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*Attorneys For Plaintiff Pacira
BioSciences, Inc.*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

PACIRA BIOSCIENCES, INC.,

Plaintiff,

v.

AMERICAN SOCIETY OF
ANESTHESIOLOGISTS, INC.,
EVAN D. KHARASCH, NASIR
HUSSAIN, RICHARD BRULL,
BRENDAN SHEEHY, MICHAEL K.
ESSANDOH, DAVID L. STAHL,
TRISTAN E. WEAVER, FARAJ W.
ABDALLAH, BRIAN M. ILFELD,
JAMES C. EISENACH, RODNEY A.
GABRIEL, AND MARY ELLEN
McCANN,

Defendants.

Civil Action No. 2:21 Civ. 9264

**COMPLAINT and DEMAND
FOR JURY TRIAL**

Plaintiff Pacira BioSciences, Inc. (“Pacira”), by and through its attorneys, hereby brings this Complaint against Defendants American Society of Anesthesiologists (“ASA” or “the Society”), Evan D. Kharasch, Nasir Hussain, Richard Brull, Brendan Sheehy, Michael K. Essandoh, David L. Stahl, Tristan E. Weaver, Faraj W. Abdallah, Brian M. Ilfeld, James C. Eisenach, Rodney A. Gabriel, and Mary Ellen McCann, and states as follows:

NATURE OF THE ACTION

1. This is a trade libel action regarding false and misleading statements made about EXPAREL, a pain medication drug, in the February 2021 issue of *Anesthesiology*, the ASA’s “official” medical journal.¹ Pacira is the manufacturer of the only liposomal bupivacaine product approved by the U.S. Food and Drug Administration (“FDA”), brand name EXPAREL. EXPAREL (bupivacaine liposome injectable suspension)² is a non-opioid pain medication proven to prolong post-surgery pain relief.

2. In the February 2021 issue of *Anesthesiology*, the ASA, reflecting a bias against EXPAREL amongst the editorial staff at *Anesthesiology*, published three

¹ ASA Publ’ns, *About the Journal*, <https://pubs.asahq.org/anesthesiology/pages/about-the-journal> (last visited Apr. 13, 2021).

² The Complaint uses both “EXPAREL” and “liposomal bupivacaine” to refer to the bupivacaine liposome injectable suspension product manufactured and sold by Pacira.

articles, and other related content, that seriously disparage Pacira's product EXPAREL. The challenged journal articles, as well as the related podcast and Continuing Medical Education ("CME") content on the ASA's website, contain false and misleading conclusions, based on faulty scientific research that does not satisfy applicable standards within the scientific community. These conclusions create the false impression that EXPAREL—a drug approved by the FDA and used by over eight million patients over the past nine years—is not an effective pain medication. As a result, Pacira has suffered and will continue to suffer significant pecuniary harm as both existing and potential customers who have seen the disparaging articles, have either canceled contracts for EXPAREL, declined to purchase EXPAREL, or are considering removing EXPAREL from hospital formularies.

PARTIES

3. Pacira is a pharmaceutical company, and a leading provider of non-opioid pain management. Pacira is the manufacturer of the drug EXPAREL, a non-opioid pain medication.

4. Pacira's headquarters are located at 5 Sylvan Way, Parsippany, New Jersey, and the company is incorporated in Delaware, making Pacira a citizen of both New Jersey and Delaware.

5. The ASA is a professional medical association centered on the practice of anesthesiology. The ASA is headquartered at 1061 American Lane, Schaumburg, Illinois, 60173, and incorporated in New York, making it a citizen of Illinois and New York.

6. The ASA's membership is open to physicians practicing in anesthesiology as well as anesthesiologist assistants and scientists interested in anesthesiology; other non-physicians who nevertheless provide anesthesia care may join as educational members.³ Active members of the ASA must also be members of a component society; component societies are located in each of the 50 states, including New Jersey, as well as the District of Columbia and Puerto Rico.⁴ The ASA has over 54,000 members,⁵ including members located in New Jersey.

7. The ASA publishes a peer-reviewed medical journal, *Anesthesiology*.⁶

8. Dr. Evan Kharasch is the editor-in-chief of *Anesthesiology* and a Professor of Anesthesiology at the Duke University School of Medicine in Durham, North Carolina, located at Department of Anesthesiology, Box 3094, 905 S. Lasalle,

³ ASA, *Membership Eligibility*, <https://www.asahq.org/member-center/membership-eligibility> (last visited Apr. 13, 2021).

⁴ ASA, *Component Societies*, <https://www.asahq.org/about-asa/component-societies> (last visited Apr. 13, 2021).

⁵ See *supra* note 3.

⁶ The Complaint uses both “*Anesthesiology*” and the “Journal” to refer to the peer-reviewed medical journal published by the ASA.

GSRB1 Room 20031, Durham, NC 27710. He holds a Ph.D. and an M.D. from Northwestern University. Dr. Kharasch oversaw the publication of the challenged articles, and is a longstanding proponent of opioid-based treatments. On information and belief, Dr. Kharasch knew or recklessly disregarded the fact that statements contained in the February articles were false or misleading when he either approved them for publication or permitted them to be published.

9. Dr. Nasir Hussain holds an M.D. and an M.Sc., and is an anesthesiology resident at the Ohio State University College of Medicine in Columbus, Ohio, located at The Ohio State University Wexner Medical Center Doan Hall, Department of Anesthesiology, 410 W. 10th Ave., Columbus, OH, 43201. Dr. Hussain was the lead author of the meta-analysis entitled, “Perineural Liposomal Bupivacaine Is Not Superior to Nonliposomal Bupivacaine for Peripheral Nerve Block Analgesia: A Systematic Review and Meta-analysis.” On information and belief, Dr. Hussain knew or recklessly disregarded the fact that his statements about EXPAREL were false or misleading.

10. Dr. Richard Brull holds an M.D. and is a Professor of Anesthesia at the University of Toronto, and Chair in Ambulatory Anesthesia and Women’s Health at Women’s College Hospital in Toronto, Ontario, located at University of Toronto, Women’s College Hospital, 76 Grenville Street, Toronto ON, M5S182. Dr. Brull co-authored “Perineural Liposomal Bupivacaine Is Not Superior to Nonliposomal



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