UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

Elizabeth Shellstrom and Justin Shellstrom, Individually and as Parents and Natural Guardians of D.M.S., a Minor,	**CIVIL ACTION NO.: 15-cv-00558**
Plaintiffs,	**COMPLAINT**
v.	**JURY TRIAL DEMANDED**
GlaxoSmithKline LLC, Defendant.	

COMPLAINT AND JURY DEMAND

COME NOW Plaintiffs, Elizabeth Shellstrom ("Mother Plaintiff") and Justin Shellstrom, individually and on behalf of their son, D.M.S., a minor, ("Minor Plaintiff") (collectively "Plaintiffs"), who by and through the undersigned counsel hereby submit this Complaint and Jury Demand against GlaxoSmithKline LLC d/b/a GlaxoSmithKline ("GSK" or "Defendant") for compensatory damages, equitable relief, and such other relief deemed just and proper arising from the injuries to D.M.S., as a result of Mother Plaintiff's prenatal exposures to the prescription drug Zofran®, also known as ondansetron. In support of this Complaint, Plaintiffs allege the following:

INTRODUCTION

1. Zofran is a powerful drug developed by GSK to treat only those patients who were afflicted with the most severe nausea imaginable – that suffered as a result of chemotherapy or radiation treatments in cancer patients.

2. The U.S. Food and Drug Administration ("FDA") approved Zofran in 1991 for use in cancer patients who required chemotherapy or radiation therapy.

3. Although the only FDA approval for this drug was for seriously ill patients, GSK marketed Zofran "off label" since at least January 1998 as an established safe and effective treatment for the very common side effect of a normal pregnancy: pregnancy-related nausea and vomiting, otherwise known as "morning sickness."

4. GSK further marketed Zofran during this time as a "wonder drug" for pregnant women, despite having knowledge that GSK had never once undertaken a single study establishing that this powerful drug was safe or effective for pregnant mothers and their growing children *in utero.* Unlike another anti-nausea prescription drug available on the market, which is FDA-approved in the United States for treating morning sickness in pregnant women, GSK never conducted a single clinical trial establishing the safety and efficacy of Zofran for treating pregnant women before GSK marketed Zofran for the treatment of pregnant women. In fact, GSK excluded pregnant women from its clinical trials used to support its application for FDA approval of Zofran in the 1990s.

5. GSK chose not to study Zofran in pregnant women or seek FDA approval to market the drug for treatment during pregnancy. GSK avoided conducting these studies and buried any internal analyses of Zofran's teratogenic potential because they would have hampered its marketing of Zofran and decreased profits by linking the drug to serious birth defects.

6. As a result of GSK's nationwide fraudulent marketing campaign, Zofran (ondansetron hydrochloride) was prescribed to unsuspecting pregnant women. In fact, in the 2000s, Zofran (ondansetron hydrochloride) became the number one most prescribed drug for treating morning sickness in the United States. Pregnant women ingested the drug because they innocently believed that Zofran (ondansetron hydrochloride) was an appropriate drug for use in their circumstance. When they ingested the drug, these pregnant women had no way of knowing

that Zofran (ondansetron hydrochloride) had never been studied in pregnant women, much less shown to be a safe and effective treatment for pregnancy-related nausea. Zofran (ondansetron hydrochloride) *would never* have become the most prescribed morning sickness drug in the United States, and Mother Plaintiff would never have taken ondansetron hydrochloride if GSK had not misleadingly and marketed the drug "off label" as a safe and efficacious treatment for pregnancy-related nausea and vomiting.

7. By contrast, GSK knew that Zofran (ondansetron hydrochloride) was unsafe for ingestion by expectant mothers.

8. In the 1980s, GSK conducted animal studies, which revealed evidence of toxicity, intrauterine deaths, and malformations in offspring, and further showed that Zofran's active ingredient (ondansetron hydrochloride) crossed the placental barrier of pregnant mammals to fetuses.

9. A later study conducted in humans confirmed that ingested Zofran (ondansetron hydrochloride) readily crossed the human placenta barrier and exposed fetuses to substantial concentrations of Zofran (ondansetron hydrochloride).

10. GSK did not disclose this material information to pregnant women or their physicians.

11. In 1992, GSK began receiving mounting evidence of reports of birth defects associated with Zofran (ondansetron hydrochloride). GSK had received at least 32 such reports by 2000, and has received more than 200 such reports to date, including reports of the same congenital anomalies suffered by Minor Plaintiff, GSK never disclosed these reports to pregnant women or their physicians.

12. Scientists have conducted large-scale epidemiological and mechanistic studies that have demonstrated an elevated risk of developing birth defects, such as those suffered by Minor Plaintiff as a result of *in utero* exposure to Zofran (ondansetron hydrochloride). GSK has not disclosed this material information to pregnant women or their physicians. Instead, GSK sales representatives specifically marketed and promoted Zofran as a morning sickness drug since at least January 1998.

13. In 2012, GSK pled guilty to criminal charges lodged by the United States of America, through the Department of Justice, for its "off-label" promotion of its drugs (including Zofran (ondansetron hydrochloride)) for indications never approved by the FDA. In exchange for GSK's full performance of its criminal plea agreement with the United States and for certain other promises exchanged between GSK and the United States, the United States agreed not to criminally prosecute GSK for conduct relating to "GSK's sales, marketing and promotion of . . . Zofran between January 1998 and December 2004." (Agreement Between United States and GSK, pp. 1-2, June 27, 2012.)

14. Around the same time, GSK entered civil settlements with the United States that included more than $1 billion in payments to the federal government for its illegal, "off-label" marketing of various drugs, including Zofran (ondansetron hydrochloride).

15. GSK's civil settlement agreement with the United States details GSK's settlement of claims that GSK:

(a) "promoted the sale and use of Zofran for a variety of conditions other than those for which its use was approved as safe and effective by the FDA (including hyperemesis and pregnancy-related nausea)"

(b) "made and/or disseminated unsubstantiated and false representations about the safety and efficacy of Zofran concerning the uses described in subsection (a) [hyperemesis and pregnancy-related nausea]"

(c) "offered and paid illegal remuneration to health care professionals to induce them to promote and prescribe Zofran"

(Settlement Agreement, p. 5, July 2, 2012.)

16. As the new drug application (NDA) holder for Zofran, GSK knew that pharmaceutical companies filing and holding abbreviated new drug applications (ANDAs) would rely on GSK's representations to the FDA, to physicians, and to the public that Zofran (ondansetron hydrochloride) was safe and effective for use during pregnancy. GSK also knew that any generic bioequivalent manufacturer must show that "the labeling proposed for the new drug is the same as the labeling approved for the listed drug." 21 U.S.C. § 355(j)(2)(A)(v). Further, GSK knew that pharmacies in this state and elsewhere routinely substitute less expensive generic drugs, such as ondansetron hydrochloride, in the place of branded drugs like Zofran. Therefore, GSK knew, or should have known, that as long as it held the Zofran NDA, it was responsible for the adequacy of the label and warnings for all forms of ondansetron hydrochloride, whether brand name or generic.

