



1	KENNETH JONES and LUGENE	)
	JONES, husband and wife;	)
2	PATSY JONES, a single woman;	)
	RONALD JOHNSON and VANILLA L.	)
3	JOHNSON, husband and wife;	)
	MARY HAWKINS and BRADFORD	)
4	HAWKINS, wife and husband;	)
	RINNA HALL, a single woman;	)
5	ALICIA LUNA, a single woman;	)
6	KATHY KUSTES and JOHN D.	)
	KUSTES, JR., wife and husband;	)
7	ANDREW KERLIN and LINDA	)
	KERLIN, husband and wife;	)
8	ROBERT MASK, a single man;	)
	JAMES LaCHAPPELL, a single man;	)
9	JACKIE BENNETT and DOROTHIA	)
10	BENNETT, husband and wife;	)
	JEANETTE BUCKLEY, a single	)
11	woman;	)
	CAROL FLANAGAN and MARK VAN	)
12	BELLE, wife and husband;	)
	KENNETH FORD, a single man;	)
13	JANET FOX, a single woman;	)
	GEORGIA FRANCIS and EARL	)
14	FRANCIS, wife and husband;	)
15	MARGIE GARNER, a widow;	)
	RONNIE GORDON, a single man;	)
16	BILLY HARTWELL and JUDITH	)
17	HARTWELL, husband and wife;	)
	VAN KALOGEROU, a single man;	)
18	IMOGENE KEYS, a separate woman;	)
	LINDA MEJIA and PHILIP MEJIA, wife	)
19	and husband;	)
	CARLOS NERIA, a single man;	)
20	ROSA RIDGEWAY, a widow;	)
	FRANCIS RYLANCE and BETTY	)
21	JANE RYLANCE, husband and wife;	)
22	JESSE STONE, a single man;	)
	BILL STONEY and DORENE	)
23	STONEY, husband and wife;	)
	DORIS TOMACELLI, a widow;	)
24	BERTHA WALLACE and RUSSELL	)
25	WALLACE, wife and husband;	)
	JOHNNY WILSON, a single man;	)
26	JOANN WINN and LAWRENCE WINN,	)
27	wife and husband;	)
		)
28	Plaintiffs,	)

1 vs. )  
 2 )  
 3 SMITHKLINE BEECHAM )  
 CORPORATION, a Pennsylvania )  
 4 corporation, d/b/a )  
 GLAXOSMITHKLINE; MCKESSON )  
 CORPORATION, a Delaware )  
 5 corporation; DOES ONE through )  
 FIFTEEN, inclusive, )  
 6 )  
 7 Defendants. )

8  
 9 For their Complaint against the Defendants for injuries and other damages caused by  
 10 ingestion of the prescription medication AVANDIA® (rosiglitazone maleate), alone, or  
 11 compounded as AVANDAMET® (rosiglitazone maleate and metformin hydrochloride) and/or  
 12 AVANDARYL® (rosiglitazone maleate and glimepiride) (these medications are hereinafter  
 13 singularly or collectively referred to as "Avandia"), Plaintiffs allege:

14 **DEMAND FOR JURY TRIAL**

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

16 **PARTIES**

17 2. Plaintiff KATHLEEN DeGREGORIO, a single woman, is and was at all times alleged  
 18 herein a citizen and resident in the City of Riverside, County of Riverside, State of California,  
 19 and brings this action individually.

20 3. Plaintiff KATHLEEN DeGREGORIO ingested Defendant's Avandia and as a result  
 21 suffered severe injuries and other damages.

22 4. Plaintiff BRENDA HOWARD, individually and as Wife and Next of Kin to ROBERT  
 23 HOWARD, deceased, is and was at all times alleged herein a citizen and resident of the State  
 24 of Alabama, and brings this action individually and as Next of Kin to ROBERT HOWARD,  
 25 deceased.

26 5. Plaintiff BRENDA HOWARD'S decedent, ROBERT HOWARD was at all times alleged  
 27 herein a citizen and resident of the State of Alabama.

1 6. Plaintiff BRENDA HOWARD's decedent, ROBERT HOWARD, ingested Defendant's  
2 Avandia and as a result suffered severe injuries resulting in his death.

