

MAY 20 2009

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6  
7

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF LOS ANGELES**  
10

11 STEVEN ALLEN and DONNA ALLEN, )  
husband and wife; )  
12 SHARON BOYAJIAN, individually and as )  
Wife and Next of Kin to )  
13 DONALD BOYAJIAN, deceased; )  
14 JAMES POTTER and PAULA POTTER, )  
husband and wife; )  
15 DAVID HOLLAND, individually and as )  
Next of Kin to MARION HOLLAND, )  
16 deceased; )  
17 CHARLENE CUNNINGHAM, individually )  
and as Wife and Next of Kin to )  
18 WILLIAM CUNNINGHAM, deceased; )  
MALCOLM WHITEBIRD, a single man; )  
19 WILLIAM MERRICK, a single man; )  
JOHN GILBERT, a single man; )  
20 GERRI KERBY and FREDERICK W. KERBY, )  
wife and husband; )  
21 MAXINE SUNTYCH, a single woman; )  
22 MARSHA KESHANI and MAHMOOD )  
KESHANI, Wife and Husband; )  
23 NARCISCO GUZMAN, a single man; )  
24 CATHERINE MONTGOMERY and OLLIE )  
MONTGOMERY, wife and husband; )  
25 OLLIE MONTGOMERY and CATHERINE )  
MONTGOMERY, husband and wife; )  
26 NANCY BARNES, a single woman; )  
RUBY GREENE, a widow; )  
27 BARBARA HARRIS, a single woman; )  
28 AL JANUSZEWSKI and GERALDINE )

CASE NO. PC045472  
  
**COMPLAINT FOR DAMAGES  
AND DEMAND FOR JURY TRIAL**  
  
**[PRODUCTS LIABILITY]**  
  
1. Strict Liability – Failure to Warn  
2. Negligence  
3. Breach of Implied Warranty  
4. Breach of Express Warranty  
5. Fraud  
6. Fraud By Concealment  
7. Negligent Misrepresentation  
8. Loss of Consortium  
9. Wrongful Death

1 JANUSZEWSKI, husband and wife; )  
MARY McBRIDE, a widow; )  
2 MARILYN VARGO and JAMES VARGO, )  
wife and husband; )  
3 ANTHONY ARCHULETA and REBECCA )  
4 ARCHULETA, husband and wife; )  
JAMES CHAMPION, a single man; )  
5 GARY CLARK and CAROL CLARK, )  
husband and wife; )  
6 JEANETTE DORSETT, a single woman; )  
7 EDWARD FRAZIER and GLADYS FRAZIER, )  
husband and wife; )  
8 TONYA HARMS and GEORGE HARMS, )  
wife and husband; )  
9 ROBERT HARTLEY, a single man; )  
10 PEGGY HAYWARD and COLIN HAYWARD, )  
wife and husband; )  
11 ROBERT HENDREN and MARGARET )  
HENDREN, husband and wife; )  
12 LAWRENCE LANE, JR. and JACQUELYN )  
LANE, husband and wife; )  
13 GEORGE MCKINNEY and DEBORAH )  
MCKINNEY, husband and wife; )  
14 BILLY PRIDEMORE, a single man; )  
15 HUGH RILEY, a widower; )  
MICHAEL SIPPEL and REGINA SIPPEL, )  
16 husband and wife; )  
LINDA SWIGER, a single woman; )  
17 CHARLES WALTERS, JR., a single man; )  
18 JIM WALTERS and GAY ANN WALTERS, )  
husband and wife; )  
19 DALE WEAVER, a single man; )  
PATSY ALMASY, a single woman; )  
20 RONALD ADKINS and LINDA ADKINS, )  
husband and wife; )  
21 ERIC BRASHER and ANGELA BRASHER, )  
husband and wife; )  
22 SUSAN LEFF, individually and as Child and )  
23 Next of Kin to ELI LEFF, deceased; )  
JAMES DAVIS, a single man; )  
24 SOCRATES DUNCAN, a single man; )  
25 BILLY GUINN and OPHELIA GUINN, )  
husband and wife; )  
26 RODOLFO HERNANDEZ and MARIA )  
HERNANDEZ, husband and wife; )  
27 STEVE MESSICK, a single man; )  
DANIEL MONTALVO and ALEYDA )  
28 MONTALVO, husband and wife; )

1 ALVIN ROGERS, individually and as )  
Husband and Next of Kin to LINDA ROGERS, )  
2 Deceased; )  
MICHELE POWELL, a separated woman; )  
3 ROBERT ROBBINS and SANDRA ROBBINS, )  
4 husband and wife; )  
DEAN ROGERS and DAPHNE ROGERS, )  
5 husband and wife; )  
FLOYD SMITH, a single man; )  
6 JOHNNY WILBURN and VELMA WILBURN, )  
7 husband and wife; )  
WILLIAM FIELDS and DOROTHY FIELDS, )  
8 husband and wife; )  
JOYCE ANN BROOKS, individually and as )  
9 Next of Kin to RONALD WAYNE BROOKS, )  
deceased; )  
10 BEVERLY JONES, individually and as Wife )  
And Next of Kin to DeWAYNE JONES, )  
11 deceased; )  
12 PATRICIA ALTRICHTER, individually and as )  
Wife and Next of Kin to RONALD )  
13 ALTRICHTER, deceased; )  
LaVONDA GRIFFIN, a single woman; and )  
14 CAROL PHINNEY, a widow )  
15 )  
Plaintiffs, )  
16 )  
vs. )  
17 )  
SMITHKLINE BEECHAM CORPORATION, )  
18 a Pennsylvania corporation d/b/a )  
GLAXOSMITHKLINE; MCKESSON )  
19 CORPORATION, a Delaware corporation; )  
20 DOES ONE through FIFTEEN, inclusive, )  
21 )  
Defendants. )

22  
23 For their Complaint against the Defendants for injuries and other damages caused by  
24 ingestion of the prescription medication AVANDIA® (rosiglitazone maleate), alone, or  
25 compounded as AVANDAMET® (rosiglitazone maleate and metformin hydrochloride) and/or  
26 AVANDARYL® (rosiglitazone maleate and glimepiride) (these medications are hereinafter  
27 singularly or collectively referred to as "Avandia"), Plaintiffs allege:  
28

1 DEMAND FOR JURY TRIAL

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

3 PARTIES

4 2. Plaintiffs STEVEN ALLEN and DONNA ALLEN, husband and wife, are and were at all  
5 times alleged herein citizens and residents in the City of Northridge, County of Los Angeles,  
6 State of California, and bring this action in their individual capacities.

7 3. Plaintiff STEVEN ALLEN ingested Defendant's Avandia and as a result suffered severe  
8 injuries and other damages.

9 4. Plaintiff SHARON BOYAJIAN, individually and as Wife and Next of Kin to DONALD  
10 BOYAJIAN, deceased, is and was at all times alleged herein a citizen and resident of the City of  
11 Encino, County of Los Angeles, State of California, and brings this action individually and as  
12 Next of Kin to DONALD BOYAJIAN, deceased.

13 5. Plaintiff SHARON BOYAJIAN's decedent, DONALD BOYAJIAN, was at all times alleged  
14 herein a citizen and resident of the City of Encino, County of Los Angeles, State of California.

15 6. Plaintiff SHARON BOYAJIAN's decedent, DONALD BOYAJIAN, ingested Defendant's  
16 Avandia and as a result suffered severe injuries resulting in his death.

17 7. Plaintiffs JAMES POTTER and PAULA POTTER, husband and wife, are and were at all  
18 times alleged herein citizens and residents of the State of California and bring this action in their  
19 individual capacities.

20 8. Plaintiff JAMES POTTER ingested Defendant's Avandia and as a result suffered severe  
21 injuries and other damages.

22 9. Plaintiff DAVID HOLLAND, individually and as Next of Kin to MARION HOLLAND,  
23 deceased, is and was at all times alleged herein a citizen and resident of the State of  
24 Oklahoma, and brings this action individually and as Next of Kin to MARION HOLLAND,  
25 deceased.

26 10. Plaintiff DAVID HOLLAND's decedent, MARION HOLLAND was at all times alleged  
27 herein a citizen and resident of the State of Oklahoma.

1 11. Plaintiff DAVID HOLLAND's decedent, MARION HOLLAND, ingested Defendant's  
2 Avandia and as a result suffered severe injuries resulting in his death.

3 12. Plaintiff CHARLENE CUNNINGHAM, individually and as Wife and Next of Kin to  
4 WILLIAM CUNNINGHAM, deceased, is and was at all times alleged herein a citizen and  
5 resident of the State of Oklahoma, and brings this action individually and as Wife and Next of  
6 Kin to WILLIAM CUNNINGHAM, deceased.

