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

BC 413877

11 RHONDA KING, a single woman;)
12 ANETTE KRAPF and DEAN KRAPF,)
13 wife and husband;)
14 MARYANN PERILLO, individually and)
15 as Wife and Next of Kin to ANTHONY)
16 PERILLO, deceased;)
17 LORA D. HOWARD, individually and)
18 as Wife and Next of Kin to TROY)
19 HOWARD, deceased;)
20 RICHARD FRANSON, individually and)
21 as Husband and Next of Kin to DIAN)
22 FRANSON, deceased;)
23 LINDA PETERS, individually and as)
24 Wife and Next of Kin to MAURY)
25 PETERS, deceased;)
26 DAPHNE RAMOS, individually and as)
27 Wife and Next of Kin to VICTOR)
28 RAMOS, deceased;)
STEPHEN B. REGISTER, JR.,)
individually and as Son and Next of Kin)
to EVELENA REGISTER, deceased;)
MELODIE RICHARDSON, individually)
and as Wife and Next of Kin to JOHN)
RICHARDSON, deceased;)
JEAN LeCRONE and JODY)
LeCRONE, wife and husband;)
JIMMY NEALEY and CASSANDRA)
NEALEY, husband and wife;)
EVA LEE, a single woman;)

CASE NO. _____

**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 MARIA PEREZ and CRUZ PEREZ,)
wife and husband;)
2 OREN STAN MAVITY, a single man;)
DIANNA NELSON, a single woman;)
3 KEN MAYNARD, a single man;)
4 DOROTHY MAYS, a single woman;)
EVA PEPIN, a single woman;)
5 PATRICIA RIDEOUT and WILLIAM)
RIDEOUT, wife and husband;)
6 LINDA RUSSELL, a single woman;)
7 ROBERTA SALISBURY, a single)
woman;)
8 JIMMY RIDLEY and CAROL RIDLEY,)
husband and wife;)
9 RAY SANDERS, a single man;)
10 ROGER SARTIN, a single man;)
MARY SCALDONE, a single woman;)
11 JOYCE SLADE, a single woman;)
JANET SLUSHER, a single woman;)
12 SHIRLEY SNOW and J.L. SNOW, wife)
and husband;)
13 MARY BARR, a widow;)
14 FRANCES BROWN and JOHNNY)
BROWN, wife and husband;)
15 JAMES DORTON, a single man;)
DAN GARIN and CHERYL GARIN,)
16 husband and wife;)
LEONARD GIBSON and OLGA)
17 GIBSON, husband and wife;)
18 JAMES GOBLE and LINDA SUE)
GOBLE, husband and wife;)
19 ROBERT HODGE and MARY HODGE,)
husband and wife;)
20 R.V. HORACE and HERMAN)
HORACE, wife and husband;)
21 DALE LIPPY and RUTH LIPPY,)
husband and wife;)
22 MAURICE MILLER and CARYL)
23 MILLER, husband and wife;)
24 PATRICIA MURDOCK, a separated)
woman;)
25 DIANE NORRIS, a single woman;)
BETTY RICKS, a widow;)
26 LAURA RODGERS and JOHN)
RODGERS, wife and husband;)
27 ROBERT SAM and ROSEMARY SAM,)
husband and wife;)
28

1 LINDA SCARBERRY and WALTER)
 SCARBERRY, wife and husband;)
 2 ORA SMITH and NANCY SMITH;)
 husband and wife;)
 3 LONNIE SOVINE and WANDA)
 SOVINE, husband and wife;)
 4)
 5 Plaintiffs,)
 6 vs.)
 7 SMITHKLINE BEECHAM)
 CORPORATION, a Pennsylvania)
 8 corporation, d/b/a)
 9 GLAXOSMITHKLINE; MCKESSON)
 CORPORATION, a Delaware)
 10 corporation; DOES ONE through)
 11 FIFTEEN, inclusive,)
 12 Defendants.)

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

19 **DEMAND FOR JURY TRIAL**

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

21 **PARTIES**

22 2. Plaintiff RHONDA KING, a single woman, is and was at all times alleged herein a citizen
 23 and resident in the City of Highland Park, County of Los Angeles, State of California, and brings
 24 this action individually.

25 3. Plaintiff RHONDA KING ingested Defendant's Avandia and as a result suffered severe
 26 injuries and other damages.

1 4. Plaintiffs ANETTE KRAPP and DEAN KRAPP, wife and husband, are and were at all
2 times alleged herein citizens and residents of the County of San Diego, State of California, and
3 bring this action in their individual capacities.

4 5. Plaintiff ANETTE KRAPP ingested Defendant's Avandia and as a result suffered severe
5 injuries and other damages.

6 6. Plaintiff MARYANN PERILLO, individually and as Wife and Next of Kin to ANTHONY
7 PERILLO, deceased, is and was at all times alleged herein a citizen and resident of the State of
8 New York, and brings this action individually and as Next of Kin to ANTHONY PERILLO,
9 deceased.

10 7. Plaintiff MARYANN PERILLO's decedent, ANTHONY PERILLO was at all times alleged
11 herein a citizen and resident of the State of New York.