17. GSK's conduct has caused devastating, irreversible, and life-long consequences and suffering to innocent newborns and their families, like Plaintiffs herein.

18. Minor Plaintiff was born in 2013 with congenital defects after Mother Plaintiff was prescribed and began taking Zofran/ondansetron hydrochloride beginning early in her first trimester of pregnancy to alleviate the symptoms of morning sickness.

19. Shortly after Minor Plaintiff was born, he was diagnosed with a severe, potentially life-threatening heart defect, namely Atrial Septal Defect.

20. Minor Plaintiff was exposed to Zofran *in utero* during the periods when each of these tissues was forming and susceptible to developmental insult from environmental exposure.

21. Minor Plaintiff's birth defects often require surgery. The defects also put him at much greater risk of serious injury should he contract any type of infection. His birth defects impair his ability to develop fully and enjoy life both at home and at school because he lives with a much higher risk of severe injuries from infections and a serious risk that the tissue lining the septal defect will detach and block his arteries, which could be fatal without emergency surgery within the hour. Every day, Plaintiffs live in fear of what could happen to Minor Plaintiff and the effect his condition has and will continue to have on his daily activities.

22. Had Plaintiffs known the truth about Zofran's (ondansetron hydrochloride) unreasonable risk of harm, long concealed by GSK, Mother Plaintiff would never have taken Zofran (ondansetron hydrochloride), and her child would never have been injured as described herein.

23. Plaintiffs bring claims for compensatory damages, as well as equitable relief, in an effort to ensure that similarly situated mothers-to-be are fully informed about the risks, benefits, and alternatives attending drugs marketed for use in pregnant women, and such other relief deemed just and proper arising from injuries and birth defects as a result of exposure to Zofran (ondansetron hydrochloride).

JURISDICTION AND VENUE

24. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds $75,000.00, exclusive of interest and costs, and GSK is incorporated and has its principal place of business in a state other than Alabama.

25. Venue in this judicial district is proper under 28 U.S.C. § 1391 inasmuch as a substantial part of the events or omissions giving rise to the claims occurred in this district.

26. At all times herein mentioned, GSK conducted, and continues to conduct, a substantial amount of business activity and has committed a tort, in whole or in part, in this judicial district. GSK is registered to conduct business in this district, with a Resident Agent located in Montgomery, Alabama and engaged in interstate commerce when they advertised, promoted, supplied, and sold pharmaceutical products, including Zofran, to distributors and retailers for resale to physicians, hospitals, medical practitioners, and the general public, deriving substantial revenue in this district. Although GSK's plan to misleadingly market Zofran for pregnancy was devised outside this district, it was executed nationwide, including in this district.

PARTIES

27. Plaintiffs Elizabeth Shellstrom and Justin Shellstrom are the parents and natural guardians of Minor Plaintiff D.M.S. who lives with them.

28. Plaintiffs are citizens Baldwin County in Robertsdale, Alabama.

29. GSK is a limited liability company organized under the laws of the State of Delaware. GSK's sole member is GlaxoSmithKline Holdings, Inc., which is a Delaware corporation, and which has identified its principal place of business in Wilmington, Delaware.

30. GSK is the successor in interest to Glaxo, Inc. and Glaxo Wellcome Inc. Glaxo, Inc. was the sponsor of the original New Drug Application ("NDA") for Zofran. Glaxo, Inc., through its division Cerenex Pharmaceuticals, authored the original package insert and labeling for Zofran, including warnings and precautions attendant to its use. Glaxo Wellcome Inc. sponsored additional NDAs for Zofran, monitored and evaluated post-market adverse event reports arising from Zofran, and authored product labeling for Zofran. The term GSK used herein refers to GSK, its predecessors Glaxo, Inc. and Glaxo Wellcome Inc., and other GSK predecessors and/or affiliates that discovery reveals were involved in the testing, development,

manufacture, marketing, sale and/or distribution of Zofran. GSK continued to hold the NDA for Zofran at all times material to this action.

31. At all relevant times, GSK conducted business in the State of Alabama and has derived substantial revenue from products, including Zofran, sold in this State.

PERTINENT BACKGROUND ON ZOFRAN

32. Zofran is a prescription drug indicated for the prevention of chemotherapy-induced nausea and vomiting, radiation therapy-induced nausea and vomiting and post-operative nausea and/or vomiting:

> **INDICATIONS AND USAGE**
> 1. Prevention of nausea and vomiting associated with highly emetogenic **cancer chemotherapy**, including cisplatin ≥ 50 mg/m2.
> 2. Prevention of nausea and vomiting associated with initial and repeat courses of moderately emetogenic **cancer chemotherapy**.
> 3. Prevention of nausea and vomiting associated with **radiotherapy** in patients receiving either total body irradiation, single high-dose fraction to the abdomen, or daily fractions to the abdomen.
> 4. Prevention of **postoperative nausea and/or vomiting**.

(GSK, Zofran Prescribing Information, Sept. 2014) (emphasis added.)

33. The medical term for nausea and vomiting is emesis, and drugs that prevent or treat nausea and vomiting are called anti-emetics.

34. Zofran is part of a class of anti-emetics called selective serotonin 5HT3 receptor antagonists. The active ingredient in Zofran is ondansetron hydrochloride, which is a potent and selective antagonist at the 5-hydroxytryptamine receptor type 3 (5-HT3).

35. Although 5-hydroxytryptamine (5HT) occurs in most tissues of the human body, Zofran is believed to block the effect of serotonin at the 5HT3 receptors located along vagal afferents in the gastrointestinal tract and at the receptors located in the area postrema of the

central nervous system (the structure in the brain that controls vomiting). Put differently, Zofran antagonizes, or inhibits, the body's serotonin activity, which triggers nausea and vomiting.

36. Zofran was the first 5HT3 receptor antagonist approved for marketing in the United States. Other drugs in the class of 5HT3 receptor antagonist include Kytril® (granisetron) (FDA-approved 1994), Anzemet® (dolasetron) (FDA-approved 1997), and Aloxi® (palonosetron) (FDA-approved 2003).

37. Zofran is available as an injection (2 mg/mL), a premixed injection (32 mg/50ml and 4 mg/50 ml), oral tablets (4 mg, 8 mg and 24 mg), orally disintegrating tablets (4 mg and 8 mg), and an oral solution (4 mg/5 mL).