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

7 8. Plaintiff JOANN HOLLAND's decedent, JERRY HOLLAND, deceased, is and was at all  
8 times alleged herein a citizen and resident of the State of Oklahoma.

9 9. Plaintiff JOANN HOLLAND's decedent, JERRY HOLLAND, ingested Defendant's  
10 Avandia and as a result suffered severe injuries resulting in his death.

11 10. Plaintiff HUGO LOFFELMACHER, individually and as Husband and Next of Kin to MARY  
12 LOFFELMACHER, deceased, is and was at all times alleged herein a citizen and resident of  
13 the State of Missouri, and brings this action individually and as Next of Kin to MARY  
14 LOFFELMACHER, deceased.

15 11. Plaintiff HUGO LOFFELMACHER's decedent, MARY LOFFELMACHER, is and was at  
16 all times alleged herein a citizen and resident of the State of Missouri.

17 12. Plaintiff HUGO LOFFELMACHER's decedent, MARY LOFFELMACHER, ingested  
18 Defendant's Avandia and as a result suffered severe injuries resulting in her death.

19 13. Plaintiff ARLENE HARBERT, individually and as Wife and Next of Kin to MICHAEL  
20 HARBERT, deceased, is and was at all times alleged herein a citizen and resident of the State  
21 of West Virginia, and brings this action individually and as Next of Kin to MICHAEL HARBERT,  
22 deceased.

23 14. Plaintiff ARLENE HARBERT's decedent, MICHAEL HARBERT, is and was at all times  
24 alleged herein a citizen and resident of the State of West Virginia.

25 15. Plaintiff ARLENE HARBERT's decedent, MICHAEL HARBERT ingested Defendant's  
26 Avandia and as a result suffered severe injuries resulting in his death.

1 16. Plaintiff PATRICIA MARTIN, individually and as Wife and Next of Kin to MIKE MARTIN,  
2 deceased, is and was at all times alleged herein a citizen and resident of the State of Florida,  
3 and brings this action individually and as Next of Kin to MIKE MARTIN, deceased.

4 17. Plaintiff PATRICIA MARTIN's decedent, MIKE MARTIN, is and was at all times alleged  
5 herein a citizen and resident of the State of Florida.

6 18. Plaintiff PATRICIA MARTIN's decedent, MIKE MARTIN ingested Defendant's Avandia  
7 and as a result suffered severe injuries resulting in his death.

8 19. Plaintiff ELOISE PATRIDGE, individually and as Wife and Next of Kin to COLE  
9 PATRIDGE, deceased, is and was at all times alleged herein a citizen and resident of the State  
10 of Indiana, and brings this action individually and as Next of Kin to COLE PATRIDGE,  
11 deceased.

12 20. Plaintiff ELOISE PATRIDGE's decedent, COLE PATRIDGE, is and was at all times  
13 alleged herein a citizen and resident of the State of West Virginia.

14 21. Plaintiff ELOISE PATRIDGE's decedent, COLE PATRIDGE ingested Defendant's  
15 Avandia and as a result suffered severe injuries resulting in his death.

16 22. Plaintiff MARY GREER, a single woman, is and was at all times alleged herein a citizen  
17 and resident of the State of Alabama, and brings this action individually.

18 23. Plaintiff MARY GREER ingested Defendant's Avandia and as a result suffered severe  
19 injuries and other damages.

20 24. Plaintiff MARY HALL, a single woman, is and was at all times alleged herein a citizen  
21 and resident of the State of Mississippi, and brings this action individually.

22 25. Plaintiff MARY HALL ingested Defendant's Avandia and as a result suffered severe  
23 injuries and other damages.

24 26. Plaintiff RUTH HEBERT, a single woman, is and was at all times alleged herein a citizen  
25 and resident of the State of Louisiana, and brings this action individually.

26 27. Plaintiff RUTH HEBERT ingested Defendant's Avandia and as a result suffered severe  
27 injuries and other damages.

28

1 28. Plaintiff LEANNA HOBACK, a single woman, is and was at all times alleged herein a  
2 citizen and resident of the State of Oklahoma, and brings this action individually.

3 29. Plaintiff LEANNA HOBACK ingested Defendant's Avandia and as a result suffered  
4 severe injuries and other damages.