12 8. Plaintiff MARYANN PERILLO's decedent, ANTHONY PERILLO, ingested Defendant's
13 Avandia and as a result suffered severe injuries resulting in his death.

14 9. Plaintiff LORA D. HOWARD, individually and as Wife and Next of Kin to TROY
15 HOWARD, deceased, is and was at all times alleged herein a citizen and resident of the State
16 of Oklahoma and brings this action individually and as Next of Kin to TROY HOWARD,
17 deceased.

18 10. Plaintiff LORA D. HOWARD's decedent, TROY HOWARD, deceased, is and was at all
19 times alleged herein a citizen and resident of the State of Oklahoma.

20 11. Plaintiff LORA HOWARD's decedent, TROY HOWARD, ingested Defendant's Avandia
21 and as a result suffered severe injuries resulting in his death.

22 12. Plaintiff RICHARD FRANSON, individually and as Husband and Next of Kin to DIAN
23 FRANSON, deceased, is and was at all times alleged herein a citizen and resident of the State
24 of Utah, and brings this action individually and as Next of Kin to DIAN FRANSON, deceased.

25 13. Plaintiff RICHARD FRANSON's decedent, DIAN FRANSON, is and was at all times
26 alleged herein a citizen and resident of the State of Utah.

27 14. Plaintiff RICHARD FRANSON's decedent, DIAN FRANSON, ingested Defendant's
28 Avandia and as a result suffered severe injuries resulting in her death.

1 15. Plaintiff LINDA PETERS, individually and as Wife and Next of Kin to MAURY PETERS,
2 deceased, is and was at all times alleged herein a citizen and resident of the State of
3 Mississippi, and brings this action individually and as Next of Kin to MAURY PETERS,
4 deceased.

5 16. Plaintiff LINDA PETERS's decedent, MAURY PETERS, is and was at all times alleged
6 herein a citizen and resident of the State of Mississippi.

7 17. Plaintiff LINDA PETER's decedent, MAURY PETERS ingested Defendant's Avandia and
8 as a result suffered severe injuries resulting in his death.

9 18. Plaintiff DAPHNE RAMOS, individually and as Wife and Next of Kin to VICTOR RAMOS,
10 deceased, is and was at all times alleged herein a citizen and resident of the State of Texas,
11 and brings this action individually and as Next of Kin to VICTOR RAMOS, deceased.

12 19. Plaintiff DAPHNE RAMOS' decedent, VICTOR RAMOS, is and was at all times alleged
13 herein a citizen and resident of the State of Texas.

14 20. Plaintiff DAPHNE RAMOS' decedent, VICTOR RAMOS ingested Defendant's Avandia
15 and as a result suffered severe injuries resulting in his death.

16 21. Plaintiff STEPHEN B. REGISTER, JR., individually and as Son and Next of Kin to
17 EVELENA REGISTER, deceased, is and was at all times alleged herein a citizen and resident
18 of the State of Florida, and brings this action individually and as Next of Kin to EVELENA
19 REGISTER, deceased.

20 22. Plaintiff STEPHEN B. REGISTER, JR.'s decedent, EVELENA REGISTER, is and was at
21 all times alleged herein a citizen and resident of the State of Florida.

22 23. Plaintiff STEPHEN B. REGISTER's decedent, EVELENA REGISTER ingested
23 Defendant's Avandia and as a result suffered severe injuries resulting in her death.

24 24. Plaintiff MELODIE RICHARDSON, individually and as Wife and Next of Kin to JOHN
25 RICHARDSON, deceased, is and was at all times alleged herein a citizen and resident of the
26 State of Florida, and brings this action individually and as Next of Kin to JOHN RICHARDSON,
27 deceased.

1 25. Plaintiff MELODIE RICHARDSON's decedent, JOHN RICHARDSON, is and was at all
2 times alleged herein a citizen and resident of the State of Florida.

3 26. Plaintiff MELODIE RICHARDSON's decedent, JOHN RICHARDSON ingested
4 Defendant's Avandia and as a result suffered severe injuries resulting in his death.

5 27. Plaintiffs JEAN LeCRONE and JODY LeCRONE, wife and husband, are and were at all
6 times alleged herein citizens and residents of the State of Oklahoma, and bring this action in
7 their individual capacities.

8 28. Plaintiff JEAN LeCRONE ingested Defendant's Avandia and as a result suffered severe
9 injuries and other damages.

10 29. Plaintiffs JIMMY NEALEY and CASSANDRA NEALEY, husband and wife, are and were
11 at all times alleged herein citizens and residents of the State of Oklahoma, and bring this action
12 in their individual capacities.

13 30. Plaintiff JIMMY NEALEY ingested Defendant's Avandia and as a result suffered severe
14 injuries and other damages.

15 31. Plaintiff MARIA PEREZ and CRUZ PEREZ, wife and husband, are and were at all times
16 alleged herein citizens and residents of the State of Oklahoma, and bring this action in their
17 individual capacities.

18 32. Plaintiff MARIA PEREZ ingested Defendant's Avandia and as a result suffered severe
19 injuries and other damages.