38. More specifically, GSK has obtained FDA approval for the following formations of Zofran:

a. NDA 20-007 – Zofran Injection (FDA approved January 4, 1991)

b. NDA 20-103 – Zofran Tablets (FDA approved December 31, 1992)

c. NDA 20-403 – Zofran Premixed Injection (FDA approved January 31, 1995)

d. NDA 20-605 – Zofran Oral Solution (FDA approved January 24, 1997)

e. NDA 20-781 – Zofran (a/k/a Zofran-Zydis) Orally Disintegrating Tablets (FDA approved January 27, 1999)

39. The FDA has never approved Zofran for the treatment of morning sickness or any other condition in pregnant women.

40. For GSK to market Zofran lawfully for the treatment of morning sickness in pregnant women, it must first adequately test the drug (including performing appropriate clinical studies) and formally submit to the FDA evidence demonstrating that the drug is safe and effective for the treatment of morning sickness. GSK has not done so.

41. A team of FDA physicians, statisticians, chemists, pharmacologists, microbiologists and other scientists would then have an opportunity to: (a) review the company's data and evidence supporting its request for approval to market the drug; and (b) determine whether to approve the company's request to market the drug in the manner requested. Without first obtaining approval to market a drug for the treatment of pregnant women, a pharmaceutical company may not legally market its drug for that purpose.

42. GSK has not performed any clinical studies of Zofran use in pregnant women. GSK, however, had the resources and know-how to perform such studies, and such studies were performed to support another prescription drug that, unlike Zofran, is FDA-approved for the treatment of morning sickness.

43. GSK also has not submitted to the FDA any data demonstrating the safety or efficacy of Zofran for treating morning sickness in pregnant women. Instead, GSK has illegally circumvented the FDA's approval process by marketing Zofran for the treatment of morning sickness in pregnant women without applying for the FDA's approval to market Zofran to treat that condition or any other condition in pregnant women. This practice is known as "off-label" promotion, and in this case it constitutes fraudulent marketing.

44. At all relevant times, GSK was in the business of and did design, research, manufacture, test, package, label, advertise, promote, market, sell and distribute Zofran.

GSK's Knowledge That Zofran Presents an Unreasonable Risk of Harm to Babies Who Are Exposed to It During Pregnancy

Preclinical Studies

45. Since at least the 1980s, when GSK received the results of the preclinical studies that it submitted in support of Zofran's NDA 20-007, GSK has known of the risk that Zofran ingested during pregnancy in mammals crosses the placental barrier to expose the fetus to the

drug. For example, at least as early as the mid-1980s, GSK performed placental-transfer studies of Zofran in rats and rabbits, and reported that the rat and rabbit fetuses were exposed prenatally to Zofran during pregnancy.

46. The placental transfer of Zofran during human pregnancy at concentrations high enough to cause congenital malformations has been independently confirmed and detected in every sample of fetal tissue taken in a published study involving 41 pregnant patients. The average fetal tissue concentration of Zofran's active ingredient was 41% of the corresponding concentration in the mother's plasma.

47. GSK reported four animal studies in support of its application for approval of NDA 20-0007: (1) Study No. R10937 I.V. Segment II teratological study of rats; (2) Study No. R10873 I.V. Segment II teratological study of rabbits; (3) Study No. R10590 Oral Segment II teratological study of rats; (4) Study No. L10649 Oral Segment II teratological study of rabbits. These preclinical teratogenicity studies in rats and rabbits were stated by the sponsor, GSK, to show no harm to the fetus, but the data also revealed clinical signs of toxicity, premature births, intrauterine fetal deaths, and impairment of ossification (incomplete bone growth).

48. Study No. R10937 was a Segment II teratological study of pregnant rats exposed to Zofran injection solution. Four groups of 40 pregnant rats (160 total) were reportedly administered Zofran through intravenous (I.V.) administration at doses of 0, 0.5, 1.5, and 4 mg/kg/day, respectively. Clinical signs of toxicity that were observed in the pregnant rats included "low posture, ataxia, subdued behavior and rearing, as well as nodding and bulging eyes." No observations were reported as teratogenic effects.

49. Study No. R10873 was a Segment II teratological study of pregnant rabbits exposed to Zofran injection solution. Four groups of 15 pregnant rabbits (60 total) were

reportedly given Zofran doses of 0, 0.5, 1.5, and 4 mg/kg/day, respectively. In this study, there was a reported increase in the number of intra-uterine deaths in the 4 mg/kg group versus lower-dose groups. The study also reported maternal weight loss in the exposed groups. Developmental retardation in off-spring and fetuses were noted – namely, areas of the parietal (body cavity) were not fully ossified, and the hyoid (neck) failed to completely ossify.

50. Study No. R10590 was an Oral Segment II teratological study of rats. Four groups of 30 pregnant rats (120 total) were given Zofran orally at doses of 0, 1, 4 and 15 mg/kg/day, respectively. Subdued behavior, labored breathing, which is a symptom of congenital heart defects, and dilated pupils were observed in the 15 mg/kg/day group. Body weight, gestational duration and fetal examinations were reported as normal, but "slight retardation in skeletal ossification" was noted in the offspring.

51. Study No. L10649 was an Oral Segment II teratological study of rabbits. Four groups of 14-18 pregnant rabbits (56-64 total) were given Zofran orally at doses of 0, 1, 5.5 and 30 mg/kg/day. The study reported lower maternal weight gain in all of the exposed groups, as well as premature delivery and "total litter loss," referring to fetal deaths during pregnancy in the 5.5 mg/kg/day group. Examination of the fetuses showed "slight developmental retardation as evident by incomplete ossification or asymmetry of skeleton."

52. Even if animal studies do not reveal evidence of harm to a prenatally exposed fetus, that result is not necessarily predictive of human response. For example, a drug formerly prescribed to alleviate morning sickness, thalidomide, is an infamous teratogenic in humans, but animal studies involving the drug failed to demonstrate such an increased risk of birth defects in animals. GSK conducted studies of thalidomide and its toxicity before GSK developed Zofran and before it marketed Zofran for the treatment of morning sickness in pregnant women.

Moreover, since at least 1993, GSK has stated in its prescribing information for Zofran that "animal reproduction studies are not always predictive of human response." Therefore, GSK has been aware since at least when it began marketing and selling Zofran that GSK could not responsibly rely on its animal studies as a basis for promoting Zofran use in pregnant women. But that is what GSK did.

Early Reports to GSK of Zofran-Related Birth Defects to GSK

53. As early as 1992, GSK began receiving reports of birth defects associated with the use of Zofran by pregnant women.

54. By 2000, GSK had received at least 32 reports of birth defects arising from Zofran treatment in pregnant women. These reports included congenital heart disease, dysmorphism, intrauterine death, stillbirth, kidney malformation, congenital diaphragmatic anomaly, congenital musculoskeletal anomalies, and orofacial anomalies, among others.

