UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MINNESOTA

CARA WICKER, INDIVIDUALLY, J.W., A MINOR, BY AND THROUGH HER PARENT AND NATURAL GUARDIAN, CARA WICKER,	)	**Civil Action No.:**
	)	**JULY TRIAL DEMANDED**
Plaintiffs,	)	
v.	)	
TARGET CORPORATION,	)	
Defendant.	)	

COMPLAINT

Plaintiff Cara Wicker and Plaintiff J.W., pursuant to Fed. R. Civ. P. 17(c)(1)(A), by and through their undersigned counsel, bring this Complaint for damages against Defendant Target Corporation (hereinafter, "Target" or "Defendant") and in support state the following:

1. This is an action brought on behalf of Plaintiffs, Cara Wicker (hereinafter "Plaintiff Mother"), the mother and guardian of J.W., and J.W. (hereinafter "Plaintiff Child"), a minor, by and through Plaintiff Mother, arising out of the failure of Defendant to warn about the dangers of prenatal exposure to Paracetamol, also known as Acetaminophen (hereinafter "APAP") and its propensity to cause attention-deficit/hyperactivity disorder ("ADHD") in children. As a result, Plaintiffs have suffered permanent injuries and significant pain and suffering, emotional distress, lost wages and earning capacity, and diminished quality of life. Plaintiffs respectfully seek all damages to which they may be legally entitled.

2. Defendant entirely failed its duty to adequately warn of the hazards of prenatal exposure to APAP, which was a direct and proximate cause of Plaintiffs' injuries and associated damages.

STATEMENT OF PARTIES

3. At all material times Plaintiffs have been citizens and residents of Portland, Oregon, and the United States.

4. Target is incorporated in Minnesota, with its principal place of business in Minnesota.

5. Target is a multinational company involved in the research, development, testing, manufacture, labeling, production, marketing, promotion, and/or sale of APAP through its over-the-counter store brand, "Up & Up" (hereinafter the "Up & Up APAP").

6. Target is individually, and jointly and severally liable to Plaintiffs for damages they suffered arising from Defendant's design, manufacture, marketing, labeling, distribution, sale, and placement of the defective Up & Up APAP into the market, effectuated directly and indirectly through its agents, servants, employees, and/or owners, all acting within the course and scope of its agencies, services, employments, and/or ownership.

7. Target is vicariously liable for the acts and/or omissions of its employees and/or agents, who were at all material times acting on behalf of Target and within the scope of its employment or agency.

VENUE AND JURISDICTION

8. This Court has subject-matter jurisdiction under 28 U.S.C. § 1332(a), based on complete diversity of citizenship between Plaintiffs and Defendant. *See supra* ¶¶ 3–4.

9. The amount in controversy exceeds $75,000.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events or omissions giving rise to Plaintiffs' claims occurred in this judicial district.

11. Defendant has conducted and continues to conduct substantial business in the State of Minnesota and in this District, distributes the Up & Up APAP in this District, receives substantial compensation and profits from sales of the Up & Up APAP in this District, and has made material omissions and misrepresentations and breaches of warranties in this District, so as to subject Defendant to in personam jurisdiction in this District.

12. Defendant is registered to transact business in Minnesota.

FACTS COMMON TO ALL COUNTS

APAP Is Marketed as the Safe Pain Reliever for Pregnant Women, but APAP Can Cause Neurodevelopment Disorders in Children, such as ADHD

1. APAP was initially discovered in the late 1800's.

2. APAP is sold in billions of units annually in North America alone.

3. APAP is widely used by pregnant women to relieve pain during the term of their pregnancy.

4. APAP was introduced to the US market in 1955 as the first aspirin-free pain reliever.

5. APAP has long been marketed as the safest, and the *only* appropriate, over-the-counter pain relief drug on the market for pregnant women.

6. More than 65% of women in the United States use APAP during pregnancy.

7. Based upon information and belief, a majority of women who use APAP during pregnancy do so electively for the treatment of headaches, muscle pain, back pain, and infection.

8. These pregnant women electively choose to take APAP because Defendant has marketed APAP as a safe pain reliever for pregnant women.

9. However, increasing experimental and epidemiological research shows that prenatal exposure to APAP alters fetal development, which significantly increases the risks of neurodevelopmental disorders including, but not limited to, ADHD.

10. Undisturbed development of the human brain in utero is vital to the health and wellness of a child's development. The human brain is vulnerable and extremely sensitive in utero.

11. During this sensitive time-period in utero, certain chemicals have been found to cause permanent brain injury at low exposure levels.

12. Once ingested by the mother, APAP is known to readily cross the placenta and blood-brain barrier.

13. ADHD is a chronic neurodevelopmental disorder resulting in attention difficulty, hyperactivity, and impulsiveness.

14. ADHD begins in childhood and persists through adulthood. ADHD contributes to low self-esteem, troubled relationships, and difficulty with school, work, and familial relationships.

