the Individual Defendants and Silver violated Section 20(a) of the 1934 Act.

64. As set forth above, the Individual Defendants and Silver had the ability to exercise control over and did control a person or persons who have each violated Section 14(a)

1 of the 1934 Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their
2 positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the 1934
3 Act. As a direct and proximate result of defendants' conduct, plaintiff and the Class are
4 threatened with irreparable harm.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, plaintiff prays for judgment and relief as follows:

7 A. Enjoining defendants and all persons acting in concert with them from proceeding
8 with, consummating, or closing the Proposed Transaction;

9 B. In the event defendants consummate the Proposed Transaction, rescinding it and
10 setting it aside or awarding rescissory damages;

11 C. Directing the Individual Defendants to file a Proxy Statement that does not
12 contain any untrue statements of material fact and that states all material facts required in it or
13 necessary to make the statements contained therein not misleading;

14 D. Declaring that defendants violated Sections 14(a) and/or 20(a) of the 1934 Act, as
15 well as Rule 14a-9 promulgated thereunder;

16 E. Awarding plaintiff the costs of this action, including reasonable allowance for
17 plaintiff's attorneys' and experts' fees; and

18 F. Granting such other and further relief as this Court may deem just and proper.

19 **JURY DEMAND**

20 Plaintiff hereby demands a trial by jury.

21 Dated: August 17, 2017

LEVI & KORSINSKY, LLP

22 By: /s/ Rosemary M. Rivas

23 Rosemary M. Rivas
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Attorneys for Plaintiff

1 **OF COUNSEL:**

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CERTIFICATION OF PLAINTIFF

I, Matthew Sciabacucchi (“Plaintiff”), hereby declare as to the claims asserted under the federal securities laws that:

1. Plaintiff has reviewed the complaint and authorizes its filing.
2. Plaintiff did not purchase the security that is the subject of this action at the direction of Plaintiff’s counsel or in order to participate in any private action.
3. Plaintiff is willing to serve as a representative party on behalf of the class, either individually or as part of a group, and I will testify at deposition or trial, if necessary. I understand that this is not a claim form and that I do not need to execute this Certification to share in any recovery as a member of the class.
4. Plaintiff’s purchase and sale transactions in the SciClone Pharmaceuticals, Inc. (NasdaqGS: SCLN) security that is the subject of this action during the class period is/are as follows:

PURCHASES

Buy Date	Shares	Price per Share
3/1/10	5	\$3.50

SALES

Sell Date	Shares	Price per Share

Please list additional transactions on separate sheet of paper, if necessary.

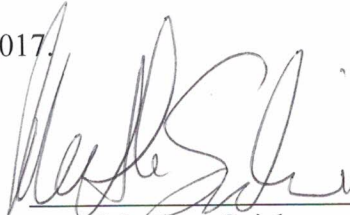
5. Plaintiff has complete authority to bring a suit to recover for investment losses on behalf of purchasers of the subject securities described herein (including Plaintiff, any co-owners, any corporations or other entities, and/or any beneficial owners).

6. During the three years prior to the date of this Certification, Plaintiff has not moved to serve as a representative party for a class in an action filed under the federal securities laws.

7. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond Plaintiff's *pro rata* share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of August, 2017.



Matthew Sciabacucchi

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MATTHEW SCIABACUCCHI, On Behalf of Himself and All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff Luzerne County, PA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Rosemary Rivas, Levi & Korsinsky, LLP, 44 Montgomery Street, Suite 650, San Francisco, CA 94104; 415-291-2420

DEFENDANTS

SCIOME PHARMACEUTICALS, INC., JON S. SAXE, FRIEDHELM BLOBEL, NANCY T. CHANG, RICHARD J. HAWKINS, GREGG ANTHONY LAPOINTE, SIMON LI, SILVER BIOTECH INVESTMENT LIMITED, and SILVER DELAWARE INVESTMENT LIMITED,

County of Residence of First Listed Defendant San Mateo County, California (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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): 15 U.S.C. § 78aa, and U.S. Securities and Exchange Commission Rule 14a-9

Brief description of cause:

Violations of Sections 14(a), and 20(a) of the Securities Exchange Act of 1934

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

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

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

JUDGE Charles R. Breyer

DOCKET NUMBER 3:17-cv-04563

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 08/17/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Rosemary M. Rivas

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Stockholder Sues SciClone Pharmaceuticals, Others Over Proposed Merger](#)