55. In many instances, GSK received multiple reports in the same month, the same week, and even the same day. For example, on or about September 13, 2000, GSK received three separate reports involving Zofran use and adverse events. For two of those incidents, the impact on the baby was so severe that the baby died.

56. From 1992 to the present, GSK has received more than **200** reports of birth defects in children who were exposed to Zofran during pregnancy.

57. The most commonly reported birth defects arising from Zofran use during pregnancy and reported to GSK were congenital heart defects, though multiple other defects such as orofacial defects, intrauterine death, stillbirth and severe malformations in newborns were frequently reported.

58. The number of events actually reported to GSK constitutes only a small fraction of the actual incidents.

Epidemiology Studies Examining the Risk of Congenital Heart Defects in Babies Who Were Exposed to Zofran During Pregnancy

59. Epidemiology is a branch of medicine focused on studying the causes, distribution, and control of diseases in human populations.

60. At least three recent epidemiological studies have examined the association between prenatal exposure to Zofran and the risk of congenital heart defects in babies. These studies include: (1) Pasternak, et al., *Ondansetron in Pregnancy and Risk of Adverse Fetal Outcomes*, New England Journal of Medicine (Feb. 28, 2013) (the "Pasternak Study"); (2) Andersen, et al., *Ondansetron Use in Early Pregnancy and the Risk of Congenital Malformations— A Register Based Nationwide Control Study*, presented as International Society of Pharmaco-epidemiology, Montreal, Canada (2013) (the "Andersen Study"); and (3) Danielsson, et al., *Ondansetron During Pregnancy and Congenital Malformations in the Infant* (Oct. 31, 2014) (the "Danielsson Study").

61. Each of these studies includes methodological characteristics tending to bias its results toward under-reporting the true risk of having a child with a birth defect. Notwithstanding these characteristics biasing the results toward the null hypothesis, all three studies show elevated risk ratios for cardiac malformations, including risk ratios greater than 2.0. In other words, the studies report that a mother exposed to Zofran during pregnancy had more than a doubled risk of having a baby with a congenital heart defect as compared to a mother who did not ingest Zofran during pregnancy.

62. The Pasternak Study included data from the Danish National Birth Registry and examined the use of Zofran during pregnancy and risk of adverse fetal outcomes. Adverse fetal

outcomes were defined as: spontaneous abortion, stillbirth, any major birth defect, pre-term delivery, low birth weight, and small size for gestational age. The study examined 608,385 pregnancies between January 2004 and March 31, 2011. The unexposed group was defined as women who did not fill a prescription for ondansetron during the exposure time window. The exposure time window was defined as the first 12 week gestational period. Notably, the median fetal age at first exposure to Zofran was ten weeks, meaning that half of the cases were first exposed to Zofran after organogenesis (organ formation). This characteristic of the study led to an under-reporting of the actual risk of prenatal Zofran exposure. The study's supplemental materials indicated that women taking Zofran during the first trimester, compared to women who did not take Zofran, were 22% more likely to have offspring with a septal defect, 41% more likely to have offspring with a ventricular septal defect and greater than four-times more likely to have offspring with atrioventricular septal defect.

63. The Andersen Study was also based on data collected from the Danish Medical Birth Registry and the National Hospital Register, the same data examined in the Pasternak Study. The Andersen study examined the relationship between Zofran use during the first trimester and subgroups of congenital malformations. Data from all women giving birth in Denmark between 1997 and 2010 were included in the study. A total of 903,207 births were identified in the study period with 1,368 women filling prescriptions for Zofran during the first trimester. The Andersen Study therefore used a larger data set (13 years) compared to the Pasternak Study (seven years). Exposure to the drug was also defined as filling a prescription during the first trimester, and prescription data were obtained from the National Prescription Registry. The Andersen study reported that mothers who ingested Zofran during their first-trimester of pregnancy were more likely than mothers who did not to have a child with a

congenital heart defect, and they had a two- to four-fold greater risk of having a baby with a septal cardiac defect.

64. The Danielsson Study investigated risks associated with Zofran use during pregnancy and risk of cardiac congenital malformations from data available through the Swedish Medical Birth Registry. The Swedish Medical Birth Registry was combined with the Swedish Register of Prescribed Drugs to identify 1,349 infants born to women who had taken Zofran in early pregnancy from 1998-2012. The total number of births in the study was 1,501,434 infants, and 43,658 had malformations classified as major (2.9%). Among the major malformations, 14,872 had cardiovascular defects (34%) and 10,491 had a cardiac septum defect (24%). The Danielsson study reported a statistically significantly elevated risk for cardiovascular defects for mothers taking Zofran versus those who did not. The results reported that the mothers who took Zofran during early pregnancy had a 62% increased risk of having a baby with a cardiovascular defect. Further, mothers who took Zofran during pregnancy had a greater than two-fold increased risk of having a baby with a septal cardiac defect, compared to mothers who did not take Zofran during pregnancy.

65. In summary, since at least 1992, GSK has had mounting evidence showing that Zofran presents an unreasonable risk of harm to babies who are exposed to the drug during pregnancy. GSK has been aware that Zofran readily crosses human placental barriers during pregnancy. GSK has also been aware that the animal studies of Zofran cannot reliably support an assertion that Zofran can be used safely or effectively in pregnant women. Since 1992, GSK has received hundreds of reports of major birth defects associated with prenatal Zofran exposure. GSK also has had actual and/or constructive knowledge of the epidemiological studies reporting that prenatal Zofran exposure can more than double the risk of developing congenital heart

defects. As alleged below, GSK not only concealed this knowledge from healthcare providers and consumers in the United States, and failed to warn of the risk of birth defects, but GSK also illegally and fraudulently promoted Zofran to physicians and patients specifically for the treatment of morning sickness in pregnancy women.

GSK's Failure to Warn of the Risk of Birth Defects Associated with Prenatal Exposure to Zofran

66. Under federal law governing GSK's drug labeling for Zofran, GSK was required to "describe serious adverse reactions and potential safety hazards, limitations in use imposed by them, and steps that should be taken if they occur." 21 C.F.R. § 201.57(e).

67. GSK was also required to list adverse reactions that occurred with other drugs in the same class as Zofran. *Id.* § 201.57(g).

68. In the context of prescription drug labeling, "an adverse reaction is an undesirable effect, reasonably associated with use of a drug, that may occur as part of the pharmacological action of the drug or may be unpredictable in its occurrence." *Id.*

69. Federal law also required GSK to revise Zofran's labeling "**to include a warning as soon as there is reasonable evidence of an association of a serious hazard with a drug; a causal relationship need not have been proved.**" *Id.*, at § 201.57(e) (emphasis added).

70. GSK has received hundreds of reports of birth defects associated with the non-FDA-approved use of Zofran in pregnant women. GSK has failed, however, to disclose these severe adverse events to healthcare providers or expectant mothers, including Mother Plaintiff and her prescribing healthcare provider.