15. Treatments for ADHD include, but are not limited to, chronic medication usage and various therapies. Treatment for ADHD lasts a lifetime, as there is no cure.

16. Adults with childhood ADHD are expected to earn $1.25 million less than adults without ADHD over their lifetime, potentially reaching retirement with up to a 75 percent lower net worth

17. As of 2019, 8.8% of children had been diagnosed with ADHD, or roughly 325,000 children per year.

18. Parental awareness and changes in diagnoses do not account for the rapid rise in these diagnoses of neurodevelopmental disorders.

19. Rather, neurotic exposures, such as prenatal APAP exposure, explain a trending increase in diagnosis.

20. For years, the scientific community has published studies showing that prenatal ingestion of APAP can cause ADHD.

21. For instance, since 2013 there have been six European birth cohort studies, examining over 70,000 mother-child pairs, showing the association between prenatal use of APAP and ADHD.

22. At this time, the overall body of scientific evidence shows that prenatal use of APAP can cause ADHD in the child.

23. During all relevant times herein, Defendant was engaged in the business of manufacturing and selling the Up & Up APAP in the United States, and the weight of the scientific evidence available showed prenatal exposure to APAP significantly increases the risk of neurodevelopmental disorders in children exposed to APAP prenatally including, but not limited to, ADHD.

24. The scientific evidence regarding the risks of in utero exposure of APAP was available to Defendant, and Defendant knew or should have known that prenatal use of APAP can cause ADHD.

25. Based on information and belief, Defendant has concealed the prenatal APAP exposure-neurodevelopmental link from consumers, like Plaintiff Mother, in part by not reporting the link to the FDA, which relies on drug manufacturers to bring new information about a drug to the agency's attention.

26. Moreover, despite knowing that prenatal use of APAP can cause ADHD, Defendant continues to market the Up & Up APAP as the safe pain reliever for pregnant women, making mothers believe they are choosing a safe drug for even minor aches, pains, and headaches.

Plaintiff Mother Took Up & Up APAP while Pregnant, and It Caused ADHD in Plaintiff Child

27. Plaintiff Mother began taking the Up & Up APAP in or around November 2011, when she was pregnant with Plaintiff Child, through August 2012, when Plaintiff Child was born.

28. Throughout Plaintiff Mother's pregnancy, she took the Up & Up APAP a few times a week to treat body pain and inflammation.

29. These were aches and pains Plaintiff Mother associated with her pregnancy.

30. Plaintiff Mother electively took the Up & Up APAP while pregnant.

31. Plaintiff Mother believed it was safe for her to take the Up & Up APAP during her pregnancy.

32. There are no warnings on the Up & Up APAP labels specifically addressing the risks of a child developing ADHD if a mother ingests APAP while pregnant.

33. Had Plaintiff Mother known of the risk of taking APAP while pregnant, specifically that it could cause ADHD in her child, she would not have taken the Up & Up APAP.

34. Plaintiff Child was born on August 13, 2012.

35. Plaintiff Mother started to have concerns about Plaintiff Child's development when she was around five years old.

36. Plaintiff Child was diagnosed with ADHD when she was around nine years old.

37. Plaintiff Child is very stubborn and sometimes aggressive because of her ADHD.

38. Plaintiff Child has been suspended from school multiple times because of behavioral issues caused by her ADHD.

39. Plaintiff Child sometimes causes bodily harm to her family members because of her ADHD.

40. The issues caused by Plaintiff Child's ADHD have a huge impact on Plaintiff Mother, Plaintiff Child, and their family.

ESTOPPEL AND TOLLING OF STATUTE OF LIMITATIONS

41. Due to Defendant's acts of fraudulent concealment, Defendant is estopped from relying on any statutes of limitations or repose. Such acts include Defendant's intentional concealment from Plaintiff Mother and the general public that APAP is defective when there is prenatal exposure, while continuing to market the Up & Up APAP with the adverse effects described in this Complaint.

42. Given Defendant's affirmative actions of concealment by failing to disclose information about the defects known to it but not the public—information over which Defendant has exclusive control—and because Plaintiff Mother could not reasonably have known that the Up & Up APAP was defective, Defendant is estopped from relying on any statutes of limitations that might overwise be applicable to the claims asserted in this Complaint.

COUNT I: STRICT LIABILITY – FAILURE TO WARN

43. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

44. At the time of Plaintiffs' injuries, the Up & Up APAP was defective and unreasonably dangerous to foreseeable consumers, including Plaintiff Mother, because they lacked an adequate warning.