20 33. Plaintiff OREN STAN MAVITY, a single man, is and was at all times alleged herein a
21 citizen and resident of the State of Oklahoma, and brings this action individually.

22 34. Plaintiff OREN STAN MAVITY ingested Defendant's Avandia and as a result suffered
23 severe injuries and other damages.

24 35. Plaintiff DIANNA NELSON, a single woman, is and was at all times alleged herein a
25 citizen and resident of the State of Texas, and brings this action individually.

26 36. Plaintiff DIANNA NELSON ingested Defendant's Avandia and as a result suffered severe
27 injuries and other damages.

1 37. Plaintiff KEN MAYNARD, 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 38. Plaintiff KEN MAYNARD ingested Defendant's Avandia and as a result suffered severe
4 injuries and other damages.

5 39. Plaintiff DOROTHY MAYS, a single woman, is and was at all times alleged herein a
6 citizen and resident of the State of Mississippi, and brings this action individually.

7 40. Plaintiff DOROTHY MAYS ingested Defendant's Avandia and as a result suffered severe
8 injuries and other damages.

9 41. Plaintiff EVA PEPIN, a single woman, is and was at all times alleged herein a citizen and
10 resident of the State of Missouri, and brings this action individually.

11 42. Plaintiff EVA PEPIN ingested Defendant's Avandia and as a result suffered severe
12 injuries and other damages.

13 43. Plaintiffs PATRICIA RIDEOUT and WILLIAM RIDEOUT, wife and husband, are and were
14 at all times alleged herein citizens and residents of the State of Rhode Island, and bring this
15 action in their individual capacities.

16 44. Plaintiff PATRICIA RIDEOUT ingested Defendant's Avandia and as a result suffered
17 severe injuries and other damages.

18 45. Plaintiff LINDA RUSSELL, a single woman, is and was at all times alleged herein a
19 citizen and resident of the State of Illinois, and brings this action individually.

20 46. Plaintiff LINDA RUSSELL ingested Defendant's Avandia and as a result suffered severe
21 injuries and other damages.

22 47. Plaintiff ROBERTA SALISBURY, a single woman, is and was at all times alleged herein
23 a citizen and resident of the State of Tennessee, and brings this action individually.

24 48. Plaintiff ROBERTA SALISBURY ingested Defendant's Avandia and as a result suffered
25 severe injuries and other damages.

26 49. Plaintiffs JIMMY RIDLEY and CAROL RIDLEY, husband and wife, are and were at all
27 times alleged herein citizens and residents of the State of Kansas, and bring this action in their
28 individual capacities.

1 50. Plaintiff JIMMY RIDLEY ingested Defendant's Avandia and as a result suffered severe
2 injuries and other damages.

3 51. Plaintiff RAY SANDERS, a single man, is and was at all times alleged herein a citizen
4 and resident of the State of Tennessee, and brings this action individually.

5 52. Plaintiff RAY SANDERS ingested Defendant's Avandia and as a result suffered severe
6 injuries and other damages.

7 53. Plaintiff ROGER SARTIN, a single man, is and was at all times alleged herein a citizen
8 and resident of the State of Indiana, and brings this action individually.

9 54. Plaintiff ROGER SARTIN ingested Defendant's Avandia and as a result suffered severe
10 injuries and other damages.

11 55. Plaintiff MARY SCALDONE, a single woman, is and was at all times alleged herein a
12 citizen and resident of the State of Colorado, and brings this action individually.

13 56. Plaintiff MARY SCALDONE ingested Defendant's Avandia and as a result suffered
14 severe injuries and other damages.

15 57. Plaintiff JOYCE SLADE, a single woman, is and was at all times alleged herein a citizen
16 and resident of the State of North Carolina, and brings this action individually.

17 58. Plaintiff JOYCE SLADE ingested Defendant's Avandia and as a result suffered severe
18 injuries and other damages.

19 59. Plaintiff JANET SLUSHER, a single woman, is and was at all times alleged herein a
20 citizen and resident of the State of Virginia, and brings this action individually.

21 60. Plaintiff JANET SLUSHER ingested Defendant's Avandia and as a result suffered severe
22 injuries and other damages.

23 61. Plaintiffs SHIRLEY SNOW and J.L. SNOW, wife and husband, are and were at all times
24 alleged herein citizens and residents of the State of Oklahoma, and bring this action in their
25 individual capacities.

26 62. Plaintiff SHIRLEY SNOW ingested Defendant's Avandia and as a result suffered severe
27 injuries and other damages.

1 63. Plaintiff MARY BARR, a widow, is and was at all times alleged herein a citizen and
2 resident of the State of Oklahoma, and brings this action individually.

3 64. Plaintiff MARY BARR ingested Defendant's Avandia and as a result suffered severe
4 injuries and other damages.

5 65. Plaintiffs FRANCES BROWN and JOHNNY BROWN, wife and husband, are and were at
6 all times alleged herein citizens and residents of the State of Mississippi, and bring this action in
7 their individual capacities.