7 13. Plaintiff CHARLENE CUNNINGHAM's decedent, WILLIAM CUNNINGHAM was at all  
8 times alleged herein a citizen and resident of the State of Oklahoma.

9 14. Plaintiff CHARLENE CUNNINGHAM's decedent, WILLIAM CUNNINGHAM, ingested  
10 Defendant's Avandia and as a result suffered severe injuries resulting in his death.

11 15. Plaintiff MALCOLM WHITEBIRD, a single man, is and was at all times alleged herein a  
12 citizen and resident of the State of Oklahoma, and brings this action individually.

13 16. Plaintiff MALCOLM WHITEBIRD ingested Defendant's Avandia and as a result suffered  
14 severe injuries and other damages.

15 17. Plaintiff WILLIAM MERRICK, a single man, is and was at all times alleged herein a  
16 citizen and resident of the State of Oklahoma, and brings this action individually.

17 18. Plaintiff WILLIAM MERRICK ingested Defendant's Avandia and as a result suffered  
18 severe injuries and other damages.

19 19. Plaintiff JOHN GILBERT, a single man, is and was at all times alleged herein a citizen  
20 and resident of the State of Oklahoma, and brings this action individually.

21 20. Plaintiff JOHN GILBERT ingested Defendant's Avandia and as a result suffered severe  
22 injuries and other damages.

23 21. Plaintiffs GERRI KERBY and FREDERICK W. KERBY, wife and husband, are and were  
24 at all times alleged herein citizens and residents of the State of Missouri, and bring this action in  
25 their individual capacities.

26 22. Plaintiff GERRI KERBY ingested Defendant's Avandia and as a result suffered severe  
27 injuries and other damages.

1 23. Plaintiff MAXINE SUNTYCH, a single woman, is and was at all times alleged herein a  
2 citizen and resident of the State of Wyoming, and brings this action individually.

3 24. Plaintiff MAXINE SUNTYCH ingested Defendant's Avandia and as a result suffered  
4 severe injuries and other damages.

5 25. Plaintiffs MARSHA KESHANI and MAHMOOD KESHANI, wife and husband, are and  
6 were at all times alleged herein citizens and residents of the State of Maryland, and bring this  
7 action in their individual capacities.

8 26. Plaintiff MARSHA KESHANI ingested Defendant's Avandia and as a result suffered  
9 severe injuries and other damages.

10 27. Plaintiff NARCISCO GUZMAN, a single man, is and was at all times alleged herein a  
11 citizen and resident of the State of Texas, and brings this action individually.

12 28. Plaintiff NARCISCO GUZMAN ingested Defendant's Avandia and as a result suffered  
13 severe injuries and other damages.

14 29. Plaintiffs CATHERINE MONTGOMERY and OLLIE MONTGOMERY, wife and husband,  
15 are and were at all times alleged herein citizens and residents of the State of Alabama, and  
16 bring this action in their individual capacities.

17 30. Plaintiff CATHERINE MONTGOMERY ingested Defendant's Avandia and as a result  
18 suffered severe injuries and other damages.

19 31. Plaintiffs OLLIE MONTGOMERY and CATHERINE MONTGOMERY, husband and wife,  
20 are and were at all times alleged herein citizens and residents of the State of Alabama, and  
21 bring this action in their individual capacities.

22 32. Plaintiff OLLIE MONTGOMERY ingested Defendant's Avandia and as a result suffered  
23 severe injuries and other damages.

24 33. Plaintiff NANCY BARNES, a single woman, is and was at all times alleged herein a  
25 citizen and resident of the State of Michigan, and brings this action individually.

26 34. Plaintiff NANCY BARNES ingested Defendant's Avandia and as a result suffered severe  
27 injuries and other damages.

1 35. Plaintiff RUBY GREENE, a widow, is and was at all times alleged herein a citizen and  
2 resident of the State of West Virginia, and brings this action individually.

3 36. Plaintiff RUBY GREENE ingested Defendant's Avandia and as a result suffered severe  
4 injuries and other damages.

5 37. Plaintiff BARBARA HARRIS, a single woman, is and was at all times alleged herein a  
6 citizen and resident of the State of Washington, and brings this action individually.

7 38. Plaintiff BARBARA HARRIS ingested Defendant's Avandia and as a result suffered  
8 severe injuries and other damages.

9 39. Plaintiff AL JANUSZEWSKI and GERALDINE JANUSZEWSKI, husband and wife, are  
10 and were at all times alleged herein citizens and residents of the State of Illinois, and bring this  
11 action in their individual capacities.

12 40. Plaintiff AL JANUSZEWSKI ingested Defendant's Avandia and as a result suffered  
13 severe injuries and other damages.

14 41. Plaintiff MARY McBRIDE, a widow, is and was at all times alleged herein a citizen and  
15 resident of the State of Virginia, and brings this action individually.

16 42. Plaintiff MARY McBRIDE ingested Defendant's Avandia and as a result suffered severe  
17 injuries and other damages.

18 43. Plaintiffs MARILYN VARGO and JAMES VARGO, wife and husband, are and were at all  
19 times alleged herein citizens and residents of the State of Ohio, and bring this action in their  
20 individual capacities.

21 44. Plaintiff MARILYN VARGO ingested Defendant's Avandia and as a result suffered  
22 severe injuries and other damages.

23 45. Plaintiffs ANTHONY ARCHULETA and REBECCA ARCHULETA, husband and wife, are  
24 and were at all times alleged herein citizens and residents of the State of New Mexico, and  
25 bring this action in their individual capacities.

26 46. Plaintiff ANTHONY ARCHULETA ingested Defendant's Avandia and as a result suffered  
27 severe injuries and other damages.

1 47. Plaintiff JAMES CHAMPION, a single man, is and was at all times alleged herein a  
2 citizen and resident of the State of Mississippi, and brings this action individually.

3 48. Plaintiff JAMES CHAMPION ingested Defendant's Avandia and as a result suffered  
4 severe injuries and other damages.

5 49. Plaintiff GARY CLARK and CAROL CLARK, husband and wife, are and were at all times  
6 alleged herein citizens and residents of the State of Arkansas, and bring this action in their  
7 individual capacities.

8 50. Plaintiff GARY CLARK ingested Defendant's Avandia and as a result suffered severe  
9 injuries and other damages.

10 51. Plaintiff JEANETTE DORSETT, a single woman, is and was at all times alleged herein a  
11 citizen and resident of the State of Pennsylvania, and brings this action individually.

12 52. Plaintiff JEANETTE DORSETT ingested Defendant's Avandia and as a result suffered  
13 severe injuries and other damages.

14 53. Plaintiffs EDWARD FRAZIER and GLADYS FRAZIER, husband and wife, are and were  
15 at all times alleged herein citizens and residents of the State of Arkansas, and bring this action  
16 in their individual capacities.

17 54. Plaintiff EDWARD FRAZIER ingested Defendant's Avandia and as a result suffered  
18 severe injuries and other damages.

19 55. Plaintiffs TONYA HARMS and GEORGE HARMS, wife and husband, are and were at all  
20 times alleged herein citizens and residents of the State of Missouri, and bring this action in their  
21 individual capacities.

22 56. Plaintiff TONYA HARMS ingested Defendant's Avandia and as a result suffered severe  
23 injuries and other damages.

24 57. Plaintiff ROBERT HARTLEY, a single man, is and was at all times alleged herein a  
25 citizen and resident of the State of Florida and brings this action individually.

26 58. Plaintiff ROBERT HARTLEY ingested Defendant's Avandia and as a result suffered  
27 severe injuries and other damages.  
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1 59. Plaintiffs PEGGY HAYWARD and COLIN HAYWARD, wife and husband, are and were  
2 at all times alleged herein citizens and residents of the State of Mississippi, and bring this action  
3 in their individual capacities.

4 60. Plaintiff PEGGY HAYWARD ingested Defendant's Avandia and as a result suffered  
5 severe injuries and other damages.

6 61. Plaintiffs EDWARD FRAZIER and GLADYS FRAZIER, husband and wife, are and were  
7 at all times alleged herein citizens and residents of the State of Arkansas, and bring this action  
8 in their individual capacities.

9 62. Plaintiff EDWARD FRAZIER ingested Defendant's Avandia and as a result suffered  
10 severe injuries and other damages.

11 63. Plaintiffs TONYA HARMS and GEORGE HARMS, wife and husband, are and were at all  
12 times alleged herein citizens and residents of the State of Missouri, and bring this action in their  
13 individual capacities.

14 64. Plaintiff TONYA HARMS ingested Defendant's Avandia and as a result suffered severe  
15 injuries and other damages.