45. At all relevant times, Defendant engaged in the business of testing, developing, designing, manufacturing, marketing, labeling, selling, distributing, and promoting the Up & Up APAP, which was defective and unreasonably dangerous to consumers, including Plaintiff Mother,

because they did not contain adequate warnings or instructions concerning the dangerous characteristics of ingesting APAP during pregnancy. These actions were under the ultimate control and supervision of Defendant. At all relevant times, Defendant registered, researched, manufactured, distributed, marketed, labeled, promoted, and sold the Up & Up APAP within this District and aimed the marketing at the ultimate consumer. Defendant was at all relevant times involved in the retail and promotion of the Up & Up APAP marketed and sold in this District.

46. Defendant had a duty to warn of the risks associated with the use of the Up & Up APAP.

47. The Up & Up APAP ingested by Plaintiff Mother during pregnancy was in the same or substantially similar condition as it was when it left possession of the Defendant.

48. Defendant expected and intended the Up & Up APAP to reach users such as Plaintiff Mother in the condition in which the Up & Up APAP was sold.

49. Plaintiff Mother did not materially alter the Up & Up APAP prior to ingestion.

50. Plaintiff Mother ingested the Up & Up APAP as indicated on the Up & Up APAP labels.

51. Plaintiff Mother was unaware of the defects and dangers of the Up & Up APAP and was unaware that prenatal exposure increases the risk of brain and behavioral development of children in utero.

52. The labels on the Up & Up APAP to consumers lack any warning specific to pregnant women. The information that Defendant did provide or communicate failed to contain relevant warnings, hazards, and precautions that would have enabled consumers such as Plaintiff Mother to utilize the products safely and with adequate protection, or decide to not ingest the Up & Up APAP at all.

53. This alleged failure to warn is not limited to the information contained on the Up & Up APAP's labeling. Defendant was able, in accord with federal law, to comply with relevant state law by disclosing the known risks associated with APAP through other non-labeling mediums, i.e., promotion, advertisements, public service announcements, and/or public information sources. But Defendant did not disclose these known risks through any medium.

54. At all relevant times, Defendant had a duty to properly test, develop, design, manufacture, inspect, package, label, market, promote, sell, distribute, maintain, and supply the Up & Up APAP; provide proper warnings for the Up & Up APAP; and take such steps as necessary to ensure the Up & Up APAP did not cause users and consumers, and their children, to suffer from unreasonable and dangerous risks. Defendant had a continuing duty to warn Plaintiff Mother of dangers associated with APAP. Defendant, as a manufacturer, seller, and/or distributor of pharmaceutical medication, is held to the knowledge of an expert in the field.

55. At the time of manufacture, Defendant could have provided the warnings or instructions regarding the full and complete risks of the Up & Up APAP because Defendant knew or should have known of the unreasonable risks of ADHD associated with prenatal exposure to and/or the use of such products.

56. At all relevant times, Defendant failed and deliberately refused to investigate, study, test, or minimize the dangers to consumers of the Up & Up APAP and to those who would foreseeably use or be harmed by the Up & Up APAP, including Plaintiffs.

57. Defendant failed to adequately warn consumers, like Plaintiff Mother, about the significant increased risk of neurodevelopmental disorders in children exposed to APAP prenatally, including but not limited to ADHD.

58. Defendant failed to adequately inform reasonably foreseeable consumers, like Plaintiff Mother, of the proper usage of the Up & Up APAP.

59. Even though Defendant knew or should have known that APAP posed a grave risk of harm to Plaintiff Child, Defendant failed to exercise reasonable care to warn of the dangerous risks associated with use and prenatal exposure.

60. Plaintiff Mother was exposed to the Up & Up APAP without knowledge of its dangerous characteristics.

61. At all relevant times, Plaintiff Mother used and/or was exposed to the use of the Up & Up APAP while using it for its intended or reasonably foreseeable purposes, without knowledge of its dangerous characteristics.

62. Plaintiff Mother could not have reasonably discovered the defects and risks associated with the Up & Up APAP prior to or at the time of Plaintiff consuming APAP. Plaintiff Mother relied upon the skill, superior knowledge, and judgment of Defendant to know about and disclose serious health risks associated with using the Up & Up APAP.

63. If Plaintiff Mother had been properly warned of the defects, dangers, and risks associated with prenatal exposure to APAP, Plaintiff Mother would have decided to not ingest the Up & Up APAP at all.

64. Defendant is liable to Plaintiffs for injuries caused by Defendant's negligent or willful failure, as described above, to provide adequate warnings or other relevant information and data regarding the appropriate use of the Up & Up APAP and the risks associated with the use of APAP.

65. As a direct and proximate result of Defendant placing defective Up & Up APAP into the stream of commerce, and Plaintiff Mother's ingestion of the Up & Up APAP during pregnancy, Plaintiff Child was exposed to APAP prenatally, causing her to develop ADHD.