5 30. Plaintiff GENEVA HODGE, a single woman, is and was at all times alleged herein a  
6 citizen and resident of the State of Arizona, and brings this action individually.

7 31. Plaintiff GENEVA HODGE ingested Defendant's Avandia and as a result suffered severe  
8 injuries and other damages.

9 32. Plaintiff DALE HOLLIS, a single man, is and was at all times alleged herein a citizen and  
10 resident of the State of Oklahoma, and brings this action individually.

11 33. Plaintiff DALE HOLLIS ingested Defendant's Avandia and as a result suffered severe  
12 injuries and other damages.

13 34. Plaintiff WELDON HUNT, is and was at all times alleged herein a citizen and resident of  
14 the State of Texas, and brings this action individually.

15 35. Plaintiff WELDON HUNT ingested Defendant's Avandia and as a result suffered severe  
16 injuries and other damages.

17 36. Plaintiff MARVA JACKSON, a single woman, is and was at all times alleged herein a  
18 citizen and resident of the State of Arizona, and brings this action individually.

19 37. Plaintiff MARVA JACKSON ingested Defendant's Avandia and as a result suffered  
20 severe injuries and other damages.

21 38. Plaintiff STEPHANIE JOHNSON and ROBERT LOVE, wife and husband, are and were  
22 at all times alleged herein citizens and residents of the State of Florida, and bring this action in  
23 their individual capacities.

24 39. Plaintiff STEPHANIE JOHNSON ingested Defendant's Avandia and as a result suffered  
25 severe injuries and other damages.

26 40. Plaintiffs KENNETH JONES and LUGENE JONES, husband and wife, are and were at  
27 all times alleged herein citizens and residents of the State of Oklahoma, and bring this action in  
28 their individual capacities.

1 41. Plaintiff KENNETH JONES ingested Defendant's Avandia and as a result suffered  
2 severe injuries and other damages.

3 42. Plaintiff PATSY JONES, a single woman, is and was at all times alleged herein a citizen  
4 and resident of the State of Oklahoma, and brings this action individually.

5 43. Plaintiff PATSY JONES ingested Defendant's Avandia and as a result suffered severe  
6 injuries and other damages.

7 44. Plaintiffs RONALD JOHNSON and VANILLA JOHNSON, husband and wife, are and  
8 were at all times alleged herein citizens and residents of the State of Oklahoma, and bring this  
9 action in their individual capacities.

10 45. Plaintiff RONALD JOHNSON ingested Defendant's Avandia and as a result suffered  
11 severe injuries and other damages.

12 46. Plaintiff MARY HAWKINS and BRADFORD HAWKINS, wife and husband, are and were  
13 at all times alleged herein citizens and residents of the State of Georgia, and bring this action in  
14 their individual capacities.

15 47. Plaintiff MARY HAWKINS ingested Defendant's Avandia and as a result suffered severe  
16 injuries and other damages.

17 48. Plaintiff RINNA HALL, a single woman, is and was at all times alleged herein a citizen  
18 and resident of the State of Georgia, and brings this action individually.

19 49. Plaintiff RINNA HALL ingested Defendant's Avandia and as a result suffered severe  
20 injuries and other damages.

21 50. Plaintiff ALICIA LUNA, a single woman, is and was at all times alleged herein a citizen  
22 and resident of the State of Texas, and brings this action individually.

23 51. Plaintiff ALICIA LUNA ingested Defendant's Avandia and as a result suffered severe  
24 injuries and other damages.

25 52. Plaintiff KATHY KUSTES and JOHN D. KUSTES, JR., wife and husband, are and were  
26 at all times alleged herein citizens and residents of the State of Iowa, and bring this action in  
27 their individual capacities.

28

1 53. Plaintiff KATHY KUSTES ingested Defendant's Avandia and as a result suffered severe  
2 injuries and other damages.

3 54. Plaintiff ANDREW KERLIN and LINDA KERLIN, husband and wife, are and were at all  
4 times alleged herein citizens and residents of the State of Oklahoma, and bring this action in  
5 their individual capacities.

6 55. Plaintiff ANDREW KERLIN ingested Defendant's Avandia and as a result suffered  
7 severe injuries and other damages.