16 65. Plaintiff ROBERT HARTLEY, a single man, is and was at all times alleged herein a  
17 citizen and resident of the State of Florida, and brings this action individually.

18 66. Plaintiff ROBERT HARTLEY ingested Defendant's Avandia and as a result suffered  
19 severe injuries and other damages.

20 67. Plaintiffs PEGGY HAYWARD and COLIN HAYWARD, wife and husband, are and were  
21 at all times alleged herein citizens and residents of the State of Mississippi, and bring this action  
22 in their individual capacities.

23 68. Plaintiff PEGGY HAYWARD ingested Defendant's Avandia and as a result suffered  
24 severe injuries and other damages.

25 69. Plaintiffs ROBERT HENDREN and MARGARET HENDREN, husband and wife, are and  
26 were at all times alleged herein citizens and residents of the State of Texas, and bring this  
27 action in their individual capacities.

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1 70. Plaintiff ROBERT HENDREN ingested Defendant's Avandia and as a result suffered  
2 severe injuries and other damages.

3 71. Plaintiffs LAWRENCE LANE, JR. and JACQUELYN LANE, husband and wife, are and  
4 were at all times alleged herein citizens and residents of the State of Minnesota, and bring this  
5 action in their individual capacities.

6 72. Plaintiff LAWRENCE LANE, JR. ingested Defendant's Avandia and as a result suffered  
7 severe injuries and other damages.

8 73. Plaintiffs GEORGE McKINNEY and DEBORAH McKINNEY, husband and wife, are and  
9 were at all times alleged herein citizens and residents of the State of Florida, and bring this  
10 action in their individual capacities.

11 74. Plaintiff GEORGE McKINNEY ingested Defendant's Avandia and as a result suffered  
12 severe injuries and other damages.

13 75. Plaintiff BILLY PRIDEMORE, a single man, is and was at all times alleged herein a  
14 citizen and resident of the State of West Virginia, and brings this action individually.

15 76. Plaintiff BILLY PRIDEMORE ingested Defendant's Avandia and as a result suffered  
16 severe injuries and other damages.

17 77. Plaintiff HUGH RILEY, a widower, is and was at all times alleged herein a citizen and  
18 resident of the State of Virginia, and brings this action individually.

19 78. Plaintiff HUGH RILEY ingested Defendant's Avandia and as a result suffered severe  
20 injuries and other damages.

21 79. Plaintiffs MICHAEL SIPPEL and REGINA SIPPEL, husband and wife, are and were at all  
22 times alleged herein citizens and residents of the State of Florida, and bring this action in their  
23 individual capacities.

24 80. Plaintiff MICHAEL SIPPEL ingested Defendant's Avandia and as a result suffered severe  
25 injuries and other damages.

26 81. Plaintiff LINDA SWIGER, a single woman, is and was at all times alleged herein a citizen  
27 and resident of the State of West Virginia, and brings this action individually.

1 82. Plaintiff LINDA SWIGER ingested Defendant's Avandia and as a result suffered severe  
2 injuries and other damages.

3 83. Plaintiff CHARLES WALTERS, JR., a single man, is and was at all times alleged herein  
4 a citizen and resident of the State of Indiana, and brings this action individually.

5 84. Plaintiff CHARLES WALTERS, JR. ingested Defendant's Avandia and as a result  
6 suffered severe injuries and other damages.

7 85. Plaintiffs JIM WALTERS and GAY ANN WALTERS, husband and wife, are and were at  
8 all times alleged herein citizens and residents of the State of Texas, and bring this action in  
9 their individual capacities.

10 86. Plaintiff JIM WALTERS ingested Defendant's Avandia and as a result suffered severe  
11 injuries and other damages.

12 87. Plaintiff DALE WEAVER, a single man, is and was at all times alleged herein a citizen  
13 and resident of the State of Illinois, and brings this action individually.

14 88. Plaintiff DALE WEAVER ingested Defendant's Avandia and as a result suffered severe

1 94. Plaintiff ERIC BRASHER ingested Defendant's Avandia and as a result suffered severe  
2 injuries and other damages.

3 95. Plaintiff SUSAN LEFF, individually and as Child and Next of Kin to ELI LEFF, deceased,  
4 is and was at all times alleged herein a citizen and resident of the State of Florida, and brings  
5 this action individually and as Next of Kin to ELI LEFF, deceased.

6 96. Plaintiff SUSAN LEFF's decedent, ELI LEFF, was at all times alleged herein a citizen  
7 and resident of the State of Florida.

8 97. Plaintiff SUSAN LEFF's decedent, ELI LEFF, ingested Defendant's Avandia and as a  
9 result suffered severe injuries resulting in his death.

10 98. Plaintiff JAMES DAVIS, a single man, is and was at all times alleged herein a citizen and  
11 resident of the State of Arkansas, and brings this action individually.

12 99. Plaintiff JAMES DAVIS ingested Defendant's Avandia and as a result suffered severe  
13 injuries and other damages.

14 100. Plaintiff SOCRATES DUNCAN, a single man, is and was at all times alleged herein a  
15 citizen and resident of the State of Iowa, and brings this action individually.

16 101. Plaintiff SOCRATES DUNCAN ingested Defendant's Avandia and as a result suffered  
17 severe injuries and other damages.

18 102. Plaintiffs BILLY GUINN and OPHELIA GUINN, husband and wife, are and were at all  
19 times alleged herein citizens and residents of the State of Texas, and bring this action in their  
20 individual capacities.

21 103. Plaintiff BILLY GUINN ingested Defendant's Avandia and as a result suffered severe  
22 injuries and other damages.

23 104. Plaintiffs RODOLFO HERNANDEZ and MARIA HERNANDEZ, husband and wife, are  
24 and were at all times alleged herein citizens and residents of the State of Utah, and bring this  
25 action in their individual capacities.

26 105. Plaintiff RODOLFO HERNANDEZ ingested Defendant's Avandia and as a result suffered  
27 severe injuries and other damages.

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1 106. Plaintiff STEVE MESSICK, a single man, is and was at all times alleged herein a citizen  
2 and resident of the State of Oklahoma, and brings this action individually.

3 107. Plaintiff STEVE MESSICK ingested Defendant's Avandia and as a result suffered severe  
4 injuries and other damages.

5 108. Plaintiffs DANIEL MONTALVO and ALEYDA MONTALVO, husband and wife, are and  
6 were at all times alleged herein citizens and residents of the State of Texas, and bring this  
7 action in their individual capacities.

8 109. Plaintiff DANIEL MONTALVO ingested Defendant's Avandia and as a result suffered  
9 severe injuries and other damages.

10 110. Plaintiff ALVIN ROGERS, individually and as Husband and Next of Kin to LINDA  
11 ROGERS, deceased, is and was at all times alleged herein a citizen and resident of the State of  
12 Texas, and brings this action individually and as Next of Kin to LINDA ROGERS, deceased.

13 111. Plaintiff ALVIN ROGERS' decedent, LINDA ROGERS, was at all times alleged herein a  
14 citizen and resident of the State of Texas.

15 112. Plaintiff ALVIN ROGERS' decedent, LINDA ROGERS, ingested Defendant's Avandia  
16 and as a result suffered severe injuries resulting in her death.

17 113. Plaintiff MICHELE POWELL, a separated woman, is and was at all times alleged herein  
18 a citizen and resident of the State of Georgia, and brings this action individually.

19 114. Plaintiff MICHELE POWELL ingested Defendant's Avandia and as a result suffered  
20 severe injuries and other damages.

21 115. Plaintiffs ROBERT ROBBINS and SANDRA ROBBINS, husband and wife, are and were  
22 at all times alleged herein citizens and residents of the State of North Carolina, and bring this  
23 action in their individual capacities.

24 116. Plaintiff ROBERT ROBBINS ingested Defendant's Avandia and as a result suffered  
25 severe injuries and other damages.

26 117. Plaintiffs DEAN ROGERS and DAPHNE ROGERS, husband and wife, are and were at  
27 all times alleged herein citizens and residents of the State of Georgia, and bring this action in  
28 their individual capacities.

1 118. Plaintiff DEAN ROGERS ingested Defendant's Avandia and as a result suffered severe  
2 injuries and other damages.

3 119. Plaintiff FLOYD SMITH, a single man, is and was at all times alleged herein a citizen and  
4 resident of the State of Texas, and brings this action individually.

5 120. Plaintiff FLOYD SMITH ingested Defendant's Avandia and as a result suffered severe  
6 injuries and other damages.

7 121. Plaintiffs JOHNNY WILBURN and VELMA WILBURN, husband and wife, are and were  
8 at all times alleged herein citizens and residents of the State of Missouri, and bring this action in  
9 their individual capacities.