66. As a direct and proximate result of Defendant placing defective Up & Up APAP into the stream of commerce, Plaintiffs have suffered permanent injuries, significant pain and suffering, emotional distress, lost wages and earning capacity, and diminished quality of life. Plaintiffs respectfully seek all damages to which they may be legally entitled.

COUNT II: NEGLIGENCE

67. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

68. Although Defendant had a duty to use reasonable care in testing, developing, designing, manufacturing, marketing, labeling, selling, distributing, promoting, and preparing written instructions and warnings for the Up & Up APAP, Defendant failed to do so.

69. Defendant, directly or indirectly, caused the Up & Up APAP to be sold, distributed, packaged, labeled, marketed, promoted, and/or used by Plaintiff Mother. At all relevant times, Defendant registered, researched, manufactured, distributed, marketed, promoted, and sold the Up & Up APAP within this district and aimed at a consumer market within this district.

70. Defendant knew, or in the exercise of reasonable care should have known, that the Up & Up APAP was defectively and unreasonably designed and/or manufactured, and/or marketed, and was unreasonably dangerous and likely to injure persons that were prenatally exposed to them. Defendant knew or should have known that Plaintiff Mother was unaware of the dangers and defects inherent in the Up & Up APAP when she was ingesting them during her pregnancy with Plaintiff Child.

71. At all relevant times, Defendant had a duty to exercise reasonable care in the marketing, advertisement, promotion, and sale of the Up & Up APAP. Defendant's duty of care owed to consumers and the general public included providing accurate, true, and correct information concerning the risks of using APAP during pregnancy and appropriate, complete, and accurate warnings concerning the potential adverse effects of APAP and, in particular, the significantly increased risk of causing neurodevelopmental disorders in children through prenatal exposure to APAP.

72. At all relevant times, Defendant knew or, in the exercise of reasonable care, should have known of the hazards and dangers of APAP ingestion while pregnant and, specifically, the significantly increased risk of causing neurodevelopmental disorders in children through prenatal exposure to APAP.

73. Defendant failed to provide any kind of warning to pregnant consumers, like Plaintiff Mother, about the significantly increased risk of causing neurodevelopmental disorders in children through prenatal exposure to APAP.

74. Accordingly, at all relevant times, Defendant knew or, in the exercise of reasonable care, should have known that use of the Up & Up APAP could cause Plaintiffs' injuries, and thus, create a dangerous and unreasonable risk of injury to the users of these products, including Plaintiffs.

75. As such, Defendant breached its duty of reasonable care and failed to exercise ordinary care in the design, research, development, manufacture, testing, marketing, labeling, supply, promotion, advertisement, packaging, sale, and distribution of the Up & Up APAP, in that Defendant manufactured and produced defective Up & Up APAP, which carry the significantly increased risk of causing neurodevelopmental disorders in children through prenatal exposure to

APAP; knew or had reason to know of the defects inherent in the Up & Up APAP; knew or had reason to know that a user's or consumer's use of the Up & Up APAP created a significant risk of harm and unreasonably dangerous side effects; and failed to prevent or adequately warn of these risks and injuries.

76. Defendant had a duty to disclose the truth about the risks associated with APAP in its promotional efforts outside of the context of labeling. Defendant was negligent in its promotion of APAP outside of the labeling context by failing to disclose material risk information as part of its promotion and marketing of the Up & Up APAP, including through the internet, television, and print advertisements.

77. Despite Defendant's ability and means to investigate, study, and test the Up & Up APAP and to provide adequate warnings, Defendant failed to do so. Indeed, Defendant wrongfully concealed information and further made false and/or misleading statements concerning the safety and use of APAP.

78. Defendant's negligence included:

a. Manufacturing, producing, promoting, formulating, creating, developing, designing, selling, and/or distributing the Up & Up APAP while negligently and/or intentionally concealing and failing to disclose the results of trials, tests, and studies of APAP and the significantly increased risk of causing neurodevelopmental disorders in children through prenatal exposure to APAP, and, consequently, the risk of serious harm associated with human use of APAP during pregnancy;

b. Failing to undertake sufficient studies and conduct necessary tests to determine whether or not the Up & Up APAP was safe for its intended consumer use and unborn children;

c. Failing to provide adequate instructions, guidelines, and safety precautions to those persons Defendant could reasonably foresee would use the Up & Up APAP;

d. Failing to disclose to Plaintiff Mother, users, consumers, and the general public that use of APAP during pregnancy presents severe risks of neurodevelopmental disorders in children exposed to APAP prenatally;

e. Failing to warn Plaintiff Mother, users, consumers, and the general public that the Up & Up APAP's risk of harm was unreasonable and that there were safer and effective alternative medications or treatments available to Plaintiff Mother and other users and/or consumers;