71. Under 21 C.F.R. § 314.70(c)(2)(i), pharmaceutical companies were (and are) free to add or strengthen – without prior approval from the FDA – a contraindication, warning, precaution, or adverse reaction.

72. GSK thus had the ability and obligation to add warnings, precautions and adverse reactions to the product labeling for Zofran without prior approval from the FDA. GSK failed to do so. Had GSK done so, the manufacturers of generic bioequivalent versions of Zofran (ondansetron hydrochloride) would have been required to make the same additions. *Id*. at 660-661.

73. Under 21 C.F.R. § 201.128, "if a manufacturer knows, or has knowledge of facts that would give him notice, that a drug introduced into interstate commerce by him is to be used for conditions, purposes, or uses other than the ones for which he offers it, he is required to provide adequate labeling for such a drug which accords with such other uses to which the article is to be put."

74. At least as of 1998, GSK knew well from its off-label promotion and payments to doctors, and its conspicuous increase in revenue from Zofran, and its market analyses of prescription data, that physicians were prescribing Zofran off-label to treat morning sickness in pregnant women and that such usage was associated with a clinically significant risk or hazard – birth defects.

75. GSK had the ability and obligation to state prominently in the Indications and Usage section of its drug label that there is a lack of evidence that Zofran is safe for the treatment of morning sickness in pregnant women. GSK failed to do so, despite GSK's knowledge that (a) the safety of Zofran for use in human pregnancy has not been established, and (b) there have been hundreds of reports of birth defects associated with Zofran use during pregnancy, and (c) epidemiology studies report an increased risk of birth defects in babies exposed to Zofran during pregnancy.

76. From 1993 to the present, despite mounting evidence of the birth defect risk, GSK's prescribing information for Zofran has included the same statement concerning use of Zofran during pregnancy:

> "**Pregnancy: Teratogenic Effects**: Pregnancy Category B. Reproduction studies have been performed in pregnant rats and rabbits at I.V. doses up to 4 mg/kg per day and have revealed no evidence of impaired fertility or harm to the fetus due to ondansetron. There are, however, no adequate and well-controlled studies in pregnant women. Because animal reproduction studies are not always predictive of human response, this drug should be used during pregnancy only if clearly needed."

77. By contrast, the Product Monograph for Zofran in Canada states "**the safety of ondansetron for use in human pregnancy has not been established**," and that "**the use of ondansetron in pregnancy is <u>not</u> recommended**."

78. In the United States and in this state specifically, GSK has at all relevant times failed to include any warning disclosing any risks of birth defects arising from Zofran (ondansetron hydrochloride) use during pregnancy in Zofran's prescribing information or other product labeling.

79. GSK's inclusion of the phrase "Pregnancy Category B" in Zofran's prescribing information refers the FDA's pregnancy categorization scheme applicable to prescription drugs in the United States. The FDA has established five categories to indicate the potential of a drug to cause birth defects if used during pregnancy. The current system of pregnancy labeling consists of five letter-categories (A, B, C, D, and X, in order of increasing risk).

80. GSK had the ability, and indeed was required, to update Zofran's label to reflect at best a Pregnancy Category D designation or alternatively a Category X designation for Zofran:

> **Pregnancy Category D. If there is positive evidence of human fetal risk based on adverse reaction data from investigational or marketing experience or studies in humans**, but the potential benefits from the use of the drug in pregnant women may be acceptable despite its potential risks (for example, if the drug is needed in a life-threatening situation or serious disease for which safer drugs cannot be used or are

> ineffective), the labeling must state: "Pregnancy Category D. See "Warnings and Precautions" section. Under the "Warnings and Precautions" section, **the labeling must state: "[drug] can cause fetal harm when administered to a pregnant woman. . . . If this drug is used during pregnancy, or if the patient becomes pregnant while taking this drug, the patient should be apprised of the potential hazard to a fetus."**
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> 21 C.F.R. § 201.57(f)(6)(i)(d) (emphasis added).
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> **Pregnancy Category X. If studies in animals or humans have demonstrated fetal abnormalities or if there is positive evidence of fetal risk based on adverse reaction reports from investigational or marketing experience, or both**, and the risk of the use of the drug in a pregnant woman clearly outweighs any possible benefit (for example, safer drugs or other forms of therapy are available), the labeling must state: "Pregnancy Category X. See `Contraindications' section." Under "Contraindications," **the labeling must state: "(Name of drug) may (can) cause fetal harm when administered to a pregnant woman. . . . (Name of drug) is contraindicated in women who are or may become pregnant. If this drug is used during pregnancy, or if the patient becomes pregnant while taking this drug, the patient should be apprised of the potential hazard to a fetus.**"
>
> *Id.* at § 201.57(f)(6)(i)(e) (emphasis added).

81. Beginning at least in 1992, GSK had positive evidence of human fetal risk posed by Zofran based more than 200 reports to GSK of birth defects, as well as epidemiology studies, and placental-transfer studies reporting on Zofran's teratogenic risk. GSK has never updated Zofran's labeling to disclose that Zofran can cause fetal harm when administered to a pregnant woman, and GSK has failed to warn of the potential hazards to a fetus arising from Zofran use during pregnancy.

82. The FDA recently promulgated a final rule declaring that, as of June 2015, it will require pharmaceutical manufacturers to remove the current A, B, C, D, or X pregnancy categorization designation from all drug product labeling and instead summarize the risks of using a drug during pregnancy, discuss the data supporting that summary, and describe relevant information to help health care providers make prescribing decisions and counsel women about the use of drugs during pregnancy and lactation. 79 Fed. Reg. 72064 (Dec. 4, 2014). In

promulgating this rule, the FDA "determined that retaining the pregnancy categories is inconsistent with the need to accurately and consistently communicate differences in degrees of fetal risk."

83. In summary, beginning years before Mother Plaintiff was exposed to Zofran, GSK marketed and sold Zofran without adequate warning to healthcare providers and consumers that Zofran was causally associated with an increased risk of birth defects, and GSK had not adequately tested Zofran to support marketing and promotion it for use in pregnant women. This rendered the warnings accompanying Zofran inadequate and defective.

84. Plaintiffs hereby demand that GSK immediately cease the wrongful conduct alleged herein for the benefit of Mother Plaintiff and similarly situated mothers and mothers-to-be, as GSK's wrongful conduct alleged herein is continuing. Plaintiffs further demand that GSK remove the Pregnancy Category B designation from its drug product labeling for Zofran, fully and accurately summarize the risks of using Zofran during pregnancy, fully and accurately describe the data supporting that summary, and fully and accurately describe the relevant information to help health care providers make informed prescribing decisions and counsel women about the risks associated with use of Zofran during pregnancy.