10 122. Plaintiff JOHNNY WILBURN ingested Defendant's Avandia and as a result suffered  
11 severe injuries and other damages.

12 123. Plaintiff WILLIAM FIELDS and DOROTHY FIELDS, husband and wife, are and were at  
13 all times alleged herein citizens and residents of the State of Louisiana, and bring this action in  
14 their individual capacities.

15 124. Plaintiff WILLIAM FIELDS ingested Defendant's Avandia and as a result suffered severe  
16 injuries and other damages.

17 125. Plaintiff JOYCE ANN BROOKS, individually and as Next of Kin to RONALD WAYNE  
18 BROOKS, deceased, is and was at all times alleged herein a citizen and resident of the State of  
19 Alabama, and brings this action individually and as Next of Kin to RONALD WAYNE BROOKS,  
20 deceased.

21 126. Plaintiff JOYCE ANN BROOKS' decedent, RONALD WAYNE BROOKS, was at all times  
22 alleged herein a citizen and resident of the State of Alabama.

23 127. Plaintiff JOYCE ANN BROOKS' decedent, RONALD WAYNE BROOKS, ingested  
24 Defendant's Avandia and as a result suffered severe injuries resulting in his death.

25 128. Plaintiff BEVERLY JONES, individually and as Wife and Next of Kin to DeWAYNE  
26 JONES, deceased, is and was at all times alleged herein a citizen and resident of the State of  
27 Florida, and brings this action individually and as Next of Kin to DeWAYNE JONES, deceased.  
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1 129. Plaintiff BEVERLY JONES' decedent, DeWAYNE JONES, was at all times alleged  
2 herein a citizen and resident of the State of Florida.

3 130. Plaintiff BEVERLY JONES' decedent, DeWAYNE JONES, ingested Defendant's Avandia  
4 and as a result suffered severe injuries resulting in his death.

5 131. Plaintiff PATRICIA ALTRICHTER, individually and as Wife and Next of Kin to RONALD  
6 ALTRICHTER, deceased, is and was at all times alleged herein a citizen and resident of the  
7 State of Minnesota, and brings this action individually and as Next of Kin to RONALD  
8 ALTRICHTER, deceased.

9 132. Plaintiff PATRICIA ALTRICHTER's decedent, RONALD ALTRICHTER, was at all times  
10 alleged herein a citizen and resident of the State of Minnesota.

11 133. Plaintiff PATRICIA ALTRICHTER's decedent, RONALD ALTRICHTER, ingested  
12 Defendant's Avandia and as a result suffered severe injuries resulting in his death.

13 134. Plaintiff LaVONDA GRIFFIN, a single woman, is and was at all times alleged herein a  
14 citizen and resident of the State of Mississippi, and brings this action individually.

15 135. Plaintiff LaVONDA GRIFFIN ingested Defendant's Avandia and as a result suffered  
16 severe injuries and other damages.

17 136. Plaintiff CAROL PHINNEY, a widow, is and was at all times alleged herein a citizen and  
18 resident of the State of Massachusetts and brings this action individually.

19 137. Plaintiff CAROL PHINNEY ingested Defendant's Avandia and as a result suffered severe  
20 injuries and other damages.

21 138. As used herein and as the context requires, "Plaintiffs" may refer to the Plaintiffs who are  
22 alleged to have ingested Avandia and/or Plaintiffs' decedents who are alleged to have ingested  
23 Avandia and/or the spouses of the Plaintiffs who are alleged to have ingested Avandia and/or  
24 the Plaintiffs presenting the claims of their respective decedents who are alleged to have  
25 ingested Avandia.

26 139. Defendant SmithKline Beecham Corporation d/b/a GLAXOSMITHKLINE (hereinafter,  
27 "GSK"), at all times alleged herein, is and was a corporation formed under the laws of the State  
28

1 of Pennsylvania, and duly authorized to transact business in the State of California, GSK makes  
2 a variety of prescription drugs, including Avandia.

3 140. At all times alleged herein, GSK is and was engaged in substantial commerce and  
4 business activity within the County of Los Angeles, State of California. Further, or in the  
5 alternative, at all times alleged herein, GSK has and had sufficient contacts within the County of  
6 Los Angeles, State of California, to subject them to the jurisdiction of this Court.

7 141. At all times alleged herein, GSK is and was engaged in substantial commerce and  
8 business activity nationally, and specifically within the State of California among other States,  
9 where Plaintiffs resided and/or ingested Avandia.

10 142. At all times alleged herein, GSK includes and included any and all parents, subsidiaries,  
11 affiliates, divisions, franchises, partners, joint venturers, and organizational units of any kind,  
12 their predecessors, successors and assigns and their officers, directors, employees, agents,  
13 representatives and any and all other persons acting on their behalf.

14 143. Defendant MCKESSON CORPORATION (hereinafter, "McKesson"), at all times alleged  
15 herein, is and was a corporation organized and existing under the laws of the State of  
16 Delaware, with its principal place of business in San Francisco, California, duly authorized to  
17 transact business in the State of California. At all times alleged herein, McKesson is and was  
18 engaged in the business of marketing, distributing, promoting, advertising and selling Avandia  
19 nationwide and specifically within the State of California, among other States, where Plaintiffs  
20 resided and/or ingested Avandia.

21 144. Upon information and belief and subject to discovery of information within the exclusive  
22 control of Defendants, at a bare minimum, McKesson distributed the Avandia ingested by those  
23 Plaintiffs and decedents alleged herein to have ingested Avandia.

24 145. At all times alleged herein, McKesson includes any and all parents, subsidiaries,  
25 affiliates, divisions, franchises, partners, joint venturers, and organizational units of any kind,  
26 their predecessors, successors and assigns and their offices, directors, employees, agents,  
27 representatives and any and all other persons acting on their behalf.

1 146. Plaintiffs do not know the true names of the Defendants sued herein as DOES ONE  
2 through FIFTEEN, inclusive. Plaintiffs allege that each of the fictitiously named Defendants is  
3 responsible in some manner for the occurrences herein alleged, and caused the injuries and  
4 damages sustained by Plaintiffs as herein alleged.

5 147. At all times alleged herein, use of the collective term "Defendants" refers to all named  
6 Defendants herein as well as Defendants DOES ONE through FIFTEEN.

7 148. At all times alleged herein, Defendant identified herein as, or discovered to be,  
8 corporations or other business entities were acting by and through officers, employees, agents,  
9 and contractors, who were acting within the course and scope of said office, employment,  
10 agency, or contractual authority.

11 149. At all times alleged herein, each of the Defendants was the agent and employee of every  
12 other Defendant in doing the acts herein alleged, and was, at all times, acting within the  
13 purpose and scope of said agency and employment and all of said acts and conduct were  
14 ratified and approved by said Defendants.

### 15 FACTUAL BACKGROUND

16 150. There are three types of diabetes: 1) Type 1 diabetes; (2) Type 2 diabetes; and  
17 Gestational Diabetes. Type 1 and 2 are chronic, progressively worsening diseases associated  
18 with a variety of cardiovascular complications. Gestational diabetes generally occurs during  
19 pregnancy and women that develop gestational diabetes are more likely to develop Type 2  
20 diabetes. Type 1 diabetes "results from the body's failure to produce insulin, the hormone that  
21 'unlocks' the cells of the body, allowing glucose to enter and fuel them. It is estimated that 5-  
22 10% of Americans who are diagnosed with diabetes have Type 1 diabetes.<sup>1</sup>"

23 151. The most common type of diabetes is Type 2 diabetes. Type 2 diabetes occurs where  
24 the body fails to properly use insulin (insulin resistance), combined with relative insulin  
25 deficiency. Insulin, which is made in the pancreas, helps the body's cells use sugar from the  
26

27  
28 <sup>1</sup> <http://www.diabetes.org/about-diabetes.jsp>

1 bloodstream, which comes from foods and drinks. Sugar is a source of energy for cells<sup>2</sup>. The  
2 third type, gestational diabetes, affects about 4% of all pregnant women – about 135,000 cases  
3 in the United States each year<sup>3</sup>.

4 152. Most people with diabetes have health problems – or risk factors – such as high blood  
5 pressure and cholesterol that increase the risk for heart disease and stroke. More than 65% of  
6 people with diabetes die from heart disease or stroke. With diabetes, heart attacks occur  
7 earlier in life and often result in death. Other risks include, but are not limited to, blindness,  
8 kidney disease, nervous system diseases, amputation, sexual dysfunction, diabetic  
9 ketoacidosis, and diabetic coma<sup>4</sup>.

