

1 Mark P. Robinson, Jr., SBN 054426
Karen Barth Menzies, SBN 180234
2 Robinson Calcagnie & Robinson
620 Newport Center Drive, 7th Floor
3 Newport Beach, CA 92660
4 Tel: (949) 720-1288
Fax: (949) 720-1292

FILED
JUL 13 2007
COURT CLERK
LOS ANGELES COUNTY

5 Attorneys for Plaintiffs
6
7

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

11 LIANA SHKHYAN, individually and as)
Next of Kin and Administrator of Estate)
12 of SHAGEN TARAKDZHYAN,)
deceased;)

CASE NO. EC 049987

13 SAEED NAGHAVIAN, a single man;)
14 JOSEPHINE SHIPLEY; a widow;)
DENISE DIXON, a single woman;)

15 OLIVE GASCOYNE and CHRIS)
16 McDONALD, as Next of Kin on behalf)
of ROBERT McDONALD, deceased;)

**COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

17 PETER BAILEY, a single man;)
18 MICHAEL BURKE, a single man;)

[PRODUCTS LIABILITY]

19 LOIS SLONE, a single woman;)
THEODORE DELATTE, a single man;)

20 DENNIS BOWMAN and KATHLEEN)
BOWMAN, husband and wife;)

1. Strict Liability-Failure to Warn
2. Negligence

21 THEODORE EWERDT, a single man;)

22 CLAUDE GAST, a single man;)

3. Breach of Implied Warranty
4. Breach of Express Warranty

23 MARK GILKEY and ELIZABETH)

24 GILKEY, husband and wife;)

5. Fraud
6. Fraud by Concealment

25 AGNES HARRISON and STEVE)

26 HARRISON, wife and husband;)

7. Negligent Misrepresentation
8. Loss of Consortium

27 McKINLEY HILL, a single man;)

28 MILFORD LESLEY, a single man;)

9. Wrongful Death

ROBERT McMILLAN, a single man;)

ROBERT RUDICEL, a single man;)

FRANK SCARABINO and OLYMPIA)

SCARABINO, husband and wife;)

1 LINDA BLAKE and LOUIS BLAKE, wife)
 and husband;)
 2 JOSEPH SMITH, a single man;)
 3 DAVID WALDREP, a single man;)
 HANNIFA ALI, a single woman)
 4 DARRELL BAKER, a single man;)
 PHILLIP BARRINGER and LISA RENE)
 5 BARRINGER, husband and wife;)
 JOHN BEAR and BETTY LOU BEAR,)
 6 Husband and wife;)
 7 MADELINE BLACKLOCK, a widow;)
 LEE VON CAREY and VERONICA)
 8 CAREY, husband and wife;)
 LAWRENCE CHRISTIAN and BONNIE)
 9 GAY CHRISTIAN, husband and wife;)
 10 HERSHALL CLARK and CHRISTINE)
 CLARK, husband and wife;)
 11 MARY FISHER, a widow;)
 EVELYN HOWZE, a single woman;)
 12 SHIRLEY HUBBARD and WILLIAM)
 HUBBARD, wife and husband;)
 13 WILLIE JONES and PAMELA JONES,)
 husband and wife;)
 14 JAN KORONKOWSKI and CHRISTINE)
 KORONKOWSKI, husband and wife;)
 15 DOROTHY MARGOSIAK and)
 16 SAMUEL MARGOSIAK, wife and)
 husband;)
 17 WILLIAM NIXON, a single man;)
 18 DEBBIE OHANLON and PHILIP)
 OHANLON, wife and husband;)
 19 GENEVA OVERFELT, a widow;)
 EUTRICE PARRIS and GARRIS)
 20 PARRIS, wife and husband;)
 IDA LOU POSTELL, a widow;)
 21 CONSTANCE TAUB, a single woman;)
 LARRY TOLLIVER and DONNA)
 22 TOLLIVER, husband and wife;)
 23 RICHARD VICARS and ELEANOR)
 KEARNS-VICARS, husband and wife;)
 24 RITA ZOLNOWSKI and STEPHEN)
 ZOLNOWSKI, wife and husband;)
 25)
 26 Plaintiffs,)
 27 vs.)
 28)

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

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

12 **DEMAND FOR JURY TRIAL**

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

14 **PARTIES**

15 2. Plaintiff LIANA SHKHAN is and was at all times a citizen and resident of the City of
16 North Hollywood, County of Los Angeles, State of California, and brings this action individually
17 and as Next of Kin and as Administrator of the Estate of SHAGEN TARAHDZHYAN, deceased.

18 3. Plaintiff LIANA SHKHAN's decedent, SHAGEN TARAHDZHYAN, was at all times
19 alleged herein a citizen and resident of the State of California.

20 4. Plaintiff LIANA SHKHAN's decedent, SHAGEN TARAHDZHYAN ingested Defendant's
21 Avandia and suffered severe injuries resulting in his death.

22 5. Plaintiff SAEED NAGHAVIAN, a single man, is and was at all times a citizen and
23 resident of the City of San Diego, County of San Diego, State of California and brings this
24 action individually.