f. Representing that the Up & Up APAP was safe for its intended purposes for pregnant women when, in fact, Defendant knew or should have known the Up & Up APAP was not safe for its intended purposes;

g. Declining to make or propose any changes to the Up & Up APAP's labeling or other promotional materials that would alert users, consumers, and the general public of the risks of APAP, including to pregnant women;

h. Advertising, marketing, and recommending the use of the Up & Up APAP, while concealing and failing to disclose or warn of the dangers known by Defendant to be caused by the use of or exposure to APAP;

i. Continuing to disseminate information to its consumers and the general public, which indicates or implies that the Up & Up APAP is not unsafe for pregnant consumer use; and

j. Continuing the manufacture and sale of the Up & Up APAP with the knowledge that the Up & Up APAP was unreasonably unsafe and dangerous.

79. Defendant knew and/or should have known that it was foreseeable that children such as Plaintiff Child would suffer injuries as a result of Defendant's failure to exercise ordinary care in the manufacturing, marketing, labeling, distribution, and sale of the Up & Up APAP to consumers, like Plaintiff Mother.

80. Plaintiff Mother did not know the nature and extent of the injuries that could result in her child from the intended use of and/or exposure to APAP prenatally.

81. Defendant's negligence was the proximate cause of Plaintiffs' injuries, i.e., absent Defendant's negligence, Plaintiff Child would not have developed ADHD.

82. Defendant's conduct, as described above, was reckless. Defendant regularly risked exposing Plaintiff Mother to the Up & Up APAP while pregnant with Plaintiff Child, with full knowledge of the dangers of the Up & Up APAP and that it could cause ADHD in Plaintiff Child. Defendant made conscious decisions not to redesign, re-label, warn, or inform the unsuspecting public, including Plaintiff Mother. Defendant's reckless conduct therefore warrants an award of punitive damages.

83. As a direct and proximate result of Defendant's negligence, Plaintiffs have suffered permanent injuries, significant pain and suffering, emotional distress, lost wages and earning capacity, and diminished quality of life. Plaintiffs respectfully seek all damages to which they may be legally entitled.

COUNT III: BREACH OF EXPRESS WARRANTY

84. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

85. At all material times, Defendant manufactured, marketed, sold, distributed, and otherwise placed into the stream of commerce the Up & Up APAP. These actions were under the ultimate control and supervision of Defendant.

86. In advertising, marketing, and promoting the Up & Up APAP to consumers, like Plaintiff Mother, Defendant expressly warranted that the Up & Up APAP was safe for use and reasonably fit for its intended purposes. In advertising, marketing, and otherwise promoting the Up & Up APAP, Defendant intended for pregnant consumers to rely upon its representations regarding safety and fitness, in an effort to induce them to purchase and consume the Up & Up APAP during pregnancy to relieve pain.

87. Defendant expressly warranted to Plaintiff Mother and pregnant consumers that the Up & Up APAP was safe for ingestion during pregnancy.

88. Defendant had a duty to exercise reasonable care in the research, development, design, testing, packaging, manufacture, inspection, labeling, distributing, marketing, promotion, sale, and release of the Up & Up APAP, including a duty to:

a. ensure that the Up & Up APAP did not cause users and their unborn children unreasonably dangerous side effects;

b. warn of dangerous and potentially incurable side effects; and

c. disclose adverse material facts, such as the true risks associated with the use of and exposure to APAP during pregnancy, when making representations to users, consumers, and the general public, including Plaintiff Mother.

89. Defendant had the ability to properly disclose the risks associated with APAP usage during pregnancy through multiple channels, not just labeling.

90. At all relevant times, Defendant expressly represented and warranted to the purchasers of the Up & Up APAP, by and through statements made by Defendant in labels, publications, brochures, and other written materials intended for consumers and the general public, that the Up & Up APAP was safe to human health and the environment, effective, fit, and proper

for its intended use. Defendant advertised, labeled, marketed, and promoted the Up & Up APAP, representing the quality to consumers and the public in such a way as to induce their purchases or use, thereby making an express warranty that the Up & Up APAP would conform to the representations.

91. The representations about the Up & Up APAP, as set forth herein, contained or constituted affirmations of fact or promises made by the seller to the buyer, which related to the goods and became part of the basis of the bargain, creating an express warranty that the goods would conform to the representations.

92. Defendant breached express representations and warranties made to Plaintiff Mother, with respect to the Up & Up APAP, including the following:

a. Defendant represented through its labeling, advertising, and marketing materials that the Up & Up APAP was safe, and intentionally withheld and concealed information about the risks of serious injury associated with use of APAP and by expressly limiting the risks associated with use within its warnings and labels; and

b. Defendant represented that the Up & Up APAP was safe for use and intentionally concealed information that demonstrated that APAP carries the significantly increased risk of causing neurodevelopmental disorders in children through prenatal exposure to APAP, and that the Up & Up APAP, therefore, was not safer than alternatives available on the market.