10 153. Cardiovascular disease (CVD) is the main cause of death in these patients. Thus, it is  
11 important that an antidiabetic agent reduce the risk of cardiovascular injury.

12 154. During the past decade, numerous drugs have been introduced for the treatment of Type  
13 2 diabetes that, used in monotherapy or in combination therapy, are supposed to better control  
14 the disease in patients and reduce the health complications often associated with diabetes,  
15 such as heart attacks, stroke and other cardiovascular complications.

16 155. GSK is a pharmaceutical manufacturer with net income (adjusted earnings) in 2006 of  
17 approximately \$10.6 billion. GSK developed the antidiabetic drug Avandia and submitted it for  
18 approval by the United States Food and Drug Administration (“FDA”).

19 156. The FDA initially approved Avandia in 1999 as safe and effective for treating Type 2  
20 diabetes mellitus.

21 157. Avandia belongs to a class of drugs known as Thiazolidinediones (TZDs), a novel class  
22 of insulin-sensitizing antidiabetic agents. In the USA and Canada, the two TZDs indicated for  
23 use in Type 2 diabetes mellitus are rosiglitazone and pioglitazone. A third, troglitazone  
24 (Rezulin) has been removed from the market because of an association with significant  
25 hepatotoxicity.

26 \_\_\_\_\_  
27 <sup>2</sup> *Id.*

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

<sup>4</sup> *Id.*

1 158. The antidiabetic actions of TZDs are likely mediated by their interaction with the nuclear  
2 receptor peroxisome proliferator-activated receptor-gamma (PPAR $\gamma$ ).

3 159. PPAR $\gamma$  is a DNA-binding nuclear hormone receptor that has been shown to regulate  
4 bone mass, energy expenditure and glucose metabolism.

5 160. Defendants marketed and sold Avandia (and its related medications Avandamet and  
6 Avandaryl) through the medical community to 6 million patients in the United States.

7 161. Avandia would not have been initially approved and/or would not have been allowed to  
8 be sold with the label permitted by the FDA and/or would have been withdrawn from the market  
9 and/or would have carried a different and more stringent label, had the FA been fully informed  
10 by Defendants of all the facts regarding the safety and efficacy of Avandia.

11 162. Large numbers of medical providers and patients in California and throughout the United  
12 States have been and are being misled about Avandia's true efficacy and risks.

13 163. Defendants have engaged in repeated and persistent fraud by misrepresenting,  
14 concealing and otherwise failing to disclose to physicians and patients, including Plaintiffs,  
15 information in its control concerning the safety and effectiveness of Avandia.

16 164. Defendants have misrepresented information concerning the safety and efficacy of  
17 Avandia for treating diabetes. For instance, Defendants have allowed positive information  
18 about Avandia to be disclosed, publicly, but have withheld and concealed negative information  
19 concerning the safety and effectiveness of the drug as treatment for diabetic patients. Thus,  
20 Defendants have prevented physicians and patients, including the Plaintiffs and the Plaintiffs'  
21 physicians, from properly and independently exercising informed judgment.

22 165. The decision to prescribe or ingest a drug is based on the balance between (a) the  
23 benefit the patient is likely to derive from the treatment, including the harm or benefit, if any, of  
24 providing no treatment or an alternative treatment and (b) the risk that the proposed treatment  
25 will cause the patient harm and the nature and severity of the harm.

26 166. In deciding whether to prescribe or to ingest a drug, physicians and patients rely on their  
27 assessment of information received about the drug. Such information must be accurate and  
28 provide an unbiased picture of a drug's safety and efficacy in treating a condition. If the

1 information is false or misleading, neither the patient nor the physician can accurately assess  
2 the crucial risk/benefit balance or exercise independent judgment.

3 167. At all times material hereto, Defendants did manufacture, create, design, test, label,  
4 sterilize, package, distribute, supply, market, sell, advertise, warn, and/or otherwise caused the  
5 Avandia to be placed into the stream of commerce, and ultimately to be ingested by the  
6 Plaintiffs.

7 168. Avandia has been widely advertised, marketed and represented by the Defendants as a  
8 safe and effective antidiabetic agent.

9 169. The product warnings for Avandia in effect during the relevant time period were vague,  
10 incomplete or otherwise wholly inadequate, both substantively and graphically, to alert  
11 prescribing physicians as well as consumer patients of the actual risks associated with the  
12 Avandia.

13 170. The Defendants marketed the Avandia heavily as safe and effective treatment for  
14 diabetes, promising fewer side effects than other similar treatments including the other TZDs on  
15 the market.

16 171. The Defendants marketed Avandia as the most effective means of treating Type 2  
17 diabetes mellitus, claiming to be more effective than older antidiabetics and other TZDs on the  
18 market.

19 172. Defendants' marketing efforts were designed and implemented to create the impression  
20 in physicians' and Plaintiffs' minds that Avandia is safe and effective for patients, and that it  
21 carried/carries less risk of side effects and adverse reactions than other available treatments.

22 173. The marketing and promotion efforts of GSK, its advertisers and sales force served to  
23 overstate the benefits of Avandia, and minimize and downplay the risks associated with the  
24 drug. These promotional efforts were made, while fraudulently withholding important safety  
25 information from the physicians, the FDA, and the public, specifically that GSK was aware of  
26 numerous reports of congestive heart failure, heart attacks, strokes, and other serious  
27 cardiovascular injuries and death associated with the use of Avandia, well beyond the  
28 background rate, and well beyond the rate of other antidiabetic agents.

1 174. Concealing or providing inaccurate or biased information that is material to a prescribing  
2 decision misleads the physician and the patient.

3 **GSK STUDIES CONCERNING THE SAFETY AND EFFICACY**  
4 **OF AVANDIA IN TREATING TYPE 2 DIABETES**

5 175. Defendants boast rosiglitazone as a safe and effective antidiabetic, claiming that  
6 rosiglitazone is safer and more effective than older antidiabetic agents and other TZDs.

7 176. Defendants have overstated the efficacious value of rosiglitazone and has understated  
8 the risk associated with rosiglitazone.

9 **Efficacy**

10 177. Defendants have promoted and marketed Avandia as being more effective than older  
11 antidiabetic agents and other TZDs; however, there is no direct evidence that lowering glucose  
12 or glycosylated hemoglobin (Hb<sub>A1c</sub>) levels with rosiglitazone reduces the risks of microvascular  
13 or macrovascular disease or mortality in patients with Type 2 diabetes. There is some evidence  
14 that other oral hypoglycemics do succeed in doing so<sup>5</sup>.

15 178. Moreover, researchers recently concluded that older antidiabetic agents are as effective  
16 or superior to rosiglitazone<sup>6</sup>.

17 179. There have been three meta-analysis conducted. Each meta-analysis has found that  
18 Avandia increases the risk of cardiovascular-related injury.

19 180. A meta-analysis combines the result of several studies that address a set of related  
20 research hypotheses.

21 181. The first analysis was performed by GSK and was handed over to the FDA in August of  
22 2006. The meta-analysis consisted of 42 separate double-blinded, randomized, controlled  
23 clinical trials to assess the efficacy of rosiglitazone for treatment of Type 2 diabetes compared  
24 to either placebo or other antidiabetic therapies in patients with Type 2 diabetes. The combined  
25

26  
27 <sup>5</sup> UK Prospective Diabetes Study Group. Intensive blood-glucose control with sulphonylureas or insulin compared with  
conventional treatment and risk of complications in patients with type 2 diabetes; UKPDS 33. *The Lancet* 1998; 352:837-853.

28 <sup>6</sup> See Bolen, et al. *Systematic Review: Comparative Effectiveness and Safety of Oral Medications for Type 2 Diabetes Mellitus*. *Annals of Internal Medicine*. (Sept. 2007).

1 studies included 8,604 patients on rosiglitazone and 5,633 patients randomized to a variety of  
2 alternative therapeutic regimens, including placebo.

3 182. GSK's own meta-analysis found an overall incidence of myocardial ischemia in  
4 rosiglitazone-treated subjects. The risk equated to more than a 30 percent excess risk of  
5 myocardial ischemic events in rosiglitazone-treated patients.

6 183. A second meta-analysis conducted by Dr. Steven Nissen and Kathy Wolski titled *Effect*  
7 *of Rosiglitazone on the Risk of Myocardial Infarction and Death Cardiovascular Causes* was  
8 published on May 21, 2007, in the New England Journal of Medicine. ("NEJM").

9 184. Nissen and Wolski reviewed data available to them through published literature, the  
10 FDA's website, and GSK's clinical-trials registry. The analysis included a review of 42 clinical  
11 trials involving nearly 28,000 patients.