8 56. Plaintiff ROBERT MASK, a single man, is and was at all times alleged herein a citizen  
9 and resident of the State of Texas, and brings this action individually.

10 57. Plaintiff ROBERT MASK ingested Defendant's Avandia and as a result suffered severe  
11 injuries and other damages.

12 58. Plaintiff JAMES LaCHAPPELL, a single man, is and was at all times alleged herein a  
13 citizen and resident of the State of Oklahoma, and brings this action individually.

14 59. Plaintiff JAMES LaCHAPPELL ingested Defendant's Avandia and as a result suffered  
15 severe injuries and other damages.

16 60. Plaintiffs JACKIE BENNETT and DOROTHIA BENNETT, husband and wife, are and  
17 were at all times alleged herein citizens and residents of the State of South Carolina, and bring  
18 this action in their individual capacities.

19 61. Plaintiff JACKIE BENNETT ingested Defendant's Avandia and as a result suffered  
20 severe injuries and other damages.

21 62. Plaintiff JEANETTE BUCKLEY, a single woman, is and was at all times alleged herein a  
22 citizen and resident of the State of Texas, and brings this action individually.

23 63. Plaintiff JEANETTE BUCKLEY ingested Defendant's Avandia and as a result suffered  
24 severe injuries and other damages.

25 64. Plaintiffs CAROL FLANAGAN and MARK VAN BELLE, wife and husband, are and were  
26 at all times alleged herein citizens and residents of the State of Pennsylvania, and bring this  
27 action in their individual capacities.

28

1 65. Plaintiff CAROL FLANAGAN ingested Defendant's Avandia and as a result suffered  
2 severe injuries and other damages.

3 66. Plaintiff KENNETH FORD, a single man, is and was at all times alleged herein a citizen  
4 and resident of the State of Massachusetts, and brings this action individually.

5 67. Plaintiff KENNETH FORD ingested Defendant's Avandia and as a result suffered severe  
6 injuries and other damages.

7 68. Plaintiff JANET FOX, a single woman, is and was at all times alleged herein a citizen and  
8 resident of the State of Mississippi, and brings this action individually.

9 69. Plaintiff JANET FOX ingested Defendant's Avandia and as a result suffered severe  
10 injuries and other damages.

11 70. Plaintiffs GEORGIA FRANCIS and EARL FRANCIS, wife and husband, are and were at  
12 all times alleged herein citizens and residents of the State of Missouri, and bring this action in  
13 their individual capacities.

14 71. Plaintiff GEORGIA FRANCIS ingested Defendant's Avandia and as a result suffered  
15 severe injuries and other damages.

16 72. Plaintiff MARGIE GARNER, a widow, is and was at all times alleged herein a citizen and  
17 resident of the State of South Carolina, and brings this action individually.

18 73. Plaintiff MARGIE GARNER ingested Defendant's Avandia and as a result suffered  
19 severe injuries and other damages.

20 74. Plaintiff RONNIE GORDON, a single man, is and was at all times alleged herein a citizen  
21 and resident of the State of Mississippi, and brings this action individually.

22 75. Plaintiff RONNIE GORDON ingested Defendant's Avandia and as a result suffered  
23 severe injuries and other damages.

24 76. Plaintiffs BILLY HARTWELL and JUDITH HARTWELL, husband and wife, are and were  
25 at all times alleged herein citizens and residents of the State of West Virginia, and bring this  
26 action in their individual capacities.

27 77. Plaintiff BILLY HARTWELL ingested Defendant's Avandia and as a result suffered  
28 severe injuries and other damages.

1 78. Plaintiff VAN KALOGEROU, a single man, is and was at all times alleged herein a citizen  
2 and resident of the State of Nevada, and brings this action individually.

3 79. Plaintiff VAN KALOGEROU ingested Defendant's Avandia and as a result suffered  
4 severe injuries and other damages.

5 80. Plaintiff IMOGENE KEYS, a separated woman, is and was at all times alleged herein a  
6 citizen and resident of the State of Nebraska, and brings this action individually.

7 81. Plaintiff IMOGENE KEYS ingested Defendant's Avandia and as a result suffered severe  
8 injuries and other damages.