25 6. Plaintiff SAEED NAGHAVIAN ingested Defendant's Avandia and as a result suffered
26 severe injuries and other damages.

1 7. Plaintiff JOSEPHINE SHIPLEY, a single woman, is and was at all times alleged herein a
2 citizen and resident of the City of San Diego, County of San Diego, State of California and
3 brings this action individually.

4 8. Plaintiff JOSEPHINE SHIPLEY ingested Defendant's Avandia and as a result suffered
5 severe injuries and other damages.

6 9. Plaintiff DENISE DIXON, a single woman is and was at all times alleged herein a citizen
7 and resident of the City of Cooperopolis, County of Calaveras, State of California, and brings
8 this action individually.

9 10. Plaintiff DENISE DIXON ingested Defendant's Avandia and as a result suffered severe
10 injuries and other damages.

11 11. Plaintiffs OLIVE GASCOYNE and CHRIS McDONALD, are and were at all times alleged
12 herein citizens and residents of the State of Michigan, and bring this action individually, and as
13 Mother and Child and Next of Kin of ROBERT McDONALD, deceased.

14 12. Plaintiffs OLIVE GASCOYNE and CHRIS McDONALD's decedent, ROBERT
15 McDONALD, was at all times alleged herein a citizen and resident of the State of Michigan.

16 13. Plaintiffs OLIVE GASCOYNE and CHRIS McDONALD's decedent, ROBERT
17 MCDONALD, ingested Defendant's Avandia and as a result suffered severe injuries resulting in
18 his death.

19 14. Plaintiff PETER BAILEY, a single man, is and was at all times alleged herein a citizen
20 and resident of the State of New Hampshire, and brings this action individually.

21 15. Plaintiff PETER BAILEY ingested Defendant's Avandia and as a result suffered severe
22 injuries and other damages.

23 16. Plaintiff MICHAEL BURKE, a single man, is and was at all times alleged herein a citizen
24 and resident of the State of Florida, and brings this action individually.

25 17. Plaintiff MICHAEL BURKE ingested Defendant's Avandia and as a result suffered severe
26 injuries and other damages.

27 18. Plaintiff LOIS SLONE, a single woman, is and was at all times alleged herein a citizen
28 and resident of the State of Florida, and brings this action individually.

1 19. Plaintiff LOIS SLONE ingested Defendant's Avandia and as a result suffered severe
2 injuries and other damages.

3 20. Plaintiff THEODORE DELATTE, a single man, is and was at all times alleged herein a
4 citizen and resident of the State of Louisiana, and brings this action individually.

5 21. Plaintiff THEODORE DELATTE ingested Defendant's Avandia and as a result suffered
6 severe injuries and other damages.

7 22. Plaintiffs DENNIS BOWMAN and KATHLEEN BOWMAN, husband and wife, are and
8 were at all times alleged herein citizens and residents of the State of Virginia, and bring this
9 action in their individual capacities.

10 23. Plaintiff DENNIS BOWMAN ingested Defendant's Avandia and as a result suffered
11 severe injuries and other damages.

12 24. Plaintiff THEODORE EWERTD, a single man, is and was at all times alleged herein a
13 citizen and resident of the State of Wisconsin, and brings this action individually.

14 25. Plaintiff THEODORE EWERTD ingested Defendant's Avandia and as a result suffered
15 severe injuries and other damages.

16 26. Plaintiff CLAUDE GAST, a single man, is and was at all times alleged herein a citizen
17 and resident of the State of Wisconsin, and brings this action individually.

18 27. Plaintiff CLAUDE GAST ingested Defendant's Avandia and as a result suffered severe
19 injuries and other damages.

20 28. Plaintiffs MARK GILKEY and ELIZABETH GILKEY, husband and wife, are and were at
21 all times alleged herein citizens and residents of the State of Illinois, and bring this action in
22 their individual capacities.

23 29. Plaintiff MARK GILKEY ingested Defendant's Avandia and as a result suffered severe
24 injuries and other damages.

25 30. Plaintiff AGNES HARRISON and STEVE HARRISON, wife and husband, are and were
26 at all times alleged herein citizens and residents of the State of Georgia, and bring this action in
27 their individual capacities.

1 31. Plaintiff AGNES HARRISON ingested Defendant's Avandia and as a result suffered
2 severe injuries and other damages.

3 32. Plaintiff McKINLEY HILL, a single man, is and was at all times alleged herein a citizen
4 and resident of the State of Michigan, and brings this action individually.

5 33. Plaintiff McKINLEY HILL ingested Defendant's Avandia and as a result suffered severe
6 injuries and other damages.

7 34. Plaintiff MILFORD LESLEY, a single man, is and was at all times alleged herein a citizen
8 and resident of the State of Florida, and brings this action individually.

9 35. Plaintiff MILFORD LESLEY ingested Defendant's Avandia and as a result suffered
10 severe injuries and other damages.

11 36. Plaintiff MARILYN MANUEL, a single woman, is and was at all times alleged herein a
12 citizen and resident of the State of Alabama, and brings this action individually.

13 37. Plaintiff MARILYN MANUEL ingested Defendant's Avandia and as a result suffered
14 severe injuries and other damages.