12 185. Nissen and Wolski concluded, "[r]osiglitazone was associated with a significant increase  
13 in the risk of myocardial infarction and with an increase in the risk of death from cardiovascular  
14 causes that had borderline significance<sup>7</sup>."

15 186. Patients suffering from Type 2 diabetes mellitus have a higher risk of experiencing a  
16 heart attack within seven years than non-diabetic patients. A diabetic taking Avandia has a  
17 much greater risk of suffering a heart attack or serious cardiovascular event – an estimate 43  
18 percent or greater increase when compared with other diabetic drugs or placebo.

19 187. On July 30, 2007, the FDA presented its results of the FDA meta-analysis. Similar to the  
20 GSK and Nissen/Wolski findings, the FDA likewise found an increased risk of heart attack,  
21 cardiovascular death, stroke and other serious ischemic related adverse events and ultimately  
22 recommended that a boxed warning be placed on the Avandia label.

23 188. Thus, while GSK's rosiglitazone-containing drugs are marketed and sold by Defendants  
24 as antidiabetic agents that reduce a diabetic patient's risk of heart attacks, studies conducted  
25 by GSK show that rosiglitazone actually increases those risks by 43 percent according to the  
26 Nissen/Wolski meta-analysis and by 31 percent according to GSK's own meta-analysis.

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27  
28 <sup>7</sup> Nissen SE and Wolski K., *Effects of Rosiglitazone on the Risk of Myocardial Infarction and Death from Cardiovascular Causes*,  
N. Eng J. Med; 356, May 21, 2007.

**GSK Has Mislead the Medical Community and the  
Public About the Efficacy and Safety of Avandia**

189. The product warnings for the Avandia in effect during the relevant time period were vague, incomplete or otherwise wholly inadequate, both substantively and graphically, to alert prescribing physicians as well as consumer patients of the actual risks associated with Avandia. Defendants have and continue to market Avandia as a safer and more effective antidiabetic agent than other antidiabetics on the market. However, even prior to the approval of Avandia in the United States market, Defendants knew or should have known of the significantly increased risks of heart attacks, cardiovascular-related deaths, strokes or other serious and life-threatening conditions, which they concealed from the medical community and patients, including Plaintiffs.

190. In fact, in 1999, John B. Buse, M.D., Ph.D., (the current President, Medicine & Science, of the American Diabetes Association), a diabetes expert and Chief of the Endocrinology Division of the Department of Medicine at the University of North Carolina (UNC) School of Medicine, raised concerns about Avandia and heart problems.

191. Instead of warning the public about this risk, GSK attempted to silence Dr. Buse by threatening him with a \$4 million lawsuit and by characterizing him as a liar<sup>8</sup>.

192. In response to GSK's pressure, Dr. Buse sent a three-page letter to Dr. Tadataka Yamada, GSK's Chairman of Research and Development. In the letter, Dr. Buse wrote, "I may disagree with GSK's interpretation of that data . . . I am not for sale . . . Please call off the dogs. I cannot remain civilized much longer under this kind of heat." Eventually, Dr. Buse signed a clarifying statement with the company to help ease investor concerns.

On March 15, 2000, John Buse, M.D., wrote a letter to the FDA again raising concerns about a "worrisome trend in cardiovascular deaths and severe adverse events" associated with Avandia: I would like you to know exactly what my concerns are regarding rosiglitazone as a clinical scientist and my approach as a clinician. On the basis of the increase in LDL concentration seen in the clinical trial program (whether the number we accept as the truth is the 18.6% at 4 mg bid in the package insert or the "average of 12%" now being discussed) one would expect an increase in cardiovascular events . . . Based on studies with stains and

<sup>8</sup> John Buse, M.D. Congressional Hearing Transcript (June 6, 2007).

1 plasmapheresis, changes in LDL concentration can be associated with substantial changes  
2 in vascular reactivity and endothelial function over a time course of days to weeks<sup>9</sup>

3 193. Around the same time period, March 7, 2000, Public Citizen filed a petition for immediate  
4 class labeling changes for all marketed TZDs<sup>10</sup>. In an independent investigation of the TZDs,  
5 Public Citizen, after studying reviews by FDA Medical Officers, Statisticians, and  
6 Pharmacologists, transcripts of FDA advisory committee meetings, and scientific literature on  
7 trolitazone, rosiglitazone, and pioglitazone, argued that information associating rosiglitazone to  
8 heart attacks and serious cardiovascular injuries "was never included in the label, or seriously  
9 understated<sup>11</sup>."

10 194. Public Citizen cited studies submitted to the FDA for approval that evidenced lack of  
11 efficacy and increase in cardiovascular risks.

12 195. Public Citizen argued that nowhere in the product insert was there any mention of  
13 myocardial infarction even where it was found that "acute myocardial infarctions occurred in 22  
14 patients (0.5%) on rosiglitazone and was fatal in six, a result "higher than in other treatment  
15 arms".

16 196. In the monotherapy trial (#011), chest pain was reported in 0.0% (placebo patients),  
17 1.7% (patients on 2 mg bid rosiglitazone) and 3.3% (patients on 4 mg bid); five patients on  
18 rosiglitazone had acute myocardial infarctions<sup>12</sup>.

19 197. This is obviously a major concern since diabetics are already susceptible to an increased  
20 risk of cardiovascular injury.

21 198. Yet, even with this information available to it, Defendants failed to warn consumers and  
22 the medical community about the increased risk of heart attacks and other serious injuries  
23 associated with Avandia.

24  
25  
26 <sup>9</sup> Letter from Dr. Buse to FDA (March 15, 2000).

27 <sup>10</sup> Public Citizen's Petition to the FDA requesting that it immediately require labeling for diabetes drugs troglitazone  
(Rezulin), rosiglitazone (Avandia) and pioglitazone (Actos) (HRG Publication #1514 (March 7, 2000).

28 <sup>11</sup> *Id.* At 1

<sup>12</sup> *Id.* At 6

1 199. Moreover, GSK has repeatedly engaged in a pattern of conduct of deliberately avoiding  
2 FDA recommendations as which concerns relating to public hazards should be warned about.

3 200. For instance, after the FDA required GSK to change its label on February 8, 2001 to  
4 reflect a risk of heart failure observed in patients on Avandia and insulin, GSK defied FDA  
5 recommendations by engaging in false and misleading promotional activities.

6 201. In a letter dated February 22, 2001, the FDA's Division of Drug Marketing, Advertising  
7 and Communications (DDMAC) informed GSK that all promotional materials for Avandia should  
8 be revised to prominently include the new risks, no later than March 8, 2001.

9 202. GSK responded on March 1, 2001, wherein GSK committed to include the new risk  
10 information by March 8, 2001.

11 203. However, instead of complying with FDA requirements GSK's sales representatives  
12 engaged in false or misleading promotional activities with respect to the new risk information in  
13 Avandia's product labeling.

14 In a Warning Letter dated July 17, 2001, the FDA warned GSK that they had  
15 engaged in a continual violation of federal regulations in their promotional  
16 activities for the marketing of Avandia. In that July 17, 2001 letter, the FDA  
17 warned that the DDMAC had been monitoring its marketing of Avandia and had:  
18 concluded that GSK has promoted Avandia in violation of the Federal Food, Drug,  
19 and Cosmetic Act (Act) and its implementing regulations. See 21. U.S.C. §331(a),  
20 (b) and 352(a), (n).

21 Specifically, during the 10<sup>th</sup> Annual American Association of Clinical  
22 Endocrinologists (AAACE) Meeting in San Antonio, Texas, on May 2-6, 2001,  
23 representatives of GSK made oral representations denying the existence of  
24 serious new risks associated with Avandia at GSK's promotional exhibit booth.  
25 Additionally, GSK displayed Exhibit panels (AV013G) at the meeting that  
26 minimized these new risks associated with Avandia.

27 Your promotional activities that minimize serious new risks are particularly  
28 troublesome because we have previously objected, in two untitled letters, to your  
dissemination of promotional material for Avandia that failed to present any risk  
information Avandia or minimized the hepatic risk associated Avandia. Despite  
your assurances that such violative promotion of Avandia had ceased, your  
violative promotion of Avandia has continued<sup>13</sup>.

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<sup>13</sup> Letter from Thomas Abrams, R.Ph., MBA, Director of the FDA's Division of Drug Marketing, Advertising and Communications to JP Garnier, Chief Executive Officer, GlaxoSmithKline (July 17, 2001) (on file with the FDA).

1 204. Following that May 21, 2007 NEJM publication of the Nissen/Wolski meta-  
2 analysis, the FDA issued a safety alert for Avandia and advised patients who take it to  
3 consult their doctors.