8 66. Plaintiff FRANCES BROWN ingested Defendant's Avandia and as a result suffered
9 severe injuries and other damages.

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

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

14 69. Plaintiffs DAN GARIN and CHERYL GARIN, husband and wife, are and were at all times
15 alleged herein citizens and residents of the State of Arizona, and bring this action in their
16 individual capacities.

17 70. Plaintiff DAN GARIN ingested Defendant's Avandia and as a result suffered severe
18 injuries and other damages.

19 71. Plaintiffs LEONARD GIBSON and OLGA GIBSON, husband and wife, are and were at
20 all times alleged herein citizens and residents of the State of Michigan, and bring this action in
21 their individual capacities.

22 72. Plaintiff LEONARD GIBSON ingested Defendant's Avandia and as a result suffered
23 severe injuries and other damages.

24 73. Plaintiffs JAMES GOBLE and LINDA SUE GOBLE, husband and wife, are and were at
25 all times alleged herein citizens and residents of the State of Mississippi, and bring this action in
26 their individual capacities.

27 74. Plaintiff JAMES GOBLE ingested Defendant's Avandia and as a result suffered severe
28 injuries and other damages.

1 75. Plaintiffs ROBERT HODGE and MARY HODGE, husband and wife, are and were at all
2 times alleged herein citizens and residents of the State of Florida, and bring this action in their
3 individual capacities.

4 76. Plaintiff ROBERT HODGE ingested Defendant's Avandia and as a result suffered severe
5 injuries and other damages.

6 77. Plaintiffs R.V. HORACE and HERMAN HORACE, wife and husband, are and were at all
7 times alleged herein citizens and residents of the State of Texas, and bring this action in their
8 individual capacities.

9 78. Plaintiff R.V. HORACE ingested Defendant's Avandia and as a result suffered severe
10 injuries and other damages.

11 79. Plaintiffs DALE LIPPY and RUTH LIPPY, husband and wife, are and were at all times
12 alleged herein citizens and residents of the State of Pennsylvania, and bring this action in their
13 individual capacities.

14 80. Plaintiff DALE LIPPY ingested Defendant's Avandia and as a result suffered severe
15 injuries and other damages.

16 81. Plaintiffs MAURICE MILLER and CARYL MILLER, husband and wife, are and were at all
17 times alleged herein citizens and residents of the State of Iowa, and bring this action in their
18 individual capacities.

19 82. Plaintiff MAURICE MILLER ingested Defendant's Avandia and as a result suffered
20 severe injuries and other damages.

21 83. Plaintiff PATRICIA MURDOCK, a separated woman, is and was at all times alleged
22 herein a citizen and resident of the State of Florida, and brings this action individually.

23 84. Plaintiff PATRICIA MURDOCK ingested Defendant's Avandia and as a result suffered
24 severe injuries and other damages.

25 85. Plaintiff DIANE NORRIS, a single woman, is and was at all times alleged herein a citizen
26 and resident of the State of Texas, and brings this action individually.

27 86. Plaintiff DIANE NORRIS ingested Defendant's Avandia and as a result suffered severe
28 injuries and other damages.

1 87. Plaintiff BETTY RICKS, a widow, is and was at all times alleged herein a citizen and
2 resident of the State of Virginia, and brings this action individually.

3 88. Plaintiff BETTY RICKS ingested Defendant's Avandia and as a result suffered severe
4 injuries and other damages.

5 89. Plaintiffs LAURA RODGERS and JOHN RODGERS, wife and husband, are and were at
6 all times alleged herein citizens and residents of the State of North Carolina, and bring this
7 action in their individual capacities.

8 90. Plaintiff LAURA RODGERS ingested Defendant's Avandia and as a result suffered
9 severe injuries and other damages.

10 91. Plaintiffs ROBERT SAM and ROSEMARY SAM, husband and wife, are and were at all
11 times alleged herein citizens and residents of the State of Illinois, and bring this action in their
12 individual capacities.

13 92. Plaintiff ROBERT SAM ingested Defendant's Avandia and as a result suffered severe
14 injuries and other damages.

15 93. Plaintiffs LINDA SCARBERRY and WALTER SCARBERRY, wife and husband, are and
16 were at all times alleged herein citizens and residents of the State of South Carolina, and bring
17 this action in their individual capacities.

18 94. Plaintiff LINDA SCARBERRY ingested Defendant's Avandia and as a result suffered
19 severe injuries and other damages.

20 95. Plaintiffs ORA SMITH and NANCY SMITH, husband and wife, are and were at all times
21 alleged herein citizens and residents of the State of Iowa and bring this action in their individual
22 capacities.

23 96. Plaintiff ORA SMITH ingested Defendant's Avandia and as a result suffered severe
24 injuries and other damages.

25 97. Plaintiffs LONNIE SOVINE and WANDA SOVINE, husband and wife, are and were at all
26 times alleged herein citizens and residents of the State of West Virginia, and bring this action in
27 their individual capacities.

28

1 98. Plaintiff LONNIE SOVINE ingested Defendant's Avandia and as a result suffered severe
2 injuries and other damages.