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

17 39. Plaintiff ROBERT McMILLAN ingested Defendant's Avandia and as a result suffered
18 severe injuries and other damages.

19 40. Plaintiff ROBERT RUDICEL, a single man, is and was at all times alleged herein a
20 citizen and resident of the State of Indiana, and brings this action individually.

21 41. Plaintiff ROBERT RUDICEL ingested Defendant's Avandia and as a result suffered
22 severe injuries and other damages.

23 42. Plaintiffs FRANK SCARABINO and OLYMPIA SCARABINO, husband and wife, are and
24 were at all times alleged herein citizens and residents of the State of New Jersey, and bring this
25 action in their individual capacities.

26 43. Plaintiff FRANK SCARABINO ingested Defendant's Avandia and as a result suffered
27 severe injuries and other damages.

1 44. Plaintiff LINDA BLAKE and LOUIS BLAKE, wife and husband, are and were at all times
2 alleged herein citizens and residents of the State of Louisiana, and bring this action in their
3 individual capacities.

4 45. Plaintiff LINDA BLAKE ingested Defendant's Avandia and as a result suffered severe
5 injuries and other damages.

6 46. Plaintiff JOSEPH SMITH, a single man, is and was at all times alleged herein a citizen
7 and resident of the State of South Carolina, and brings this action individually.

8 47. Plaintiff JOSEPH SMITH ingested Defendant's Avandia and as a result suffered severe
9 injuries and other damages.

10 48. Plaintiff DAVID WALDREP, a single man, is and was at all times alleged herein a citizen
11 and resident of the State of Alabama, and brings this action individually.

12 49. Plaintiff DAVID WALDREP ingested Defendant's Avandia and as a result suffered
13 severe injuries and other damages.

14 50. Plaintiff HANNIFA ALI, a single woman, is and was at all times alleged herein a citizen
15 and resident of the State of Massachusetts, and brings this action individually.

16 51. Plaintiff HANNIFA ALI ingested Defendant's Avandia and as a result suffered severe
17 injuries and other damages.

18 52. Plaintiff DARRELL BAKER, a single man, is and was at all times alleged herein a citizen
19 and resident of the State of Virginia, and brings this action individually.

20 53. Plaintiff DARRELL BAKER ingested Defendant's Avandia and as a result suffered
21 severe injuries and other damages.

22 54. Plaintiffs PHILLIP BARRINGER and LISA RENE BARRINGER, husband and wife, are
23 and were at all times alleged herein citizens and residents of the State of Missouri, and bring
24 this action in their individual capacities.

25 55. Plaintiff PHILLIP BARRINGER ingested Defendant's Avandia and as a result suffered
26 severe injuries and other damages.

1 56. Plaintiffs JOHN BEAR and BETTY LOU BEAR, husband and wife, are and were at all
2 times alleged herein citizens and residents of the State of Idaho, and bring this action in their
3 individual capacities.

4 57. Plaintiff JOHN BEAR ingested Defendant's Avandia and as a result suffered severe
5 injuries and other damages.

6 58. Plaintiff MADELINE BLACKLOCK, a widow, is and was at all times alleged herein a
7 citizen and resident of the State of Ohio, and brings this action individually.

8 59. Plaintiff MADELINE BLACKLOCK ingested Defendant's Avandia and as a result suffered
9 severe injuries and other damages.

10 60. Plaintiffs LEE VON CAREY and VERONICA CAREY, husband and wife, are and were at
11 all times alleged herein citizens and residents of the State of Michigan, and bring this action in
12 their individual capacities.

13 61. Plaintiff LEE VON CAREY ingested Defendant's Avandia and as a result suffered severe
14 injuries and other damages.

15 62. Plaintiffs LAWRENCE CHRISTIAN and BONNIE GAY CHRISTIAN, husband and wife,
16 are and were at all times alleged herein citizens and residents of the State of Texas, and bring
17 this action in their individual capacities.

18 63. Plaintiff LAWRENCE CHRISTIAN ingested Defendant's Avandia and as a result suffered
19 severe injuries and other damages.

20 64. Plaintiffs HERSHALL CLARK and CHRISTINE CLARK, husband and wife, are and were
21 at all times alleged herein citizens and residents of the State of Oklahoma, and bring this action
22 in their individual capacities.

23 65. Plaintiff HERSHALL CLARK ingested Defendant's Avandia and as a result suffered
24 severe injuries and other damages.

25 66. Plaintiff MARY FISHER, a widow, is and was at all times alleged herein a citizen and
26 resident of the State of Michigan, and brings this action individually.

27 67. Plaintiff MARY FISHER ingested Defendant's Avandia and as a result suffered severe
28 injuries and other damages.

1 68. Plaintiff EVELYN HOWZE, a single woman, is and was at all times alleged herein a
2 citizen and resident of the State of Mississippi, and brings this action individually.

3 69. Plaintiff EVELYN HOWZE ingested Defendant's Avandia and as a result suffered severe
4 injuries and other damages.

5 70. Plaintiffs SHIRLEY HUBBARD and WILLIAM HUBBARD, wife and husband, are and
6 were at all times alleged herein citizens and residents of the State of Michigan, and bring this
7 action in their individual capacities.