4 205. On June 1, 2007, GSK published a "Dear Avandia Patient" letter, which  
5 responded to the "recent press coverings about the safety of Avandia." Therein, GSK  
6 stated that it "stands firmly behind Avandia" and that "Avandia is the most widely studied  
7 medicine for type 2 diabetes" and that the evaluation of clinical trials by "well-informed  
8 experts and researchers has been encouraging."

9 206. At the congressional hearing on June 6, 2007, the FDA indicated that a black box  
10 warning should be added to rosiglitazone (Avandia), for increased risk of heart failure.

11 207. On July 30, 2007, the FDA held an FDA Advisory Committee Hearing on the safety of  
12 Avandia. The panel was determining whether to recommend keeping the label the same,  
13 adding a black box warning, or taking Avandia off the market altogether.

14 208. Dr. David Graham, testifying on behalf of the FDA, called for withdrawing Avandia and  
15 estimated that its toxic effects on the heart had caused up to 205,000 heart attacks and strokes,  
16 some fatal, from 1999 to 2006. For every month that Avandia is sold, Dr. Graham said 1,600 to  
17 2,200 patients will suffer more of those problems.

18 209. The FDA provided testimony that Avandia offers no unique benefits compared to other  
19 drugs in battling diabetes, but that all indications point to increased risks of heart attack and  
20 sudden death.

21 210. The panel of advisers to the FDA voted 20-to-3 that Avandia increases the risks of heart  
22 attacks.

23 211. Defendants, through their affirmative misrepresentations and omissions, actively  
24 concealed from Plaintiffs and their physicians the true and significant risks associated with  
25 taking Avandia. The running of any applicable Statute of Limitations has been tolled by reason  
26 of Defendants' fraudulent concealment.

27 212. As a result of Defendants' actions, Plaintiffs and prescribing physicians were unaware,  
28 and could not have reasonably known or have learned through reasonable diligence, that

1 Plaintiffs had been exposed to the risk identified in this Complaint, and that those risks were the  
2 direct and proximate result of Defendants' acts, omissions and misrepresentations.

3 213. Defendants' actions amounted to over promotion.

4 214. Defendants' actions do not meet the criteria necessary to overcome the "Reasonable  
5 Expectations Doctrine"; thus, they may not rely upon the "Learned Intermediary Doctrine" to  
6 escape liability.

7 215. At all times pertinent, Defendant McKesson was privy to the above information, and did  
8 assist in the marketing and distribution of Avandia, and did assist in the "over promotion",  
9 knowing that Plaintiffs and/or their prescribing physicians would justifiably rely upon the  
10 information received in the marketing and distribution process.

11 216. The Defendants thereby acted with fraud, malice, oppression and a conscious disregard  
12 for the Plaintiffs' and general public's safety, who accordingly requests that the trier of fact, in  
13 the exercise of sound discretion, award additional damages for the sake of example and for the  
14 purpose of punishing the Defendants for their conduct, in an amount sufficiently large to be an  
15 example to others and deter the Defendants and others from engaging in similar conduct in the  
16 future. The aforesaid wrongful conduct was done with the advance knowledge, authorization,  
17 and/or ratification of an officer, director, and/or managing agent of Defendants.

### 18 FIRST CAUSE OF ACTION

#### 19 **[Strict Product Liability; Failure to Warn]**

20 217. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
21 allegation contained in Paragraphs 1-216, inclusive, of this Complaint.

22 218. Defendants manufactured, sold and/or distributed Avandia to Plaintiffs to be used to  
23 increase insulin sensitivity without causing serious effects, harm, or injury.

24 219. At all times alleged herein, Avandia was dangerous and presented a substantial danger  
25 to diabetic patients and these risks and dangers were known or knowable at the time of  
26 manufacture, sale or distribution to Plaintiffs. Ordinary consumers would not have recognized  
27 the potential risks and dangers the Avandia posed to diabetic patients because its uses were  
28 specifically promoted to improve the health of diabetic patients. The Avandia was used by

1 Plaintiffs in a way reasonably foreseeable to all Defendants. Defendants failed to provide  
2 warnings of such risks and dangers to Plaintiffs as described herein.

3 220. As a result of the defective dangerous condition of Avandia manufactured and/or  
4 supplied by the Defendants, and each of them, Plaintiffs suffered grievous, serious and severe  
5 injuries and will continue to suffer consequences of those injuries, all to their detriment and  
6 damage in a sum within the jurisdiction of this Court.

7 221. As a result of Plaintiffs' ingestion of the defective Avandia and subsequent grievous,  
8 serious, and severe injuries, their spouses have been and will continue to be deprived of  
9 consortium, society, comfort, protection and service, thereby causing and continuing to cause  
10 them grief, sorrow, mental anguish, emotional distress and pain and suffering.

11 222. As a result of Plaintiffs' decedents' ingestion of the defective Avandia that ultimately  
12 caused their deaths, the heirs have been and will continue to be deprived of consortium,  
13 society, comfort, protection and service, thereby causing and continuing to cause them grief,  
14 sorrow, mental anguish, emotional distress and pain and suffering.

15 In doing the acts herein alleged, the Defendants acted with oppression, fraud and malice and  
16 Plaintiffs are therefore entitled to punitive damages to deter Defendants and others from  
17 engaging in similar conduct in the future. Said wrongful conduct was done with advance  
18 knowledge, authorization and/or ratification of an officer, director and/or managing agent of the  
19 Defendants.

20 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

21 **SECOND CAUSE OF ACTION**

22 **[Negligence]**

23 223. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
24 allegation contained in Paragraphs 1-222, inclusive, of this Complaint.

25 224. Defendants, and each of them, and their representatives were manufacturers and/or  
26 distributors of Avandia. At all times herein, Defendants had a duty to properly manufacture,  
27 compound, test, inspect, package, label, distribute, market, examine, maintain supply, provide  
28 proper warnings and prepare for use and sell the aforesaid product.

1 225. Defendants, and each of them, so negligently and carelessly manufactured,  
2 compounded, tested, failed to test, inspected, failed to inspect, packaged, labeled, distributed,  
3 recommended, displayed, sold, examined, failed to examine and supplied aforesaid product,  
4 that it was dangerous and unsafe for the use and purpose for which it was intended, that is,  
5 increasing insulin sensitivity without causing serious injury, harm, or effect, in Plaintiffs and  
6 others similarly situated. As a result of the carelessness and negligence of Defendants,  
7 Plaintiffs ingested the Avandia in the manner intended by the manufacturer and, as a result,  
8 Plaintiffs suffered grievous, serious and severe injuries and will continue to suffer  
9 consequences of those injuries.

10 226. As a result of the carelessness and negligence of Defendants that resulted in Plaintiffs'  
11 decedents' ingestion of Avandia that ultimately caused their deaths, their heirs have been and  
12 will continue to be deprived of consortium, society, comfort, protection and service, thereby  
13 causing and continuing to cause them grief, sorrow, mental anguish, emotional distress and  
14 pain and suffering.

15 227. As a result of the carelessness and negligence of Defendants that resulted in Plaintiffs'  
16 ingestion of Avandia and subsequent grievous, serious and severe injuries, their spouses have  
17 been and will continue to be deprived of consortium, society, comfort, protection and service,  
18 thereby causing and continuing to cause them grief, sorrow, mental anguish, emotional distress  
19 and pain and suffering.

20 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

21 **THIRD CAUSE OF ACTION**

22 **[Breach of Implied Warranty]**

23 228. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
24 allegation contained in Paragraph 1-227, inclusive, of this Complaint.

25 229. Defendants impliedly warranted that Avandia, which Defendants designed,  
26 manufactured, assembled, promoted, sold and distributed to Plaintiffs were merchantable and  
27 fit and safe for ordinary use. Defendants further impliedly warranted that Avandia was fit for the  
28

1 particular purpose of increasing insulin sensitivity in diabetic patients without causing serious  
2 harm, injury or effect including, but not limited to, death.

3 230. Defendants' Avandia was defective, unmerchantable and unfit for ordinary use when  
4 sold and unfit for the particular purpose for which they were sold, and subjected Plaintiffs to  
5 severe and permanent injuries. Therefore, Defendants breached the implied warranties of  
6 merchantability and fitness for a particular purpose when Avandia was sold to Plaintiffs, in that  
7 the Avandia was defective and failed to increase insulin sensitivity without serious harm in  
8 diabetic patients as represented and intended.

9 231. As a result of Defendants breach of the implied warranties of merchantability and fitness  
10 for a particular purpose, Plaintiffs have sustained and will continue to sustain the injuries and  
11 damages described herein and are therefore entitled to compensatory damages.

12 232. After Plaintiffs were made aware their injuries were a result of the aforesaid product,  
13 Avandia, Defendants had ample and sufficient notice of breach of said warranty.