93. Plaintiff Mother detrimentally relied on the express warranties and representations of Defendant concerning the safety and/or risk profile of APAP in deciding to purchase the Up & Up APAP. Plaintiff Mother reasonably relied upon Defendant to disclose known defects, risks, dangers, and side effects of APAP. Plaintiff Mother would not have purchased or used the Up &

Up APAP had Defendant properly disclosed the risks associated with the Up & Up APAP, either through advertising, labeling, or any other form of disclosure.

94. Plaintiff Mother had no knowledge of the falsity or incompleteness of Defendant's statements and representations concerning the Up & Up APAP.

95. Plaintiff Mother used and/or was exposed to APAP as researched, developed, designed, tested, manufactured, inspected, labeled, distributed, packaged, marketed, promoted, sold, or otherwise released into the stream of commerce by Defendant.

96. Had the warnings, labels, advertisements, or promotional material for the Up & Up APAP accurately and adequately set forth the true risks associated with the use of such Products, including Plaintiffs' injuries, rather than expressly excluding such information and warranting that the Up & Up APAP was safe for its intended use, Plaintiffs could have avoided the injuries complained of herein.

97. As a direct and proximate result of Defendant's breach of express warranty, Plaintiffs have suffered permanent injuries, significant pain and suffering, emotional distress, lost wages and earning capacity, and diminished quality of life. Plaintiffs respectfully seek all damages to which they may be legally entitled.

COUNT IV: BREACH OF IMPLIED WARRANTY

98. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

99. At all material times, Defendant manufactured, marketed, sold, distributed, and otherwise placed the Up & Up APAP into the stream of commerce.

100. At all material times, Defendant intended for the Up & Up APAP to be consumed and ingested by pregnant women, like Plaintiff Mother; and Defendant impliedly warranted that

the Up & Up APAP and its component parts were of merchantable quality, safe, fit for such use, and adequately tested.

101. Defendant was aware that consumers, including Plaintiff Mother, would consume and ingest the Up & Up APAP as directed by the Product's labels and promotional materials. Therefore, Plaintiff Mother was a foreseeable user of the Up & Up APAP.

102. But Defendant failed to disclose that APAP has dangerous propensities when used as intended and that use of the Up & Up APAP carries an increased risk of developing severe injuries, including Plaintiff Child's injuries.

103. The Up & Up APAP was expected to reach, and did in fact reach consumers, including Plaintiff Mother, without substantial change in the condition in which they were manufactured and sold by Defendant.

104. Plaintiff Mother was an intended beneficiary of the implied warranties made by Defendant to purchasers of the Up & Up APAP.

105. In reliance upon Defendant's implied warranties, Plaintiff Mother used the Up & Up APAP as indicated, and in the foreseeable manner normally intended, recommended, promoted, and marketed by Defendant.

106. Defendant breached its implied warranties to Plaintiffs in that the Up & Up APAP was not of merchantable quality, nor was it safe or fit for its intended use or adequately tested.

107. The harm caused by the Up & Up APAP far outweighed its benefit, rendering the Up & Up APAP more dangerous than an ordinary consumer or user would expect and more dangerous than alternative products.

108. As a direct and proximate result of Defendant's breach of implied warranty, Plaintiffs have suffered permanent injuries, significant pain and suffering, emotional distress, lost

wages and earning capacity, and diminished quality of life. Plaintiffs respectfully seek all damages to which they may be legally entitled.

COUNT V: VIOLATION OF CONSUMER PROTECTION LAWS

109. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

110. Plaintiff Mother purchased and used the Up & Up APAP for primarily personal use and pain relief during pregnancy, thereby suffering ascertainable losses as a result of Defendant's actions in violation of the consumer protection laws.

111. Had Defendant not engaged in the deceptive conduct described in this Complaint, Plaintiff would not have purchased and/or paid for the Up & Up APAP, and Plaintiffs would not have incurred related injury medical costs.

112. Defendant engaged in wrongful conduct while at the same time obtaining under false pretenses moneys from Plaintiff for the Up & Up APAP. Those moneys would not have been paid had Defendant not engaged in unfair and deceptive conduct.

113. Defendant engaged in the following unfair methods of competition or deceptive acts or practices, which are proscribed by law:

A. representing that goods or services have characteristics, ingredients, uses, benefits, or qualities they do not have;

B. advertising goods or services with the intent not to sell them as advertised; and

C. engaging in fraudulent or deceptive conduct creating a likelihood of confusion or misunderstanding.

114. Plaintiffs were injured by the cumulative nature of Defendant's conduct. The cumulative effect, directed at patients, physicians, and consumers, was to create demand for and

sell the Up & Up APAP. Each aspect of Defendant's conduct combined to artificially create sales of the Up & Up APAP.