3 99. As used herein and as the context requires, "Plaintiffs" may refer to the Plaintiffs who are
4 alleged to have ingested Avandia and/or Plaintiffs' decedents who are alleged to have ingested
5 Avandia and/or the spouses of the Plaintiffs who are alleged to have ingested Avandia and/or
6 the Plaintiffs presenting the claims of their respective decedents who are alleged to have
7 ingested Avandia.

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

12 101. At all times alleged herein, GSK is and was engaged in substantial commerce and
13 business activity within the County of Los Angeles, State of California. Further, or in the
14 alternative, at all times alleged herein, GSK has and had sufficient contacts within the County of
15 Los Angeles, State of California, to subject them to the jurisdiction of this Court.

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

19 103. At all times alleged herein, GSK includes and included any and all parents, subsidiaries,
20 affiliates, divisions, franchises, partners, joint venturers, and organizational units of any kind,
21 their predecessors, successors and assigns and their officers, directors, employees, agents,
22 representatives and any and all other persons acting on their behalf.

23 104. Defendant MCKESSON CORPORATION (hereinafter, "McKesson"), at all times alleged
24 herein, is and was a corporation organized and existing under the laws of the State of
25 Delaware, with its principal place of business in San Francisco, California, duly authorized to
26 transact business in the State of California. At all times alleged herein, McKesson is and was
27 engaged in the business of marketing, distributing, promoting, advertising and selling Avandia
28

1 nationwide and specifically within the State of California, among other States, where Plaintiffs
2 resided and/or ingested Avandia.

3 105. Upon information and belief and subject to discovery of information within the exclusive
4 control of Defendants, at a bare minimum, McKesson distributed the Avandia ingested by those
5 Plaintiffs and decedents alleged herein to have ingested Avandia.

6 106. At all times alleged herein, McKesson includes any and all parents, subsidiaries,
7 affiliates, divisions, franchises, partners, joint venturers, and organizational units of any kind,
8 their predecessors, successors and assigns and their offices, directors, employees, agents,
9 representatives and any and all other persons acting on their behalf.

10 107. Plaintiffs do not know the true names of the Defendants sued herein as DOES ONE
11 through FIFTEEN, inclusive. Plaintiffs allege that each of the fictitiously named Defendants is
12 responsible in some manner for the occurrences herein alleged, and caused the injuries and
13 damages sustained by Plaintiffs as herein alleged.

14 108. At all times alleged herein, use of the collective term "Defendants" refers to all named
15 Defendants herein as well as Defendants DOES ONE through FIFTEEN.

16 109. At all times alleged herein, Defendant identified herein as, or discovered to be,
17 corporations or other business entities were acting by and through officers, employees, agents,
18 and contractors, who were acting within the course and scope of said office, employment,
19 agency, or contractual authority.

20 110. At all times alleged herein, each of the Defendants was the agent and employee of every
21 other Defendant in doing the acts herein alleged, and was, at all times, acting within the
22 purpose and scope of said agency and employment and all of said acts and conduct were
23 ratified and approved by said Defendants.

24 FACTUAL BACKGROUND

25 111. There are three types of diabetes: 1) Type 1 diabetes; (2) Type 2 diabetes; and
26 Gestational Diabetes. Type 1 and 2 are chronic, progressively worsening diseases associated
27 with a variety of cardiovascular complications. Gestational diabetes generally occurs during
28 pregnancy and women that develop gestational diabetes are more likely to develop Type 2

1 diabetes. Type 1 diabetes "results from the body's failure to produce insulin, the hormone that
2 'unlocks' the cells of the body, allowing glucose to enter and fuel them. It is estimated that 5-
3 10% of Americans who are diagnosed with diabetes have type 1 diabetes.¹"

4 112. The most common type of diabetes is Type 2 diabetes. Type 2 diabetes occurs where
5 the body fails to properly use insulin (insulin resistance), combined with relative insulin
6 deficiency. Insulin, which is made in the pancreas, helps the body's cells use sugar from the
7 bloodstream, which comes from foods and drinks. Sugar is a source of energy for cells². The
8 third type, gestational diabetes, affects about 4% of all pregnant women – about 135,000 cases
9 in the United States each year³.

10 113. Most people with diabetes have health problems – or risk factors – such as high blood
11 pressure and cholesterol that increase the risk for heart disease and stroke. More than 65% of
12 people with diabetes die from heart disease or stroke. With diabetes, heart attacks occur
13 earlier in life and often result in death. Other risks include, but are not limited to, blindness,
14 kidney disease, nervous system diseases, amputation, sexual dysfunction, diabetic
15 ketoacidosis, and diabetic coma⁴.

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

18 115. During the past decade, numerous drugs have been introduced for the treatment of Type
19 2 diabetes that, used in monotherapy or in combination therapy, are supposed to better control
20 the disease in patients and reduce the health complications often associated with diabetes,
21 such as heart attacks, stroke and other cardiovascular complications.

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

25 _____
26 ¹ <http://www.diabetes.org/about-diabetes.jsp>

27 ² *Id.*

28 ³ *Id.*

⁴ *Id.*

1 117. The FDA initially approved Avandia in 1999 as safe and effective for treating Type 2
2 diabetes mellitus.