8 71. Plaintiff SHIRLEY HUBBARD ingested Defendant's Avandia and as a result suffered
9 severe injuries and other damages.

10 72. Plaintiffs WILLIE JONES and PAMELA JONES, husband and wife, are and were at all
11 times alleged herein citizens and residents of the State of Florida, and bring this action in their
12 individual capacities.

13 73. Plaintiff WILLIE JONES ingested Defendant's Avandia and as a result suffered severe
14 injuries and other damages.

15 74. Plaintiffs JAN KORONKOWSKI and CHRISTINE KORONKOWSKI, husband and wife,
16 are and were at all times alleged herein citizens and residents of the State of Illinois, and bring
17 this action in their individual capacities.

18 75. Plaintiff JAN KORONKOWSKI ingested Defendant's Avandia and as a result suffered
19 severe injuries and other damages.

20 76. Plaintiffs DOROTHY MARGOSIAK and SAMUEL MARGOSIAK, wife and husband, are
21 and were at all times alleged herein citizens and residents of the State of Virginia, and bring this
22 action in their individual capacities.

23 77. Plaintiff DOROTHY MARGOSIAK ingested Defendant's Avandia and as a result suffered
24 severe injuries and other damages.

25 78. Plaintiff WILLIAM NIXON, a single man, is and was at all times alleged herein a citizen
26 and resident of the State of Michigan, and brings this action individually.

27 79. Plaintiff WILLIAM NIXON ingested Defendant's Avandia and as a result suffered severe
28 injuries and other damages.

1 80. Plaintiffs DEBBIE OHANLON and PHILIP OHANLON, wife and husband, are and were
2 at all times alleged herein citizens and residents of the State of Arizona, and bring this action in
3 their individual capacities.

4 81. Plaintiff DEBBIE OHANLON ingested Defendant's Avandia and as a result suffered
5 severe injuries and other damages.

6 82. Plaintiff GENEVA OVERFELT, a widow, is and was at all times alleged herein a citizen
7 and resident of the State of Missouri, and brings this action individually.

8 83. Plaintiff GENEVA OVERFELT ingested Defendant's Avandia and as a result suffered
9 severe injuries and other damages.

10 84. Plaintiff EUTRICE PARRIS and GARRIS PARRIS, wife and husband, are and were at all
11 times alleged herein citizens and residents of the State of New York, and bring this action in
12 their individual capacities.

13 85. Plaintiff EUTRICE PARRIS ingested Defendant's Avandia and as a result suffered
14 severe injuries and other damages.

15 86. Plaintiff IDA LOU POSTELL, a widow, is and was at all times alleged herein a citizen and
16 resident of the State of Georgia, and brings this action individually.

17 87. Plaintiff IDA LOU POSTELL ingested Defendant's Avandia and as a result suffered
18 severe injuries and other damages.

19 88. Plaintiff CONSTANCE TAUB, a single woman, is and was at all times alleged herein a
20 citizen and resident of the State of North Carolina, and brings this action individually.

21 89. Plaintiff CONSTANCE TAUB ingested Defendant's Avandia and as a result suffered
22 severe injuries and other damages.

23 90. Plaintiffs LARRY TOLLIVER and DONNA TOLLIVER, husband and wife, are and were at
24 all times alleged herein citizens and residents of the State of New Mexico, and bring this action
25 in their individual capacities.

26 91. Plaintiff LARRY TOLLIVER ingested Defendant's Avandia and as a result suffered
27 severe injuries and other damages.

1 92. Plaintiffs RICHARD VICARS and ELEANOR KEARNS-VICARS, husband and wife, are
2 and were at all times alleged herein citizens and residents of the State of Florida, and bring this
3 action in their individual capacities.

4 93. Plaintiff RICHARD VICARS ingested Defendant's Avandia and as a result suffered
5 severe injuries and other damages.

6 94. Plaintiffs RITA ZOLNOWSKI and STEPHEN ZOLNOWSKI, wife and husband, are and
7 were at all times alleged herein citizens and residents of the State of Texas, and bring this
8 action in their individual capacities.

9 95. Plaintiff RITA ZOLNOWSKI ingested Defendant's Avandia and as a result suffered
10 severe injuries and other damages.

11 96. As used herein and as the context requires, "Plaintiffs" may refer to the Plaintiffs who are
12 alleged to have ingested Avandia and/or Plaintiffs' decedents who are alleged to have ingested
13 Avandia and/or the spouses of the Plaintiffs who are alleged to have ingested Avandia and/or
14 the Plaintiffs presenting the claims of their respective decedents who are alleged to have
15 ingested Avandia.

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

20 98. At all times alleged herein, GSK is and was engaged in substantial commerce and
21 business activity within the County of Los Angeles, State of California. Further, or in the
22 alternative, at all times alleged herein, GSK has and had sufficient contacts within the County of
23 Los Angeles, State of California, to subject them to the jurisdiction of this Court.

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

27 100. At all times alleged herein, GSK includes and included any and all parents, subsidiaries,
28 affiliates, divisions, franchises, partners, joint venturers, and organizational units of any kind,

1 their predecessors, successors and assigns and their officers, directors, employees, agents,
2 representatives and any and all other persons acting on their behalf.