115. Defendant had a statutory duty to refrain from unfair or deceptive acts or trade practices in the design, labeling, development, manufacture, promotion, and sale of the Up & Up APAP.

116. Defendant's deceptive, unconscionable, or fraudulent representations and material omissions to consumers, including Plaintiff Mother, constitute unfair and deceptive acts and trade practices in violation of the federal and state consumer protection statutes listed below.

117. Defendant's actions, as complained of in this Complaint, constitute unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or trade practices in violation of the federal and state consumer protection statutes listed below.

118. Defendant has engaged in unfair competition, or unfair or deceptive acts or trade practices, or has made false representations under the following statutes:

- 15 U.S.C. §§ 2301–12 (1982); and
- Minnesota Statute §§ 325D.43, *et seq* (Uniform Deceptive Trade Practices)
- Minnesota Statute §§ 325D.09, *et seq* (Unlawful Trade Practices)
- Minnesota Statute § 325F.67 (False Statement in Advertisement)
- Minnesota Statutes §§ 325F.68, *et seq* (Prevention of Consumer Fraud)

119. To protect consumers against unfair, deceptive, fraudulent, and unconscionable trade and business practices, and false advertising, Defendant, as the supplier, manufacturer, advertiser, and seller, is subject to liability under the above legislation enacted against unfair, deceptive, fraudulent, and unconscionable consumer sales practices.

120. By knowingly and falsely representing that the Up & Up APAP was fit to be used for the purposes for which they were intended—when in fact they were defective and dangerous—and by other acts alleged, Defendant violated the above statutes, enacted to protect consumers against unfair, deceptive, fraudulent, and unconscionable trade and business practices, and false advertising.

121. Defendant's actions and omissions are uncured or incurable, deceptive acts under the above legislation.

122. Defendant had actual knowledge of the defective and dangerous conditions of the Up & Up APAP but failed to take any action to cure such defective and dangerous conditions.

123. Plaintiff Mother relied upon Defendant's misrepresentations and omissions in determining which Up & Up APAP (if any) to ingest.

124. Defendant's deceptive, unconscionable, or fraudulent representations and material omissions to consumers constituted unfair and deceptive acts and practices.

125. By reason of the unlawful acts in which Defendant engaged, and as a direct and proximate result thereof, Plaintiffs have suffered ascertainable losses and damages.

126. As a direct and proximate result of Defendant's violations of the above-listed legislation, Plaintiffs have sustained economic losses and other damages and are entitled to statutory and compensatory damages in an amount to be proven at trial.

COUNT VI: NEGLIGENT MISREPRESENTATION

127. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

128. Defendant had a duty to accurately and truthfully represent to consumers, including Plaintiff Mother, and the public that the Up & Up APAP had not been adequately tested and found

to be a safe and effective treatment for pregnant women. Defendant breached that duty as its representations were false.

129. Defendant failed to exercise ordinary care in the representations concerning the Up & Up APAP while Defendant was involved in its manufacture, sale, testing, quality assurance, quality control, and distribution in interstate commerce, because Defendant negligently misrepresented the Up & Up APAP's high risk of unreasonable and dangerous adverse side effects.

130. Defendant also breached its duty in representing to Plaintiff Mother that the Up & Up APAP had no serious side effects when ingested during pregnancy.

131. As a foreseeable, direct, and proximate result of Defendant's negligent misrepresentations, Defendant knew or had reason to know that the Up & Up APAP had been insufficiently tested or had not been tested at all; and that it lacked adequate and accurate warnings, and created a high risk, or a higher than acceptable reported and represented risk, of adverse side effects. Those side effects include neurodevelopmental disorders in children, such as ADHD.

132. As a direct and proximate result of Defendant's negligent misrepresentation, Plaintiffs have suffered permanent injuries, significant pain and suffering, emotional distress, lost wages and earning capacity, and diminished quality of life. Plaintiffs respectfully seek all damages to which they may be legally entitled.

PUNITIVE DAMAGES

133. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

134. Defendant failed to adequately test and study the Up & Up APAP to determine and ensure that the Up & Up APAP was safe and effective prior to releasing it for sale for human consumption.

135. Further, Defendant continued to manufacture and sell the Up & Up APAP after obtaining knowledge and information that it was defective and unreasonably unsafe in that they did not include adequate warnings.

136. Defendant was aware of the probable consequences of the dangerous and defective product, including the risk of neurodevelopmental disorders in children, such as ADHD, when they suffered prenatal exposure.