GSK's Fraudulent, Off-Label Promotion of Zofran for the Treatment of Morning Sickness in Pregnant Women

85. At all relevant times, GSK has known that the safety of Zofran for use in human pregnancy has not been established.

86. But with more than six million annual pregnancies in the United States since 1991 and an estimated 70-85% incidence of pregnancy-related nausea, the absence of a prescription medication that was approved by the FDA for pregnancy-related nausea presented an extremely lucrative business opportunity for GSK to expand its sales of Zofran, which before its patent

expiration in 2006 was one of the most expensive drugs available in the United States market. GSK seized that opportunity, but the effect of its conduct was tantamount to experimenting with the lives of unsuspecting mothers-to-be and their babies in the United States and in this State..

87. At least as early as January 1998, despite available evidence showing that Zofran presented an unreasonable risk of harm to babies exposed to Zofran prenatally, GSK launched a marketing scheme to promote Zofran to obstetrics and gynecology (Ob/Gyn) healthcare practitioners, including those in this State, as a safe treatment alternative for morning sickness in pregnant women.

88. In support of its off-label marketing efforts, at least as early as January 1998, GSK offered and paid substantial remuneration to healthcare providers and "thought leaders" to induce them to promote and prescribe Zofran to treat morning sickness.

89. On March 9, 1999, the FDA's Division of Drug Marketing, Advertising and Communications (DDMAC) notified GSK that the FDA had become aware of GSK's promotional materials for Zofran that violated the Federal Food Drug and Cosmetic Act and its implementing regulations. The FDA reviewed the promotional material and determined that "it promotes Zofran in a manner that is false or misleading because it lacks fair balance." FDA Ltr. to Michele Hardy, Director, Advertising and Labeling Policy, GSK, Mar. 9 1999.

90. GSK's promotional labeling under consideration included promotional statements relating the effectiveness of Zofran, such as "Zofran Can," "24-hour control," and other promotional messages. But the promotional labeling failed to present any information regarding the risks associated with use of Zofran.

91. In its March 9, 1999 letter, the FDA directed GSK to "**immediately cease distribution of this and other similar promotional materials for Zofran that contain the same or similar claims without balancing risk information**."

92. GSK blatantly disregarded this mandate by the FDA. For example, as early as 2000, GSK's marketing materials in widely circulated obstetrician and gynecology trade journals over-emphasized Zofran's "Pregnancy Category B" designation as an imprimatur of safeness for use in pregnancy on the very first page of the marketing material and without adequate risk information. This created a false impression to busy healthcare practitioners that the safety of Zofran use in pregnancy has been established. GSK's materials failed to disclose any of its internal information concerning the risks of birth defects associated with Zofran treatment during pregnancy.

93. When the FDA first approved Zofran to treat cancer patients, GSK's Oncology Division sales force had primary responsibility for marketing and promoting the drug. Beginning in at least January 1998, GSK set out to expand its Zofran sales to obstetricians and gynecologists by promoting Zofran as an established safe and effective treatment for morning sickness. GSK's initial strategy in this regard required its sales force to create new relationships with obstetricians and gynecologists by adding them as "new accounts." While this strategy had some success, it was inefficient compared to a revised promotional strategy that would enable GSK to leverage its other division's already established relationships with obstetricians and gynecologists. Thus, GSK's Oncology Division began partnering with GSK's Consumer Healthcare Division to promote Zofran (ondansetron hydrochloride).

94. Specifically, in or about 2001, GSK's Oncology Division finalized a co-marketing agreement with GSK's Consumer Healthcare Division under which sales representatives from

GSK's Consumer Healthcare Division would market Zofran to obstetricians and gynecologists. At the time GSK's Consumer Healthcare Division sales force already had established relationships with, and routinely called on, obstetricians and gynecologists to promote and provide samples of another GSK product, Tums®, specifically for the treatment and prevention of heartburn during pregnancy. GSK's established network for promoting Tums for use in pregnancy afforded it an efficient additional conduit for promoting Zofran for use in pregnancy.

95. GSK's primary purpose in undertaking this co-marketing arrangement was to promote Zofran to obstetricians and gynecologists during GSK's Consumer Healthcare Division sales force visits to obstetricians' and gynecologists' offices. Although some obstetricians and gynecologists performed surgeries and could order Zofran for post-operative nausea, the central focus of GSK's co-marketing effort was to promote Zofran for the much more common condition of morning sickness in pregnancy, thereby increasing sales and profits.

96. GSK's Zofran sales representatives received incentive-based compensation that included an annual salary and a quarterly bonus. The bonus amount was determined by each sales representative's performance in the relevant market and whether she or he attained or exceeded quarterly sales quotas. The more Zofran sold by a GSK sales representative or prescribed by a provider in that representative's sales territory, the greater his or her compensation and other incentives would be.

97. As a result of GSK's fraudulent marketing campaign, the precise details of which are uniquely within the control of GSK, Zofran achieved blockbuster status by 2002 and became the number one most prescribed drug for treating morning sickness in the United States. In 2002, sales of Zofran in the United States totaled $1.1 billion, while global Zofran sales were approximately $1.4 billion.

98. GSK's promotion of Zofran for use in pregnancy eventually led to a federal governmental investigation. **On July 2, 2012 the Department of Justice announced that GSK "agreed to plead guilty and pay $3 billion to resolve its criminal and civil liability arising from the company's unlawful promotion of certain prescription drugs," which included Zofran among numerous others.** *See* DOJ Press Release, *GlaxoSmithKline to Plead Guilty and Pay $3 Billion to Resolve Fraud Allegations and Failure to Report Safety Data* (July 2, 2012).

99. Part of GSK's civil liability to the government included payments arising from the facts that: (a) GSK promoted Zofran and disseminated false representations about the safety and efficacy of Zofran concerning pregnancy-related nausea and hyperemesis gravidarum, a severe form of morning sickness; and (b) GSK paid and offered to pay illegal remuneration to health care professionals to induce them to promote and prescribe Zofran.

100. GSK's 2012 civil settlement with the United States covered improper promotional conduct that was part of an overarching plan to maximize highly profitable Zofran sales without due regard to laws designed to protect patient health and safety. Another component of that plan led to a separate $150 million settlement between GSK and the United States in 2005. In or around 1993, a GSK marketing document sent to all of its sales and marketing personnel nationwide advised that they should emphasize to medical providers not only the benefits of Zofran but also the financial benefits to the providers by prescribing Zofran. Specifically, "[b]y using a 32 mg bag [of Zofran], the physician provides the most effective dose to the patient and increases his or her profit by $___ in reimbursement." GSK's marketing focus on profits to the prescribers misleadingly aimed to shift prescribers' focus from the best interests of patients to personal profit. In this regard,

GSK marketed Zofran beginning in the 1990s as "convenient" and offering "better reimbursement" to prescribers. GSK detailed this plan in a marketing document for its Zofran premixed IV bag entitled "Profit Maximization – It's in the Bag." Upon information and belief, GSK's conduct in this paragraph continued until the DOJ began investigating it in the early 2000s.