3 101. Defendant MCKESSON CORPORATION (hereinafter, "McKesson"), at all times alleged
4 herein, is and was a corporation organized and existing under the laws of the State of
5 Delaware, with its principal place of business in San Francisco, California, duly authorized to
6 transact business in the State of California. At all times alleged herein, McKesson is and was
7 engaged in the business of marketing, distributing, promoting, advertising and selling Avandia
8 nationwide and specifically within the State of California, among other States, where Plaintiffs
9 resided and/or ingested Avandia.

10 102. Upon information and belief and subject to discovery of information within the exclusive
11 control of Defendants, at a bare minimum, McKesson distributed the Avandia ingested by those
12 Plaintiffs and decedents alleged herein to have ingested Avandia.

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

17 104. Plaintiffs do not know the true names of the Defendants sued herein as DOES ONE
18 through FIFTEEN, inclusive. Plaintiffs allege that each of the fictitiously named Defendants is
19 responsible in some manner for the occurrences herein alleged, and caused the injuries and
20 damages sustained by Plaintiffs as herein alleged.

21 105. At all times alleged herein, use of the collective term "Defendants" refers to all named
22 Defendants herein as well as Defendants DOES ONE through FIFTEEN.

23 106. At all times alleged herein, Defendant identified herein as, or discovered to be,
24 corporations or other business entities were acting by and through officers, employees, agents,
25 and contractors, who were acting within the course and scope of said office, employment,
26 agency, or contractual authority.

27 107. At all times alleged herein, each of the Defendants was the agent and employee of every
28 other Defendant in doing the acts herein alleged, and was, at all times, acting within the

1 purpose and scope of said agency and employment and all of said acts and conduct were
2 ratified and approved by said Defendants.

3 FACTUAL BACKGROUND

4 108. There are three types of diabetes: 1) Type 1 diabetes; (2) Type 2 diabetes; and
5 Gestational Diabetes. Type 1 and 2 are chronic, progressively worsening diseases associated
6 with a variety of cardiovascular complications. Gestational diabetes generally occurs during
7 pregnancy and women that develop gestational diabetes are more likely to develop Type 2
8 diabetes. Type 1 diabetes “results from the body’s failure to produce insulin, the hormone that
9 ‘unlocks’ the cells of the body, allowing glucose to enter and fuel them. It is estimated that 5-
10 10% of Americans who are diagnosed with diabetes have type 1 diabetes.^{1”}

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

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

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

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

27 ² *Id.*

28 ³ *Id.*

⁴ *Id.*

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

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

8 114. The FDA initially approved Avandia in 1999 as safe and effective for treating Type 2
9 diabetes mellitus.

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

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

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

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

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

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

1 121. Defendants have engaged in repeated and persistent fraud by misrepresenting,
2 concealing and otherwise failing to disclose to physicians and patients, including Plaintiffs,
3 information in its control concerning the safety and effectiveness of Avandia.

4 122. Defendants have misrepresented information concerning the safety and efficacy of
5 Avandia for treating diabetes. For instance, Defendants have allowed positive information
6 about Avandia to be disclosed, publicly, but have withheld and concealed negative information
7 concerning the safety and effectiveness of the drug as treatment for diabetic patients. Thus,
8 Defendants have prevented physicians and patients, including the Plaintiffs and the Plaintiffs'
9 physicians, from properly and independently exercising informed judgment.

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

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

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

23 126. Avandia has been widely advertised, marketed and represented by the Defendants as a
24 safe and effective antidiabetic agent.

25 127. The product warnings for Avandia in effect during the relevant time period were vague,
26 incomplete or otherwise wholly inadequate, both substantively and graphically, to alert
27 prescribing physicians as well as consumer patients of the actual risks associated with the
28 Avandia.

1 128. The Defendants marketed the Avandia heavily as safe and effective treatment for
2 diabetes, promising fewer side effects than other similar treatments including the other TZDs on
3 the market.

4 129. The Defendants marketed Avandia as the most effective means of treating Type 2
5 diabetes mellitus, claiming to be more effective than older antidiabetics and other TZDs on the
6 market.

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

10 131. The marketing and promotion efforts of GSK, its advertisers and sales force served to
11 overstate the benefits of Avandia, and minimize and downplay the risks associated with the
12 drug. These promotional efforts were made, while fraudulently withholding important safety
13 information from the physicians, the FDA, and the public, specifically that GSK was aware of
14 numerous reports of congestive heart failure, heart attacks, strokes, and other serious
15 cardiovascular injuries and death associated with the use of Avandia, well beyond the
16 background rate, and well beyond the rate of other antidiabetic agents.

17 132. Concealing or providing inaccurate or biased information that is material to a prescribing
18 decision misleads the physician and the patient.

19 **GSK STUDIES CONCERNING THE SAFETY AND EFFICACY**
20 **OF AVANDIA IN TREATING TYPE 2 DIABETES**

21 133. Defendants boast rosiglitazone as a safe and effective antidiabetic, claiming that
22 rosiglitazone is safer and more effective than older antidiabetic agents and other TZDs.