9 82. Plaintiffs LINDA MEJIA and PHILIP MEJIA, wife and husband, are and were at all times  
10 alleged herein citizens and residents of the State of South Carolina, and bring this action in  
11 their individual capacities.

12 83. Plaintiff LINDA MEJIA ingested Defendant's Avandia and as a result suffered severe  
13 injuries and other damages.

14 84. Plaintiff CARLOS NERIA, a single man, is and was at all times alleged herein a citizen  
15 and resident of the State of Texas, and brings this action individually.

16 85. Plaintiff CARLOS NERIA ingested Defendant's Avandia and as a result suffered severe  
17 injuries and other damages.

18 86. Plaintiff ROSA RIDGEWAY, a widow, is and was at all times alleged herein a citizen and  
19 resident of the State of Georgia, and brings this action individually.

20 87. Plaintiff ROSA RIDGEWAY ingested Defendant's Avandia and as a result suffered  
21 severe injuries and other damages.

22 88. Plaintiffs FRANCIS RYLANCE and BETTY RYLANCE, husband and wife, are and were  
23 at all times alleged herein citizens and residents of the State of Georgia, and bring this action in  
24 their individual capacities.

25 89. Plaintiff FRANCIS RYLANCE ingested Defendant's Avandia and as a result suffered  
26 severe injuries and other damages.

27 90. Plaintiff JESSE STONE, a single man, is and was at all times alleged herein a citizen  
28 and resident of the State of Connecticut and brings this action individually.

1 91. Plaintiff JESSE STONE ingested Defendant's Avandia and as a result suffered severe  
2 injuries and other damages.

3 92. Plaintiffs BILL STONEY and DORENE STONEY, husband and wife, are and were at all  
4 times alleged herein citizens and residents of the State of Utah, and bring this action in their  
5 individual capacities.

6 93. Plaintiff BILL STONEY ingested Defendant's Avandia and as a result suffered severe  
7 injuries and other damages.

8 94. Plaintiff DORIS TOMACELLI, a widow, is and was at all times alleged herein a citizen  
9 and resident of the State of Oklahoma, and brings this action individually.

10 95. Plaintiff DORIS TOMACELLI ingested Defendant's Avandia and as a result suffered  
11 severe injuries and other damages.

12 96. Plaintiffs BERTHA WALLACE and RUSSELL WALLACE, wife and husband, are and  
13 were at all times alleged herein citizens and residents of the State of West Virginia, and bring  
14 this action in their individual capacities.

15 97. Plaintiff BERTHA WALLACE ingested Defendant's Avandia and as a result suffered  
16 severe injuries and other damages.

17 98. Plaintiff JOHNNY WILSON, a single man, is and was at all times alleged herein a citizen  
18 and resident of the State of Mississippi, and brings this action individually.

19 99. Plaintiff JOHNNY WILSON ingested Defendant's Avandia and as a result suffered  
20 severe injuries and other damages.

21 100. Plaintiffs JOANN WINN and LAWRENCE WINN, wife and husband, are and were at all  
22 times alleged herein citizens and residents of the State of Kansas, and bring this action in their  
23 individual capacities.

24 101. Plaintiff JOANN WINN ingested Defendant's Avandia and as a result suffered severe  
25 injuries and other damages.

26 102. As used herein and as the context requires, "Plaintiffs" may refer to the Plaintiffs who are  
27 alleged to have ingested Avandia and/or Plaintiffs' decedents who are alleged to have ingested  
28 Avandia and/or the spouses of the Plaintiffs who are alleged to have ingested Avandia and/or

1 the Plaintiffs presenting the claims of their respective decedents who are alleged to have  
2 ingested Avandia.

3 103. Defendant SmithKline Beecham Corporation d/b/a GLAXOSMITHKLINE (hereinafter,  
4 "GSK"), at all times alleged herein, is and was a corporation formed under the laws of the State  
5 of Pennsylvania, and duly authorized to transact business in the State of California, GSK makes  
6 a variety of prescription drugs, including Avandia.

7 104. At all times alleged herein, GSK is and was engaged in substantial commerce and  
8 business activity within the County of Riverside, State of California. Further, or in the  
9 alternative, at all times alleged herein, GSK has and had sufficient contacts within the County of  
10 Riverside, State of California, to subject them to the jurisdiction of this Court.