137. At all material times, Defendant knew or should have known that the Up & Up APAP was inherently dangerous with respect to the following: the risk of neurodevelopmental disorders in children, such as ADHD, when they suffered prenatal exposure; pain and suffering; loss of life's enjoyment; and unsuccessful treatments to cure the conditions proximately related to the use of the Up & Up APAP, as well as the other permanent and lasting severe personal injuries.

138. Defendant's misrepresentations included knowingly withholding material information from consumers and the public, including Plaintiff Mother, concerning the safety and efficacy of the Up & Up APAP, which deprived Plaintiff Mother of vitally necessary information with which to make a fully informed decision about whether to use the Up & Up APAP.

139. At all material times, Defendant also knew and recklessly and/or intentionally disregarded the fact that the Up & Up APAP can cause debilitating and life-altering side effects with greater frequency than safer alternative methods, products, and/or treatments. But Defendant recklessly failed to advise the medical community and the general public, including Plaintiff Mother, of that fact.

140. At all material times, Defendant intentionally misstated and misrepresented data; and Defendant continues to misrepresent data so as to minimize the perceived risk of injuries and the rate of complications caused by or associated with the Up & Up APAP.

141. Notwithstanding the foregoing and the growing body of knowledge and information regarding the true and defective nature of the Up & Up APAP, with its increased risk of side effects and serious complications, Defendant continues to aggressively market the Up & Up APAP to consumers, including the pregnant community at large, without disclosing the true risk of the complications and side effects.

142. When Plaintiff Mother consumed the Up & Up APAP and since then, Defendant has known the Up & Up APAP was defective and unreasonably dangerous without an adequate warning. But Defendant continued to manufacture, produce, assemble, market, distribute, and sell the Up & Up APAP to the pregnant community so as to maximize sales and profits at the expense of the health and safety of expecting mothers in a conscious, reckless, and/or intentional disregard of the likely and foreseeable harm caused by the Up & Up APAP to members of the public, including Plaintiffs.

143. At all material times, Defendant has concealed and/or failed to disclose to the public the serious risks and the potential complications associated with the Up & Up APAP, so as to ensure continued and increased sales and profits and to the detriment of the public, including Plaintiffs.

144. Defendant's acts and omissions are of such character and nature so as to entitle Plaintiffs to an award of punitive damages in accordance with applicable statutory and common law. Defendant's conduct shows willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care, raising the presumption of conscious indifference to consequences, thereby justifying an award of punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendant individually, and jointly and severally. Plaintiffs also request compensatory damages, punitive damages, or enhanced

compensatory damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

PRAYER FOR RELIEF

Plaintiffs demand judgment against Defendant, individually, and jointly and severally, and prays for the following relief in accordance with applicable law and equity:

i. Compensatory damages to Plaintiffs for past, present, and future damages, including pain and suffering for severe and permanent personal injuries sustained by Plaintiffs, permanent impairment, mental pain and suffering, loss of enjoyment of life, health and medical care costs, economic damages, together with interest and costs as provided by law;

ii. Restitution and disgorgement of Defendant's profits;

iii. Punitive or enhanced compensatory damages;

iv. Reasonable attorneys' fees as provided by law;

v. Past and future costs of all proceedings;

vi. All ascertainable economic damages;

vii. Prejudgment interest on all damages as allowed by law; and

viii. Such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: September 15, 2022

Respectfully submitted,

CAMPBELL KNUTSON
Professional Association

By */s/ Jared D. Shepherd*
Jared D. Shepherd
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Attorneys for Plaintiff

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

CARA WICKER INDIVIDUALLY J.W., A MINOR, BY AND THROUGH HER PARENT AND NATURAL GUARDIAN, CARA WICKER

(b) County of Residence of First Listed Plaintiff Multnomah County OR
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Jared D. Shepherd, 860 Blue Gentian Road, Suite 290
Eagan, Minnesota 55121, (651) 452-5000

DEFENDANTS

TARGET CORPORATION

County of Residence of First Listed Defendant Hennepin
(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
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

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

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☒ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State 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)***:
28 U.S.C. § 1332(a)

Brief description of cause: STRICT LIABILITY – FAILURE TO WARN, NEGLIGENCE, BREACH OF EXPRESS WARRANTY, BREACH OF IMPLIED WARRANTY, VIOLATION OF CONSUMER PROTECTION LAWS, NEGLIGENT MISREPRESENTATION

VII. REQUESTED IN COMPLAINT:

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

DEMAND $ $75,001

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Katherine Menedez DOCKET NUMBER 0:22-cv-01532-KMM-JFD

DATE 09/15/2022

SIGNATURE OF ATTORNEY OF RECORD /s/ Jared D. Shepherd

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 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 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. 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 Rule 8(a), F.R.Cv.P., 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.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 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.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 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 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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN 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 Rule 23, F.R.Cv.P.
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 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.