23 134. Defendants have overstated the efficacious value of rosiglitazone and has understated
24 the risk associated with rosiglitazone.

25 **Efficacy**

26 135. Defendants have promoted and marketed Avandia as being more effective than older
27 antidiabetic agents and other TZDs; however, there is no direct evidence that lowering glucose
28 or glycosylated hemoglobin (Hb_{A1c}) levels with rosiglitazone reduces the risks of microvascular

1 or macrovascular disease or mortality in patients with type 2 diabetes. There is some evidence
2 that other oral hypoglycemics do succeed in doing so⁵.

3 136. Moreover, researchers recently concluded that older antidiabetic agents are as effective
4 or superior to rosiglitazone⁶.

5 137. There have been three meta-analysis conducted. Each meta-analysis has found that
6 Avandia increases the risk of cardiovascular-related injury.

7 138. A meta-analysis combines the result of several studies that address a set of related
8 research hypotheses.

9 139. The first analysis was performed by GSK and was handed over to the FDA in August of
10 2006. The meta-analysis consisted of 42 separate double-blinded, randomized, controlled
11 clinical trials to assess the efficacy of rosiglitazone for treatment of Type 2 diabetes compared
12 to either placebo or other antidiabetic therapies in patients with Type 2 diabetes. The combined
13 studies included 8,604 patients on rosiglitazone and 5,633 patients randomized to a variety of
14 alternative therapeutic regiments, including placebo.

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

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

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

24
25
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).

1 143. Nissen and Wolski concluded, “[r]osiglitazone was associated with a significant increase
2 in the risk of myocardial infarction and with an increase in the risk of death from cardiovascular
3 causes that had borderline significance⁷.”

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

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

12 146. Thus, while GSK’s rosiglitazone-containing drugs are marketed and sold by Defendants
13 as antidiabetic agents that reduce a diabetic patient’s risk of heart attacks, studies conducted
14 by GSK show that rosiglitazone actually increases those risks by 43 percent according to the
15 Nissen/Wolski meta-analysis and by 31 percent according to GSK’s own meta-analysis.

16 **GSK Has Mislead the Medical Community and the**

17 **Public About the Efficacy and Safety of Avandia**

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

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.

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

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

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

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

20 151. Around the same time period, March 7, 2000, Public Citizen filed a petition for immediate
21 class labeling changes for all marketed TZDs¹⁰. In an independent investigation of the TZDs,
22 Public Citizen, after studying reviews by FDA Medical Officers, Statisticians, and
23 Pharmacologists, transcripts of FDA advisory committee meetings, and scientific literature on
24 troglitazone, rosiglitazone, and pioglitazone, argued that information associating rosiglitazone to
25 heart attacks and serious cardiovascular injuries "was never included in the label, or seriously
26 understated¹¹."

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

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

1 152. Public Citizen cited studies submitted to the FDA for approval that evidenced lack of
2 efficacy and increase in cardiovascular risks.

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

7 154. In the monotherapy trial (#011), chest pain was reported in 0.0% (placebo patients),
8 1.7% (patients on 2 mg bid rosiglitazone) and 3.3% (patients on 4 mg bid); five patients on
9 rosiglitazone had acute myocardial infarctions¹².

10 155. This is obviously a major concern since diabetics are already susceptible to an increased
11 risk of cardiovascular injury.

12 156. Yet, even with this information available to it, Defendants failed to warn consumers and
13 the medical community about the increased risk of heart attacks and other serious injuries
14 associated with Avandia.

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

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

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

23 160. GSK responded on March 1, 2001, wherein GSK committed to include the new risk
24 information by March 8, 2001.

25
26
27
28 ¹² *Id.* At 6

1 161. However, instead of complying with FDA requirements GSK's sales representatives
2 engaged in false or misleading promotional activities with respect to the new risk information in
3 Avandia's product labeling.

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

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

17 Your promotional activities that minimize serious new risks are particularly
18 troublesome because we have previously objected, in two untitled letters, to your
19 dissemination of promotional material for Avandia that failed to present any risk
20 information Avandia or minimized the hepatic risk associated Avandia. Despite
21 your assurances that such violative promotion of Avandia had ceased, your
22 violative promotion of Avandia has continued¹³.

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

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

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

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

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

4 166. Dr. David Graham, testifying on behalf of the FDA, called for withdrawing Avandia and
5 estimated that its toxic effects on the heart had caused up to 205,000 heart attacks and strokes,
6 some fatal, from 1999 to 2006. For every month that Avandia is sold, Dr. Graham said 1,600 to
7 2,200 patients will suffer more of those problems.

8 167. The FDA provided testimony that Avandia offers no unique benefits compared to other
9 drugs in battling diabetes, but that all indications point to increased risks of heart attack and
10 sudden death.

11 168. The panel of advisers to the FDA voted 20-to-3 that Avandia increases the risks of heart
12 attacks.

13 169. Defendants, through their affirmative misrepresentations and omissions, actively
14 concealed from Plaintiffs and their physicians the true and significant risks associated with
15 taking Avandia. The running of any applicable Statute of Limitations has been tolled by reason
16 of Defendants' fraudulent concealment.