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

14 106. At all times alleged herein, GSK includes and included any and all parents, subsidiaries,  
15 affiliates, divisions, franchises, partners, joint venturers, and organizational units of any kind,  
16 their predecessors, successors and assigns and their officers, directors, employees, agents,  
17 representatives and any and all other persons acting on their behalf.

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

25 108. Upon information and belief and subject to discovery of information within the exclusive  
26 control of Defendants, at a bare minimum, McKesson distributed the Avandia ingested by those  
27 Plaintiffs and decedents alleged herein to have ingested Avandia.

1 109. At all times alleged herein, McKesson includes any and all parents, subsidiaries,  
2 affiliates, divisions, franchises, partners, joint venturers, and organizational units of any kind,  
3 their predecessors, successors and assigns and their offices, directors, employees, agents,  
4 representatives and any and all other persons acting on their behalf.

5 110. Plaintiffs do not know the true names of the Defendants sued herein as DOES ONE  
6 through FIFTEEN, inclusive. Plaintiffs allege that each of the fictitiously named Defendants is  
7 responsible in some manner for the occurrences herein alleged, and caused the injuries and  
8 damages sustained by Plaintiffs as herein alleged.

9 111. At all times alleged herein, use of the collective term "Defendants" refers to all named  
10 Defendants herein as well as Defendants DOES ONE through FIFTEEN.

11 112. At all times alleged herein, Defendant identified herein as, or discovered to be,  
12 corporations or other business entities were acting by and through officers, employees, agents,  
13 and contractors, who were acting within the course and scope of said office, employment,  
14 agency, or contractual authority.

15 113. At all times alleged herein, each of the Defendants was the agent and employee of every  
16 other Defendant in doing the acts herein alleged, and was, at all times, acting within the  
17 purpose and scope of said agency and employment and all of said acts and conduct were  
18 ratified and approved by said Defendants.

19 **FACTUAL BACKGROUND**

20 114. There are three types of diabetes: 1) Type 1 diabetes; (2) Type 2 diabetes; and  
21 Gestational Diabetes. Type 1 and 2 are chronic, progressively worsening diseases associated  
22 with a variety of cardiovascular complications. Gestational diabetes generally occurs during  
23 pregnancy and women that develop gestational diabetes are more likely to develop Type 2  
24 diabetes. Type 1 diabetes "results from the body's failure to produce insulin, the hormone that  
25 'unlocks' the cells of the body, allowing glucose to enter and fuel them. It is estimated that 5-  
26 10% of Americans who are diagnosed with diabetes have Type 1 diabetes.<sup>1</sup>"

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

1 115. The most common type of diabetes is Type 2 diabetes. Type 2 diabetes occurs where  
2 the body fails to properly use insulin (insulin resistance), combined with relative insulin  
3 deficiency. Insulin, which is made in the pancreas, helps the body's cells use sugar from the  
4 bloodstream, which comes from foods and drinks. Sugar is a source of energy for cells<sup>2</sup>. The  
5 third type, gestational diabetes, affects about 4% of all pregnant women – about 135,000 cases  
6 in the United States each year<sup>3</sup>.

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

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

15 118. During the past decade, numerous drugs have been introduced for the treatment of Type  
16 2 diabetes that, used in monotherapy or in combination therapy, are supposed to better control  
17 the disease in patients and reduce the health complications often associated with diabetes,  
18 such as heart attacks, stroke and other cardiovascular complications.

19 119. GSK is a pharmaceutical manufacturer with net income (adjusted earnings) in 2006 of  
20 approximately \$10.6 billion. GSK developed the antidiabetic drug Avandia and submitted it for  
21 approval by the United States Food and Drug Administration ("FDA").

22 120. The FDA initially approved Avandia in 1999 as safe and effective for treating Type 2  
23 diabetes mellitus.

24 121. Avandia belongs to a class of drugs known as Thiazolidinediones (TZDs), a novel class  
25 of insulin-sensitizing antidiabetic agents. In the USA and Canada, the two TZDs indicated for  
26

27 <sup>2</sup> *Id.*

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

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

1 use in Type 2 diabetes mellitus are rosiglitazone and pioglitazone. A third, troglitazone  
2 (Rezulin) has been removed from the market because of an association with significant  
3 hepatotoxicity.