Plaintiffs' Exposures to Zofran

101. Plaintiffs Elizabeth Shellstrom and Justin Shellstrom are the parents and natural guardians of Minor Plaintiff D.M.S.

102. To alleviate and prevent the symptoms of morning sickness, Mother Plaintiff was prescribed and ingested Zofran/Ondansetron tablets early in her first trimester of pregnancy with Minor Plaintiff.

103. Minor Plaintiff D.M.S. was born in 2013.

104. Minor Plaintiff was born with a congenital heart defect as a direct and proximate result of his prenatal exposures to Zofran. Shortly after birth, echocardiograms evidenced that Minor Plaintiff suffered from a congenital heart defect, namely Atrial Septal Defect.

105. Minor Plaintiff suffers from physical injuries, some or all of which are permanent and/or may be fatal. It is anticipated that he will require surgery(ies) and procedures in the future. Following surgery, Minor Plaintiff may present with long-term problems including arrhythmia, pulmonary regurgitation, and re-operation.

106. Minor Plaintiff was exposed to Zofran *in utero* during the periods when each of these tissues was forming and susceptible to developmental insult from environmental exposure.

107. Minor Plaintiff has no known family history of any of the conditions from which he suffers.

108. Mother Plaintiff was unaware of the dangerousness of Zofran or the fraudulent nature of GSK's marketing of Zofran when she was administered Zofran.

109. Had Mother Plaintiff and her prescribers known of the increased risk of birth defects associated with Zofran, and had they not been misled by GSK's promotion of the drug's purported safety benefits for use in pregnancy (on which they reasonably relied), Mother Plaintiff would not have taken ondansetron hydrochloride during pregnancy and Minor Plaintiff would not have been born with congenital malformations.

110. As a direct and proximate result of GSK's conduct, Plaintiffs have suffered and incurred harm including severe pain and suffering, mental anguish, medical expenses and other economic and noneconomic damages, and will require more constant and continuous medical monitoring and treatment than had they not been exposed to ondansetron hydrochloride.

111. Plaintiffs file this lawsuit within the applicable limitations period of first suspecting that GSK's wrongful conduct caused the appreciable harm sustained by Minor Plaintiff. Plaintiffs could not, by the exercise of reasonable diligence, have discovered the wrongful conduct that caused the injuries at an earlier time. Plaintiffs did not suspect, nor did Plaintiffs have reason to suspect, the tortious nature of the conduct causing the injuries, until a short time before filing of this action. Additionally, Plaintiffs were prevented from discovering this information sooner because GSK has misrepresented to the public and to the medical profession that Zofran is safe for use in pregnancy, and GSK has fraudulently concealed facts and information that could have led Plaintiffs to discover a potential cause of action. In all events, the applicable statute of limitations is tolled for claims arising from injuries to minors.

FIRST CAUSE OF ACTION

(NEGLIGENCE)

112. Plaintiffs repeat, reiterate, and re-allege each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

113. GSK had a duty to exercise reasonable care and to comply with existing standards of care, in the designing, researching, manufacturing, marketing, supplying, promoting, packaging, sale, testing, and/or distribution of Zofran into the stream of commerce, including a duty to ensure that the product would not cause users to suffer unreasonable, dangerous side effects.

114. GSK failed to exercise ordinary care and failed to comply with existing standards of care in the designing, researching, manufacturing, marketing, supplying, promoting, packaging, sale, testing, quality assurance, quality control, and/or distribution of Zofran into interstate commerce in that GSK knew or should have known that using Zofran created an unreasonable risk of dangerous birth defects, as well as other severe personal injuries which are permanent and lasting in nature, physical pain and mental anguish, including diminished enjoyment of life, as well as the need for lifelong medical treatment, monitoring and/or medications.

115. GSK, its agents, servants, and/or employees, failed to exercise ordinary care and failed to comply with existing standards of care in the following acts and/or omissions:

a. Failing to conduct adequate testing, including pre-clinical and clinical testing and post-marketing surveillance to determine the safety risks of Zofran for treating pregnant women while promoting the use of Zofran and providing kickbacks and

financial incentives to health care professionals to convince health care professionals to prescribe Zofran for pregnancy-related nausea;

b. Marketing Zofran for the treatment of morning sickness in pregnant women without testing it determine whether or not Zofran was safe for this use;

c. Designing, manufacturing, producing, promoting, formulating, and/or creating, Zofran without adequately and thoroughly testing it;

d. Selling Zofran without conducting sufficient tests to identify the dangers posed by Zofran to pregnant women;

e. Failing to adequately and correctly warn the Plaintiff, the public, the medical and healthcare communities, and the FDA of the dangers of Zofran for pregnant women;

f. Failing to evaluate available data and safety information concerning Zofran use in pregnant women;

g. Advertising and recommending the use of Zofran without sufficient knowledge as to its dangerous propensities to cause birth defects;

h. Representing that Zofran was safe for treating pregnant women, when, in fact, it was and is unsafe;

i. Representing that Zofran was safe and efficacious for treating morning sickness and hyperemesis gravidarum when GSK was aware that neither the safety nor efficacy for such treatment has been established;

j. Representing that GSK's animal studies in rats and rabbits showed no harm to fetuses, when the data revealed impairment of ossification (incomplete bone growth) and other signs of toxicity;

k. Failing to provide adequate instructions regarding birth defects including cleft palate and cardiac malformations;

l. Failing to accompany Zofran with proper and/or accurate warnings regarding all possible adverse side effects associated with the use of Zofran;

m. Failing to include a black box warning concerning the birth defects associated with Zofran;

n. Failing to issue sufficiently strengthened warnings following the existence of reasonable evidence associating Zofran use the increased risk of birth defects;

o. Failing to advise Plaintiff, her healthcare providers, the FDA, and the medical community that neither the safety nor the efficacy of Zofran for treating pregnancy-related nausea has been established and that the risks of the using the drug for that condition outweigh any putative benefit;

p. Failing to advise Plaintiff, her healthcare providers, the FDA, and the medical community of clinically significant adverse reactions (birth defects) associated with Zofran use during pregnancy; and

q. Failing to correct its misrepresentations that the safety and efficacy of Zofran for treating morning sickness had been established.

116. Despite the fact that GSK knew or should have known that Zofran significantly increased the risk of birth defects, GSK continued and still continues to negligently and misleadingly market, manufacture, distribute and/or sell Zofran to consumers, including Mother Plaintiff.