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

21 171. Defendants' actions amounted to over promotion.

22 172. Defendants' actions do not meet the criteria necessary to overcome the "Reasonable
23 Expectations Doctrine"; thus, they may not rely upon the "Learned Intermediary Doctrine" to
24 escape liability.

25 173. At all times pertinent, Defendant McKesson was privy to the above information, and did
26 assist in the marketing and distribution of Avandia, and did assist in the "over promotion",
27 knowing that Plaintiffs and/or their prescribing physicians would justifiably rely upon the
28 information received in the marketing and distribution process.

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

8 **FIRST CAUSE OF ACTION**

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

10 175. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every
11 allegation contained in Paragraphs 1-174, inclusive, of this Complaint.

12 176. Defendants manufactured, sold and/or distributed Avandia to Plaintiffs to be used to
13 increase insulin sensitivity without causing serious effects, harm, or injury.

14 177. At all times alleged herein, Avandia was dangerous and presented a substantial danger
15 to diabetic patients and these risks and dangers were known or knowable at the time of
16 manufacture, sale or distribution to Plaintiffs. Ordinary consumers would not have recognized
17 the potential risks and dangers the Avandia posed to diabetic patients because its uses were
18 specifically promoted to improve the health of diabetic patients. The Avandia was used by
19 Plaintiffs in a way reasonably foreseeable to all Defendants. Defendants failed to provide
20 warnings of such risks and dangers to Plaintiffs as described herein.

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

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

1 180. As a result of Plaintiffs' decedents' ingestion of the defective Avandia that ultimately
2 caused their death, the heirs have been and will continue to be deprived of consortium, society,
3 comfort, protection and service, thereby causing and continuing to cause them grief, sorrow,
4 mental anguish, emotional distress and pain and suffering.

5 In doing the acts herein alleged, the Defendants acted with oppression, fraud and malice and
6 Plaintiffs are therefore entitled to punitive damages to deter Defendants and others from
7 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 the
9 Defendants.

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

11 **SECOND CAUSE OF ACTION**

12 **[Negligence]**

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

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

19 183. Defendants, and each of them, so negligently and carelessly manufactured,
20 compounded, tested, failed to test, inspected, failed to inspect, packaged, labeled, distributed,
21 recommended, displayed, sold, examined, failed to examine and supplied aforesaid product,
22 that it was dangerous and unsafe for the use and purpose for which it was intended, that is,
23 increasing insulin sensitivity without causing serious injury, harm, or effect, in Plaintiffs and
24 others similarly situated. As a result of the carelessness and negligence of Defendants,
25 Plaintiffs ingested the Avandia in the manner intended by the manufacturer and, as a result,
26 Plaintiffs suffered grievous, serious and severe injuries and will continue to suffer
27 consequences of those injuries.

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

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

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

12 **THIRD CAUSE OF ACTION**

13 **[Breach of Implied Warranty]**

14 186. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every
15 allegation contained in Paragraph 1-185, inclusive, of this Complaint.

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

21 188. Defendants' Avandia was defective, unmerchantable and unfit for ordinary use when
22 sold and unfit for the particular purpose for which they were sold, and subjected Plaintiffs to
23 severe and permanent injuries. Therefore, Defendants breached the implied warranties of
24 merchantability and fitness for a particular purpose when Avandia was sold to Plaintiffs, in that
25 the Avandia was defective and failed to increase insulin sensitivity without serious harm in
26 diabetic patients as represented and intended.

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

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

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

7 **FOURTH CAUSE OF ACTION**

8 **[Breach of Express Warranty]**

9 191. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every
10 allegation contained in Paragraphs 1-190, inclusive, of this Complaint.

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

14 193. Plaintiffs and their physicians reasonably relied upon the skill and judgment of
15 Defendants, and upon said express warranty, in using the aforesaid product. The warranty and
16 representations were untrue in that the product caused severe injury to Plaintiffs and was
17 unsafe and, therefore, unsuited for the use in which it was intended and caused Plaintiffs to
18 sustain damages and injuries herein alleged.

19 194. As soon as the true nature of the product and the fact that the warranty and
20 representations were false, were ascertained, said Defendants had ample and sufficient notice
21 of the breach of said warranty.

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

23 **FIFTH CAUSE OF ACTION**

24 **[Fraud]**

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

27 196. Defendants falsely and fraudulently represented to Plaintiffs, their physicians and to
28 members of the general public that the aforesaid product was safe, effective, reliable,

1 consistent, and better than the other similar products due to its ability to increase insulin
2 sensitivity without causing serious harm when used in the manner intended by the
3 manufacturer. The representations by said Defendants were in fact, false. The true facts
4 include, but are not limited to the fact that the aforesaid product was not safe to be used and
5 was, in fact, dangerous to the health and body of Plaintiffs.

6 197. When the Defendants made these representations, they knew that they were false.
7 Defendants made said representations with the intent to defraud and deceive Plaintiffs, with the
8 intent to induce Plaintiff to act in the manner herein alleged, that is to use the aforementioned
9 product for increasing insulin sensitivity.