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

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

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

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

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

16 127. Defendants have engaged in repeated and persistent fraud by misrepresenting,  
17 concealing and otherwise failing to disclose to physicians and patients, including Plaintiffs,  
18 information in its control concerning the safety and effectiveness of Avandia.

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

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

1 130. In deciding whether to prescribe or to ingest a drug, physicians and patients rely on their  
2 assessment of information received about the drug. Such information must be accurate and  
3 provide an unbiased picture of a drug's safety and efficacy in treating a condition. If the  
4 information is false or misleading, neither the patient nor the physician can accurately assess  
5 the crucial risk/benefit balance or exercise independent judgment.

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

10 132. Avandia has been widely advertised, marketed and represented by the Defendants as a  
11 safe and effective antidiabetic agent.

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

16 134. The Defendants marketed the Avandia heavily as safe and effective treatment for  
17 diabetes, promising fewer side effects than other similar treatments including the other TZDs on  
18 the market.

19 135. The Defendants marketed Avandia as the most effective means of treating Type 2  
20 diabetes mellitus, claiming to be more effective than older antidiabetics and other TZDs on the  
21 market.

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

25 137. The marketing and promotion efforts of GSK, its advertisers and sales force served to  
26 overstate the benefits of Avandia, and minimize and downplay the risks associated with the  
27 drug. These promotional efforts were made, while fraudulently withholding important safety  
28 information from the physicians, the FDA, and the public, specifically that GSK was aware of

1 numerous reports of congestive heart failure, heart attacks, strokes, and other serious  
2 cardiovascular injuries and death associated with the use of Avandia, well beyond the  
3 background rate, and well beyond the rate of other antidiabetic agents.

4 138. Concealing or providing inaccurate or biased information that is material to a prescribing  
5 decision misleads the physician and the patient.

6 **GSK STUDIES CONCERNING THE SAFETY AND EFFICACY**  
7 **OF AVANDIA IN TREATING TYPE 2 DIABETES**

8 139. Defendants boast rosiglitazone as a safe and effective antidiabetic, claiming that  
9 rosiglitazone is safer and more effective than older antidiabetic agents and other TZDs.

10 140. Defendants have overstated the efficacious value of rosiglitazone and has understated  
11 the risk associated with rosiglitazone.

12 **Efficacy**

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

18 142. Moreover, researchers recently concluded that older antidiabetic agents are as effective  
19 or superior to rosiglitazone<sup>6</sup>.

20 143. There have been three meta-analysis conducted. Each meta-analysis has found that  
21 Avandia increases the risk of cardiovascular-related injury.

22 144. A meta-analysis combines the result of several studies that address a set of related  
23 research hypotheses.

24 145. The first analysis was performed by GSK and was handed over to the FDA in August of  
25 2006. The meta-analysis consisted of 42 separate double-blinded, randomized, controlled  
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 clinical trials to assess the efficacy of rosiglitazone for treatment of type 2 diabetes compared to  
2 either placebo or other antidiabetic therapies in patients with type 2 diabetes. The combined  
3 studies included 8,604 patients on rosiglitazone and 5,633 patients randomized to a variety of  
4 alternative therapeutic regimens, including placebo.

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

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

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

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

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

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

25 152. Thus, while GSK's rosiglitazone-containing drugs are marketed and sold by Defendants  
26 as antidiabetic agents that reduce a diabetic patient's risk of heart attacks, studies conducted

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.

1 by GSK show that rosiglitzone actually increases those risks by 43 percent according to the  
2 Nissen/Wolski meta-analysis and by 31 percent according to GSK's own meta-analysis.

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

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

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

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

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

25 On March 15, 2000, John Buse, M.D., wrote a letter to the FDA again raising concerns about  
26 a "worrisome trend in cardiovascular deaths and severe adverse events" associated with  
27 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

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

1 concentration seen in the clinical trial program (whether the number we accept as the truth is  
2 the 18.6% at 4 mg bid in the package insert or the "average of 12%" now being discussed)  
3 one would expect an increase in cardiovascular events . . . Based on studies with stains and  
4 plasmapheresis, changes in LDL concentration can be associated with substantial changes  
5 in vascular reactivity and endothelial function over a time course of days to weeks<sup>9</sup>

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

13 158. Public Citizen cited studies submitted to the FDA for approval that evidenced lack of  
14 efficacy and increase in cardiovascular risks.