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

8 119. The antidiabetic actions of TZDs are likely mediated by their interaction with the nuclear
9 receptor peroxisome proliferator-activated receptor-gamma (PPAR γ).

10 120. PPAR γ is a DNA-binding nuclear hormone receptor that has been shown to regulate
11 bone mass, energy expenditure and glucose metabolism.

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

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

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

20 124. Defendants have engaged in repeated and persistent fraud by misrepresenting,
21 concealing and otherwise failing to disclose to physicians and patients, including Plaintiffs,
22 information in its control concerning the safety and effectiveness of Avandia.

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

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

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

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

14 129. Avandia has been widely advertised, marketed and represented by the Defendants as a
15 safe and effective antidiabetic agent.

16 130. The product warnings for Avandia in effect during the relevant time period were vague,
17 incomplete or otherwise wholly inadequate, both substantively and graphically, to alert
18 prescribing physicians as well as consumer patients of the actual risks associated with the
19 Avandia.

20 131. The Defendants marketed the Avandia heavily as safe and effective treatment for
21 diabetes, promising fewer side effects than other similar treatments including the other TZDs on
22 the market.

23 132. The Defendants marketed Avandia as the most effective means of treating Type 2
24 diabetes mellitus, claiming to be more effective than older antidiabetics and other TZDs on the
25 market.

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

1 134. The marketing and promotion efforts of GSK, its advertisers and sales force served to
2 overstate the benefits of Avandia, and minimize and downplay the risks associated with the
3 drug. These promotional efforts were made, while fraudulently withholding important safety
4 information from the physicians, the FDA, and the public, specifically that GSK was aware of
5 numerous reports of congestive heart failure, heart attacks, strokes, and other serious
6 cardiovascular injuries and death associated with the use of Avandia, well beyond the
7 background rate, and well beyond the rate of other antidiabetic agents.

8 135. Concealing or providing inaccurate or biased information that is material to a prescribing
9 decision misleads the physician and the patient.

10 **GSK STUDIES CONCERNING THE SAFETY AND EFFICACY**
11 **OF AVANDIA IN TREATING TYPE 2 DIABETES**

12 136. Defendants boast rosiglitazone as a safe and effective antidiabetic, claiming that
13 rosiglitazone is safer and more effective than older antidiabetic agents and other TZDs.

14 137. Defendants have overstated the efficacious value of rosiglitazone and has understated
15 the risk associated with rosiglitazone.

16 **Efficacy**

17 138. Defendants have promoted and marketed Avandia as being more effective than older
18 antidiabetic agents and other TZDs; however, there is no direct evidence that lowering glucose
19 or glycosylated hemoglobin (Hb_{A1C}) levels with rosiglitazone reduces the risks of microvascular
20 or macrovascular disease or mortality in patients with type 2 diabetes. There is some evidence
21 that other oral hypoglycemics do succeed in doing so⁵.

22 139. Moreover, researchers recently concluded that older antidiabetic agents are as effective
23 or superior to rosiglitazone⁶.

24 140. There have been three meta-analysis conducted. Each meta-analysis has found that
25 Avandia increases the risk of cardiovascular-related injury.

26 _____
27 ⁵ 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 ⁶ See Bolen, et al. *Systematic Review: Comparative Effectiveness and Safety of Oral Medications for Type 2 Diabetes Mellitus*. Annals of Internal Medicine. (Sept. 2007).

1 141. A meta-analysis combines the result of several studies that address a set of related
2 research hypotheses.

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

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

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

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

18 146. Nissen and Wolski concluded, "[r]osiglitazone was associated with a significant increase
19 in the risk of myocardial infarction and with an increase in the risk of death from cardiovascular
20 causes that had borderline significance⁷."

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

25 148. On July 30, 2007, the FDA presented its results of the FDA meta-analysis. Similar to the
26 GSK and Nissen/Wolski findings, the FDA likewise found an increased risk of heart attack,

27
28 ⁷ 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 cardiovascular death, stroke and other serious ischemic related adverse events and ultimately
2 recommended that a boxed warning be placed on the Avandia label.

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

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

9 150. The product warnings for the Avandia in effect during the relevant time period were
10 vague, 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 Avandia.
12 Defendants have and continue to market Avandia as a safer and more effective antidiabetic
13 agent than other antidiabetics on the market. However, even prior to the approval of Avandia in
14 the United States market, Defendants knew or should have known of the significantly increased
15 risks of heart attacks, cardiovascular-related deaths, strokes or other serious and life-
16 threatening conditions, which they concealed from the medical community and patients,
17 including Plaintiffs.

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

22 152. Instead of warning the public about this risk, GSK attempted to silence Dr. Buse by
23 threatening him with a \$4 million lawsuit and by characterizing him as a liar⁸.

24 153. In response to GSK's pressure, Dr. Buse sent a three-page letter to Dr. Tadataka
25 Yamada, GSK's Chairman of Research and Development. In the letter, Dr. Buse wrote, "I may
26 disagree with GSK's interpretation of that data . . . I am not for sale . . . Please call off the dogs.

