

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

**ERIC W. BONWIT,**

**Plaintiff,**

**vs.**

**PFIZER PHARMACEUTICALS &  
OMOLOLA OLAJIDE**

**Defendants.**

**3:10-cv-08136 JWS**

**ORDER AND OPINION**

**[Re: Motion at Docket 31]**

**I. MOTION PRESENTED**

At docket 31, defendant Pfizer Pharmaceuticals (“defendant” or “Pfizer”) moves for summary judgment pursuant to Federal Rule of Civil Procedure 56. *Pro se* plaintiff Eric W. Bonwit (“plaintiff” or “Mr. Bonwit”) opposes the motion at docket 33. Pfizer’s reply is at docket 34. Oral argument was not requested but would not assist the court.

**II. BACKGROUND**

Mr. Bonwit alleges that his physician, Dr. Omolola Olajide, gave him a sample packet of Viagra, an erectile dysfunction drug. Mr. Bonwit maintains that he took Viagra late on February 7, 2008, and that he awoke at 4:40 a.m. the next morning, went upstairs, and passed out after feeling light headed. The paramedics were called and Mr. Bonwit was taken to the hospital. Mr. Bonwit maintains that he suffered multiple

1 fractures of his big toes, that he had to wear a walking boot for the next several weeks,  
2 and that, while wearing the boot, he got in a car accident. Mr. Bonwit states that he still  
3 experiences pain and stiffness in his big toes.

4 Mr. Bonwit filed a complaint in Arizona state court seeking damages from Pfizer  
5 and Dr. Olajide. The claims against Dr. Olajide were dismissed for failure to make  
6 timely service of process.

### 7 **III. STANDARD OF REVIEW**

8 Summary judgment is appropriate where “there is no genuine dispute as to any  
9 material fact and the movant is entitled to judgment as a matter of law.”<sup>1</sup> The materiality  
10 requirement ensures that “only disputes over facts that might affect the outcome of the  
11 suit under the governing law will properly preclude the entry of summary judgment.”<sup>2</sup>  
12 Ultimately, “summary judgment will not lie if the . . . evidence is such that a reasonable  
13 jury could return a verdict for the nonmoving party.”<sup>3</sup> In resolving a motion for summary  
14 judgment, a court must view the evidence in the light most favorable to the non-moving  
15 party.<sup>4</sup> The reviewing court may not weigh evidence or assess the credibility of  
16 witnesses.<sup>5</sup> The burden of persuasion is on the moving party.<sup>6</sup>

### 17 **IV. DISCUSSION**

18 Pfizer’s primary argument is that Mr. Bonwit has failed to file a witness list and  
19 therefore will not be able to prove his claim. In the court’s scheduling and planning  
20 order of May 25, 2011, the court stated as follows: “A final witness list, disclosing all lay  
21 and expert witnesses whom a party may wish to call at trial, shall be served and filed

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22 <sup>1</sup>Fed. R. Civ. P. 56(a).

23 <sup>2</sup>*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

24 <sup>3</sup>*Id.*

25 <sup>4</sup>*Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000).

26 <sup>5</sup>*Dominguez-Curry v. Nevada Transp. Dept.*, 424 F.3d 1027, 1036 (9th Cir. 2005).

27 <sup>6</sup>*Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