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

19 160. In the monotherapy trial (#011), chest pain was reported in 0.0% (placebo patients),  
20 1.7% (patients on 2 mg bid rosiglitazone) and 3.3% (patients on 4 mg bid); five patients on  
21 rosiglitazone had acute myocardial infarctions<sup>12</sup>.

22 161. This is obviously a major concern since diabetics are already susceptible to an increased  
23 risk of cardiovascular injury.

24 162. Yet, even with this information available to it, Defendants failed to warn consumers and  
25 the medical community about the increased risk of heart attacks and other serious injuries  
26 associated with Avandia.

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

28 <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).

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

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

1 163. 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.

3 164. 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.

6 165. 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.

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

11 167. 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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13 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, GlascoSmithKline (July 17, 2001) (on file with the FDA).

1 168. 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.

4 169. 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."

9 170. 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.

11 171. 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.

14 172. 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.

18 173. 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.

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

23 175. 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.

27 176. 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.

3 177. Defendants' actions amounted to over promotion.

4 178. 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.

7 179. 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.

11 180. 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]**

20 181. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
21 allegation contained in Paragraphs 1-180, inclusive, of this Complaint.

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

24 183. 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.

3 184. 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.

7 185. 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.

11 186. As a result of Plaintiffs' decedent's 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]**

23 187. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
24 allegation contained in Paragraphs 1-186, inclusive, of this Complaint.

25 188. 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.

1 189. 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 serous 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.

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

15 191. 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]**

23 192. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
24 allegation contained in Paragraph 1-191, inclusive, of this Complaint.

25 193. 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.

3 194. 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.

9 195. 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.

12 196. 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]**

17 197. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
18 allegation contained in Paragraphs 1-196, inclusive, of this Complaint.

19 198. 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.

22 199. 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.

1 200. 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]**

7 201. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
8 allegation contained in Paragraphs 1-200, inclusive, of this Complaint.

9 202. 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.

16 203. 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.

20 204. 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.

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

3 206. 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]**

11 207. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
12 allegation contained in Paragraphs 1-206, inclusive, of this Complaint.

13 208. 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.

20 209. 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.

23 210. 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.

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

3 212. 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]**

11 213. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
12 allegation contained in Paragraphs 1-212, inclusive, of this Complaint.

13 214. 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.

16 215. 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.

19 216. 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.

24 217. 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]**

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

5 219. 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.

7 220. 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]**

15 221. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every  
16 allegation contained in Paragraphs 1-220, inclusive, of this Complaint.

17 222. 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.

20 223. As a result of Plaintiffs' decedents' ingestion of the defective Avandia that ultimately  
21 caused their death, 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 14, 2009

10 Respectfully submitted,

11 

12 Mark P. Robinson, Jr., SBN 054426  
13 Karen Barth Menzies, SBN 180234  
14 Robinson Calcagnie & Robinson  
15 620 Newport Center Drive, 7<sup>th</sup> Floor  
16 Newport Beach, CA 92660  
17 Tel: (949) 720-1288  
18 Fax: (949) 720-1292

19 James D. Sill (OK Bar No. 8239)  
20 Matthew J. Sill (OK Bar No. 21547)  
21 SILL & MEDLEY  
22 725 Northwest Eleventh  
23 Oklahoma City, OK 73103  
24 Tel: (405) 604-5953  
25 Fax: (405) 604-9775

26 *and*

27 A. Daniel Woska (OK Bar No. 9900)  
28 S. Randall Sullivan (OK Bar No. 11179)  
John D. Wadley (OK Bar No. 21855)  
A. Daniel Woska & Associates, P.C.  
3037 NW 63rd Street, Suite 251  
Oklahoma City, OK 73116  
Tel: (405) 562-7771  
Fax: (405) 285-9350  
*Attorneys for Plaintiffs*