27 _____
28 ⁸ John Buse, M.D. Congressional Hearing Transcript (June 6, 2007).

1 I cannot remain civilized much longer under this kind of heat.” Eventually, Dr. Buse signed a
2 clarifying statement with the company to help ease investor concerns.

3 On March 15, 2000, John Buse, M.D., wrote a letter to the FDA again raising concerns about
4 a “worrisome trend in cardiovascular deaths and severe adverse events” associated with
5 Avandia: I would like you to know exactly what my concerns are regarding rosiglitazone as a
6 clinical scientist and my approach as a clinician. On the basis of the increase in LDL
7 concentration seen in the clinical trial program (whether the number we accept as the truth is
8 the 18.6% at 4 mg bid in the package insert or the “average of 12%” now being discussed)
9 one would expect an increase in cardiovascular events . . . Based on studies with stains and
10 plasmapheresis, changes in LDL concentration can be associated with substantial changes
11 in vascular reactivity and endothelial function over a time course of days to weeks⁹

12 154. Around the same time period, March 7, 2000, Public Citizen filed a petition for immediate
13 class labeling changes for all marketed TZDs¹⁰. In an independent investigation of the TZDs,
14 Public Citizen, after studying reviews by FDA Medical Officers, Statisticians, and
15 Pharmacologists, transcripts of FDA advisory committee meetings, and scientific literature on
16 troglitazone, rosiglitazone, and pioglitazone, argued that information associating rosiglitazone to
17 heart attacks and serious cardiovascular injuries “was never included in the label, or seriously
18 understated¹¹.”

19 155. Public Citizen cited studies submitted to the FDA for approval that evidenced lack of
20 efficacy and increase in cardiovascular risks.

21 156. Public Citizen argued that nowhere in the product insert was there any mention of
22 myocardial infarction even where it was found that “acute myocardial infarctions occurred in 22
23 patients (0.5%) on rosiglitazone and was fatal in six, a result “higher than in other treatment
24 arms”.

25 157. In the monotherapy trial (#011), chest pain was reported in 0.0% (placebo patients),
26 1.7% (patients on 2 mg bid rosiglitazone) and 3.3% (patients on 4 mg bid); five patients on
27 rosiglitazone had acute myocardial infarctions¹².

28 ⁹ Letter from Dr. Buse to FDA (March 15, 2000).

¹⁰ 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).

¹¹ *Id.* At 1

¹² *Id.* At 6

1 158. This is obviously a major concern since diabetics are already susceptible to an increased
2 risk of cardiovascular injury.

3 159. Yet, even with this information available to it, Defendants failed to warn consumers and
4 the medical community about the increased risk of heart attacks and other serious injuries
5 associated with Avandia.

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

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

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

14 163. GSK responded on March 1, 2001, wherein GSK committed to include the new risk
15 information by March 8, 2001.

16 164. However, instead of complying with FDA requirements GSK's sales representatives
17 engaged in false or misleading promotional activities with respect to the new risk information in
18 Avandia's product labeling.

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

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

Your promotional activities that minimize serious new risks are particularly
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

1 your assurances that such violative promotion of Avandia had ceased, your
2 violative promotion of Avandia has continued¹³.

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

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

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

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

16 169. Dr. David Graham, testifying on behalf of the FDA, called for withdrawing Avandia and
17 estimated that its toxic effects on the heart had caused up to 205,000 heart attacks and strokes,
18 some fatal, from 1999 to 2006. For every month that Avandia is sold, Dr. Graham said 1,600 to
19 2,200 patients will suffer more of those problems.

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

23 171. The panel of advisers to the FDA voted 20-to-3 that Avandia increases the risks of heart
24 attacks.

25 172. Defendants, through their affirmative misrepresentations and omissions, actively
26 concealed from Plaintiffs and their physicians the true and significant risks associated with

27
28 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, GlaxoSmithKline (July 17, 2001) (on file with the FDA).

1 taking Avandia. The running of any applicable Statute of Limitations has been tolled by reason
2 of Defendants' fraudulent concealment.

3 173. As a result of Defendants' actions, Plaintiffs and prescribing physicians were unaware,
4 and could not have reasonably known or have learned through reasonable diligence, that
5 Plaintiffs had been exposed to the risk identified in this Complaint, and that those risks were the
6 direct and proximate result of Defendants' acts, omissions and misrepresentations.

7 174. Defendants' actions amounted to over promotion.

8 175. Defendants' actions do not meet the criteria necessary to overcome the "Reasonable
9 Expectations Doctrine"; thus, they may not rely upon the "Learned Intermediary Doctrine" to
10 escape liability.

11 176. At all times pertinent, Defendant McKesson was privy to the above information, and did
12 assist in the marketing and distribution of Avandia, and did assist in the "over promotion",
13 knowing that Plaintiffs and/or their prescribing physicians would justifiably rely upon the
14 information received in the marketing and distribution process.