10 198. At the time Defendants made the aforesaid representations, Plaintiffs took the actions
11 herein alleged. Plaintiffs and their physicians were ignorant of the falsity of these
12 representations and reasonably believe them to be true. In reliance upon said representations,
13 Plaintiffs were induced to, and did, use the aforesaid products as herein described. If Plaintiffs
14 had known the actual facts, they would not have taken such action. The reliance of Plaintiffs
15 and their physicians upon Defendants' representations were justified because said
16 representations were made by individuals and entities who appeared to be in a position to know
17 the true facts.

18 199. As a result of Defendants' fraud and deceit, Plaintiffs were caused to sustain the herein
19 described injuries and damages.

20 200. In doing the acts herein alleged, the Defendants acted with oppression, fraud, and
21 malice and Plaintiffs are therefore entitled to punitive damages to deter Defendants and others
22 from 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
24 Defendants.

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

1 SIXTH CAUSE OF ACTION

2 **[Fraud By Concealment]**

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

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

12 203. At all times herein mentioned, Defendants willfully, and maliciously concealed facts as
13 set forth above from Plaintiffs and their physicians and therefore Plaintiffs, with the intent to
14 defraud as herein alleged.

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

20 205. As a result of the concealment of the facts set forth above, Plaintiffs were caused to
21 sustain the herein described injuries and damages.

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

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

1 **SEVENTH CAUSE OF ACTION**

2 **[Negligent Misrepresentation]**

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

5 208. At all relevant times herein, Defendants represented to Plaintiffs and their physicians that
6 the Avandia was safe to use to increase insulin sensitivity knowing that the Avandia was
7 defective in causing injuries described herein.

8 209. The Defendants made the aforesaid representations with no reasonable ground for
9 believing them to be true when Defendants' own data showed the Avandia to be defective and
10 dangerous when used in the intended manner.

11 210. The aforesaid representations were made to the physicians prescribing Avandia prior to
12 the date it was prescribed to Plaintiffs and their physicians with the intent that Plaintiffs and their
13 physicians rely upon such misrepresentations about the safety and efficacy of Avandia.
14 Plaintiffs and their physicians did reasonably rely upon such representations that the aforesaid
15 product was safe for use to aid in the treatment of increasing insulin sensitivity.

16 211. The representations by said Defendants to Plaintiffs were false, and thereby caused
17 Plaintiffs to sustain the injuries and damages described herein.

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

19 **EIGHTH CAUSE OF ACTION**

20 **[Loss of consortium]**

21 212. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every
22 allegation contained in Paragraphs 1-211, inclusive, of this Complaint.

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

25 214. By reason of the injuries described herein sustained by Plaintiffs who ingested Avandia
26 and suffered grievous, serious and severe injuries, their spouses have been and will continue to
27 be deprived of consortium, society, comfort, protection and service, thereby causing and
28

1 continuing to cause them grief, sorrow, mental anguish, emotional distress and pain and
2 suffering.

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

4 **NINTH CAUSE OF ACTION**

5 **[Wrongful Death]**

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

8 216. Those Plaintiffs bringing this action on behalf of decedents alleged to have ingested
9 Avandia that resulted in their death bring this claim for wrongful death on behalf of the heirs of
10 their respective decedents.

11 217. As a result of Plaintiffs' decedents' ingestion of the defective Avandia that ultimately
12 caused their death, their heirs have been and will continue to be deprived of consortium,
13 society, comfort, protection and service, thereby causing and continuing to cause them grieve,
14 sorrow, mental anguish, emotional distress and pain and suffering, and are entitled to damages
15 for wrongful death.

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

17 **PRAYER FOR RELIEF**

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

- 23 1. For general damages in a sum within the jurisdiction of this Court;
 - 24 2. For medical, hospital, and incidental expenses, according to proof;
 - 25 3. For loss of earnings and for loss of earning capacity, according to proof;
 - 26 4. For punitive or exemplary damages; and
 - 27 5. For such other relief as the Court deems just and proper.
- 28

1 DATED: May 14, 2009

2 Respectfully submitted,

3 

4 Mark P. Robinson, Jr., SBN 064426
5 Karen Barth Menzies, SBN 180234
6 Robinson Calcagnie & Robinson
7 620 Newport Center Drive, 7th Floor
8 Newport Beach, CA 92660
9 Tel: (949) 720-1288
10 Fax: (949) 720-1292

11 James D. Sill (OK Bar No. 8239)
12 Matthew J. Sill (OK Bar No. 21547)
13 SILL & MEDLEY
14 725 Northwest Eleventh
15 Oklahoma City, OK 73103
16 Tel: (405) 604-5953
17 Fax: (405) 604-9775

18 *And*

19 A. Daniel Woska (OK Bar No. 9900)
20 S. Randall Sullivan (OK Bar No. 11179)
21 John D. Wadley (OK Bar No. 21855)
22 A. Daniel Woska & Associates, P.C.
23 3037 NW 63rd Street, Suite 251
24 Oklahoma City, OK 73116
25 Tel: (405) 562-7771
26 Fax: (405) 285-9350
27 *Attorneys for Plaintiffs*
28