14 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

15 **FOURTH CAUSE OF ACTION**

16 **[Breach of Express Warranty]**

17 233. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
18 allegation contained in Paragraphs 1-232, inclusive, of this Complaint.

19 234. Defendants expressly warranted to Plaintiffs and/or their authorized agents or sales  
20 representatives, in publications, and other communications intended for medical patients, and  
21 the general public, that Avandia was safe, effective, fit and proper for its intended use.

22 235. Plaintiffs and their physicians reasonably relied upon the skill and judgment of  
23 Defendants, and upon said express warranty, in using the aforesaid product. The warranty and  
24 representations were untrue in that the product caused severe injury to Plaintiffs and was  
25 unsafe and, therefore, unsuited for the use in which it was intended and caused Plaintiffs to  
26 sustain damages and injuries herein alleged.

1 236. As soon as the true nature of the product and the fact that the warranty and  
2 representations were false, were ascertained, said Defendants had ample and sufficient notice  
3 of the breach of said warranty.

4 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

5 **FIFTH CAUSE OF ACTION**

6 **[Fraud]**

7 237. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
8 allegation contained in Paragraphs 1-236, inclusive, of this Complaint.

9 238. Defendants falsely and fraudulently represented to Plaintiffs, their physicians and to  
10 members of the general public that the aforesaid product was safe, effective, reliable,  
11 consistent, and better than the other similar products due to its ability to increase insulin  
12 sensitivity without causing serious harm when used in the manner intended by the  
13 manufacturer. The representations by said Defendants were in fact, false. The true facts  
14 include, but are not limited to the fact that the aforesaid product was not safe to be used and  
15 was, in fact, dangerous to the health and body of Plaintiffs.

16 239. When the Defendants made these representations, they knew that they were false.  
17 Defendants made said representations with the intent to defraud and deceive Plaintiffs, with the  
18 intent to induce Plaintiff to act in the manner herein alleged, that is to use the aforementioned  
19 product for increasing insulin sensitivity.

20 240. At the time Defendants made the aforesaid representations, Plaintiffs took the actions  
21 herein alleged. Plaintiffs and their physicians were ignorant of the falsity of these  
22 representations and reasonably believe them to be true. In reliance upon said representations,  
23 Plaintiffs were induced to, and did, use the aforesaid products as herein described. If Plaintiffs  
24 had known the actual facts, they would not have taken such action. The reliance of Plaintiffs  
25 and their physicians upon Defendants' representations were justified because said  
26 representations were made by individuals and entities who appeared to be in a position to know  
27 the true facts.

1 241. As a result of Defendants' fraud and deceit, Plaintiffs were caused to sustain the herein  
2 described injuries and damages.

3 242. In doing the acts herein alleged, the Defendants acted with oppression, fraud, and  
4 malice and Plaintiffs are therefore entitled to punitive damages to deter Defendants and others  
5 from engaging in similar conduct in the future. Said wrongful conduct was done with advance  
6 knowledge, authorization and/or ratification of an officer, director and/or managing agent of  
7 Defendants.

8 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

9 **SIXTH CAUSE OF ACTION**

10 **[Fraud By Concealment]**

11 243. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
12 allegation contained in Paragraphs 1-242, inclusive, of this Complaint.

13 244. At all times mentioned herein, Defendants had the duty and obligation to disclose to  
14 Plaintiffs and to their physicians, the true facts concerning the aforesaid product, Avandia; that  
15 is, that said product was dangerous and defective, lacking efficacy for its purported use and  
16 lacking safety in normal use, and how likely it was to cause serious consequences to users  
17 including injuries and possible death. Defendants made the affirmative representations as set  
18 forth above to Plaintiffs and their physicians and the general public prior to the date Avandia  
19 was ingested by Plaintiffs, while concealing material facts.

20 245. At all times herein mentioned, Defendants willfully, and maliciously concealed facts as  
21 set forth above from Plaintiffs and their physicians and therefore Plaintiffs, with the intent to  
22 defraud as herein alleged.

23 246. At all times herein mentioned, neither Plaintiffs nor their physicians were aware of the  
24 facts set forth above, and had they been aware of said facts, they would not have acted as they  
25 did, that is, reasonably would not have relied upon said representations of safety and efficacy  
26 and utilized the Avandia for increasing insulin sensitivity. Defendants' representations were a  
27 substantial factor in Plaintiffs utilizing Avandia for increasing insulin sensitivity.

1 247. As a result of the concealment of the facts set forth above, Plaintiffs were caused to  
2 sustain the herein described injuries and damages.

3 248. In doing the acts herein alleged, the Defendants acted with oppression, fraud, and  
4 malice, and Plaintiffs are therefore entitled to punitive damages to deter Defendants and others  
5 from engaging in similar conduct in the future. Said wrongful conduct was done with advance  
6 knowledge, authorization and/or ratification of an officer, director and/or managing agent of  
7 Defendants.

8 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

9 **SEVENTH CAUSE OF ACTION**

10 **[Negligent Misrepresentation]**

11 249. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
12 allegation contained in Paragraphs 1-248, inclusive, of this Complaint.

13 250. At all relevant times herein, Defendants represented to Plaintiffs and their physicians that  
14 the Avandia was safe to use to increase insulin sensitivity knowing that the Avandia was  
15 defective in causing injuries described herein.

16 251. The Defendants made the aforesaid representations with no reasonable ground for  
17 believing them to be true when Defendants' own data showed the Avandia to be defective and  
18 dangerous when used in the intended manner.

19 252. The aforesaid representations were made to the physicians prescribing Avandia prior to  
20 the date it was prescribed to Plaintiffs and their physicians with the intent that Plaintiffs and their  
21 physicians rely upon such misrepresentations about the safety and efficacy of Avandia.  
22 Plaintiffs and their physicians did reasonably rely upon such representations that the aforesaid  
23 product was safe for use to aid in the treatment of increasing insulin sensitivity.

24 253. The representations by said Defendants to Plaintiffs were false, and thereby caused  
25 Plaintiffs to sustain the injuries and damages described herein.

26 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as hereinafter set forth.  
27  
28

1 **EIGHTH CAUSE OF ACTION**

2 **[Loss of Consortium]**

3 254. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
4 allegation contained in Paragraphs 1-253, inclusive, of this Complaint.

5 255. Those Plaintiffs alleged to be the spouses of Plaintiffs who ingested Avandia and  
6 suffered grievous, serious, and sever injuries bring this cause of action for loss of consortium.

7 256. By reason of the injuries described herein sustained by Plaintiffs who ingested Avandia  
8 and suffered grievous, serious and severe injuries, their spouses have been and will continue to  
9 be deprived of consortium, society, comfort, protection and service, thereby causing and  
10 continuing to cause them grief, sorrow, mental anguish, emotional distress and pain and  
11 suffering.

12 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

13 **NINTH CAUSE OF ACTION**

14 **[Wrongful Death]**

15 257. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
16 allegation contained in Paragraphs 1-256, inclusive, of this Complaint.

17 258. Those Plaintiffs bringing this action on behalf of decedents alleged to have ingested  
18 Avandia that resulted in their death bring this claim for wrongful death on behalf of the heirs of  
19 their respective decedents.

20 259. As a result of Plaintiffs' decedents' ingestion of the defective Avandia that ultimately  
21 caused their deaths, their heirs have been and will continue to be deprived of consortium,  
22 society, comfort, protection and service, thereby causing and continuing to cause them grieve,  
23 sorrow, mental anguish, emotional distress and pain and suffering, and are entitled to damages  
24 for wrongful death.

25 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

26 **PRAYER FOR RELIEF**

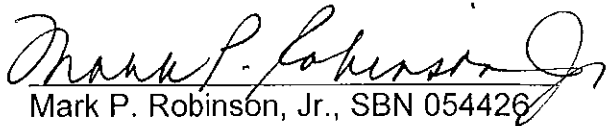
27 Plaintiffs pray that judgment be entered in favor of Plaintiffs in such aggregate sum as  
28 will fairly and reasonably compensate Plaintiffs for damages arising out of Defendants conduct

1 as described herein. The conduct of Defendants, as alleged herein, was a direct, proximate  
2 and producing cause of the damages to Plaintiffs and the following general and specific  
3 damages:

- 4 1. For general damages in a sum within the jurisdiction of this Court;
- 5 2. For medical, hospital, and incidental expenses, according to proof;
- 6 3. For loss of earnings and for loss of earning capacity, according to proof;
- 7 4. For punitive or exemplary damages; and
- 8 5. For such other relief as the Court deems just and proper.

9 DATED: May 20, 2009

10 Respectfully submitted,

11 

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22 *And*

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