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

22 **FIRST CAUSE OF ACTION**

23 **[Strict Product Liability; Failure to Warn]**

24 178. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every
25 allegation contained in Paragraphs 1-177, inclusive, of this Complaint.

26 179. Defendants manufactured, sold and/or distributed Avandia to Plaintiffs to be used to
27 increase insulin sensitivity without causing serious effects, harm, or injury.

1 180. At all times alleged herein, Avandia was dangerous and presented a substantial danger
2 to diabetic patients and these risks and dangers were known or knowable at the time of
3 manufacture, sale or distribution to Plaintiffs. Ordinary consumers would not have recognized
4 the potential risks and dangers the Avandia posed to diabetic patients because its uses were
5 specifically promoted to improve the health of diabetic patients. The Avandia was used by
6 Plaintiffs in a way reasonably foreseeable to all Defendants. Defendants failed to provide
7 warnings of such risks and dangers to Plaintiffs as described herein.

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

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

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

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

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

26 **SECOND CAUSE OF ACTION**

27 **[Negligence]**

1 184. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every
2 allegation contained in Paragraphs 1-183, inclusive, of this Complaint.

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

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

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

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

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

27 **THIRD CAUSE OF ACTION**

28 **[Breach of Implied Warranty]**

1 189. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every
2 allegation contained in Paragraph 1-188, inclusive, of this Complaint.

3 190. Defendants impliedly warranted that Avandia, which Defendants designed,
4 manufactured, assembled, promoted, sold and distributed to Plaintiffs were merchantable and
5 fit and safe for ordinary use. Defendants further impliedly warranted that Avandia was fit for the
6 particular purpose of increasing insulin sensitivity in diabetic patients without causing serious
7 harm, injury or effect including, but not limited to, death.

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

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

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

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

20 **FOURTH CAUSE OF ACTION**

21 **[Breach of Express Warranty]**

22 194. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every
23 allegation contained in Paragraphs 1-193, inclusive, of this Complaint.

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

27 196. Plaintiffs and their physicians reasonably relied upon the skill and judgment of
28 Defendants, and upon said express warranty, in using the aforesaid product. The warranty and

1 representations were untrue in that the product caused severe injury to Plaintiffs and was
2 unsafe and, therefore, unsuited for the use in which it was intended and caused Plaintiffs to
3 sustain damages and injuries herein alleged.

4 197. As soon as the true nature of the product and the fact that the warranty and
5 representations were false, were ascertained, said Defendants had ample and sufficient notice
6 of the breach of said warranty.

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

8 **FIFTH CAUSE OF ACTION**

9 **[Fraud]**

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

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

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

23 201. At the time Defendants made the aforesaid representations, Plaintiffs took the actions
24 herein alleged. Plaintiffs and their physicians were ignorant of the falsity of these
25 representations and reasonably believe them to be true. In reliance upon said representations,
26 Plaintiffs were induced to, and did, use the aforesaid products as herein described. If Plaintiffs
27 had known the actual facts, they would not have taken such action. The reliance of Plaintiffs
28 and their physicians upon Defendants' representations were justified because said

1 representations were made by individuals and entities who appeared to be in a position to know
2 the true facts.

3 202. As a result of Defendants' fraud and deceit, Plaintiffs were caused to sustain the herein
4 described injuries and damages.

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

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

11 **SIXTH CAUSE OF ACTION**

12 **[Fraud By Concealment]**

13 204. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every
14 allegation contained in Paragraphs 1-203, inclusive, of this Complaint.

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

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

25 207. At all times herein mentioned, neither Plaintiffs nor their physicians were aware of the
26 facts set forth above, and had they been aware of said facts, they would not have acted as they
27 did, that is, reasonably would not have relied upon said representations of safety and efficacy
28

1 and utilized the Avandia for increasing insulin sensitivity. Defendants' representations were a
2 substantial factor in Plaintiffs utilizing Avandia for increasing insulin sensitivity.

3 208. As a result of the concealment of the facts set forth above, Plaintiffs were caused to
4 sustain the herein described injuries and damages.

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

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

11 **SEVENTH CAUSE OF ACTION**

12 **[Negligent Misrepresentation]**

13 210. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every
14 allegation contained in Paragraphs 1-209, inclusive, of this Complaint.

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

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

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

26 214. The representations by said Defendants to Plaintiffs were false, and thereby caused
27 Plaintiffs to sustain the injuries and damages described herein.

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

1 **EIGHTH CAUSE OF ACTION**

2 **[Loss of consortium]**

3 215. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every
4 allegation contained in Paragraphs 1-214, inclusive, of this Complaint.

5 216. 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.

7 217. 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]**

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

17 219. 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.

20 220. 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
27
28

1 PRAYER FOR RELIEF

2 Plaintiffs pray that judgment be entered in favor of Plaintiffs in such aggregate sum as
3 will fairly and reasonably compensate Plaintiffs for damages arising out of Defendants conduct
4 as described herein. The conduct of Defendants, as alleged herein, was a direct, proximate
5 and producing cause of the damages to Plaintiffs and the following general and specific
6 damages:

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

12
13 DATED: May 14, 2009

14 Respectfully submitted,

15 

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