117. GSK knew or should have known that consumers such as Mother Plaintiff would foreseeably suffer injury as a result of GSK's representations about ondansetron hydrochloride and its failure to exercise ordinary care, as set forth above.

118. GSK's negligence was the proximate cause of Plaintiffs' injuries, harm and economic loss, which Plaintiffs suffered and/or will continue to suffer.

119. Had Mother Plaintiff not taken Zofran, Minor Plaintiff would not have suffered those injuries and damages as described herein with particularity. Had GSK marketed Zofran in a truthful and non-misleading manner, Mother Plaintiff would never have taken ondansetron hydrochloride.

120. As a result of the foregoing acts and omissions, Minor Plaintiff was caused to suffer serious birth defects that are severe in nature, physical pain and mental anguish, including diminished enjoyment of life, as well as the need for medical treatment, monitoring and/or medications.

121. Plaintiffs also sustained severe emotional distress and suffering as a result GSK's wrongful conduct and the injuries to their child. Every day, Plaintiffs live in fear of what could happen to their son and the effect his condition has and will continue to have on his daily activities.

122. As a result of the foregoing acts and omissions, Minor Plaintiff requires and will require more health care and services and did incur medical, health, incidental and related expenses. Plaintiffs are informed and believe and further allege that their child will be required to obtain further medical and/or hospital care, attention, and services in the future.

123. By reason of the foregoing, Plaintiffs have been damaged by GSK's wrongful conduct.

SECOND CAUSE OF ACTION
(NEGLIGENT UNDERTAKING UNDER ALABAMA'S "GOOD SAMARITAN" DOCTRINE)

124. Plaintiffs repeat, reiterate, and re-allege each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

125. In 1991, Zofran® [ondansetron] was first approved by the U.S. Food and Drug Administration ["FDA"] for prevention of nausea and vomiting associated with initial and repeat courses of emetogenic cancer chemotherapy, including high-dose cisplatin and radiotherapy, as well as of post-operative nausea and/or vomiting.

126. Ondansetron has never been approved by FDA for use as treatment for or prevention of pregnancy-related nausea and vomiting, a/k/a "morning sickness" [hyperemesis/emesis gravidarum, or NVP ("Nausea and Vomiting of Pregnancy")]. Use of a prescription drug for such unapproved uses is commonly called "off-label" use.

127. On information and belief, beginning as early as 1999, Defendant GSK, through its pharmaceutical sales representatives, written promotional materials, and by other means, undertook, gratuitously or for consideration, actively to instruct, advise, and warn doctors and prescribing health care professionals in Alabama and elsewhere, and through those learned intermediaries, their patients, regarding the use of ondansetron for treatment of pregnancy-related nausea and vomiting, an unapproved, "off-label" use. In particular, GSK undertook a duty to warn doctors and prescribing health care professionals regarding any potential teratogenic side effects associated with a woman's ingesting ondansetron during pregnancy.

128. In addition, on information and belief, beginning as early as 1999, GSK, through its pharmaceutical sales representatives, written promotional materials, and by other means,

undertook, gratuitously or for consideration, actively to promote and establish among doctors, prescribing health care professionals, and in the medical community in Alabama and the United States in general, the use of ondansetron as a safe, medically-accepted standard of care for treatment for pregnancy-related nausea and vomiting, despite the fact that ondansetron had never been approved by FDA for such an "off-label" use. In particular, GSK undertook a duty to warn the Alabama state and local medical communities, that is, the doctors and prescribing health care professionals who comprise them and routinely and reasonably rely on their prevailing standards and practices in treating their patients, regarding any potential teratogenic side effects associated with a woman's ingesting ondansetron during pregnancy.

129. Because off-label promotion is illegal under federal FDA regulations, in 2012, GSK entered into a plea agreement with the U.S. Department of Justice ["DOJ"] that required that GSK maintain a corporate policy that prohibits sales personnel from engaging in off-label promotion (directly or indirectly) and requiring sales personnel to refer all requests for information about off-label uses to Medical Affairs personnel. GSK will require sales personnel to obtain a signature from the medical professional who verbally requested written information regarding off-label uses in order to confirm the information requested and that the request was unsolicited. *See* Letter from Carmen M. Ortiz [DOJ] to Geoffrey E. Hobart & Matthew J. O'Connor, dated June 27, 2012, Addendum A, "Compliance Measures and Certifications" at 4, attached and incorporated herein as Exh. A.

130. Despite GSK's dealings with the Justice Department and FDA, GSK was quite successful in its undertaking to instruct, advise, and warn doctors and prescribing health care professionals regarding the use of ondansetron for treatment of pregnancy-related nausea and vomiting and in its promotion and establishment of ondansetron in the medical community as a

safe, medically-accepted standard of care for treatment for pregnancy-related nausea and vomiting. From 1999, when the FDA first warned GSK about its promotional materials regarding ondansetron's off-label, pregnancy-related use, until 2006, when GSK's patent on ondansetron expired and generic manufacturers first entered the market, GSK's sales of Zofran experienced a three-fold or 300% increase. A large portion of this increase arose from prescriptions for pregnant women.

131. GSK should have recognized and reasonably foreseen that the accuracy and sufficiency of its warnings and other written and verbal information regarding the use of ondansetron for pregnancy-related nausea and vomiting conveyed to doctors, prescribing health care professionals, and the medical community was necessary for the protection of pregnant patients and their unborn children, like plaintiffs here, and for the proper performance of GSK's undertaken duty to them.

132. GSK is liable to Minor Plaintiff for bodily harm resulting from GSK's failure to exercise due care or such competence and skill as one possesses in performing its undertaking in a way that increased their risk of harm. GSK breached its undertaken duties to such plaintiffs, as outlined above, by the following:

a. Failing to provide adequate and accurate warnings and information to doctors, prescribing health care professionals, and the medical community regarding the dangers associated with and, in particular, the teratogenic side effects of the use of ondansetron in pregnant women.

b. Providing false and misleading warnings and information to doctors, prescribing health care professionals, and the medical community regarding the safety of the

use of ondansetron in pregnant women, and, in particular, the teratogenic side effects of the use of ondansetron in pregnant women.

c. Failing to conduct adequate testing, including pre-clinical and clinical testing and post-marketing surveillance to determine the safety risks of Zofran for treating pregnant women while promoting the use of Zofran and providing kickbacks to health care professionals to convince health care professionals to prescribe Zofran for pregnancy-related nausea;

d. Marketing Zofran for the treatment of morning sickness in pregnant women without testing it determine whether or not Zofran was safe for this use;

e. Designing, manufacturing, producing, promoting, formulating, creating, and/or designing Zofran without adequately and thoroughly testing it;

f. Selling Zofran without conducting sufficient tests to identify the dangers posed by Zofran to pregnant women;

g. Failing to adequately and correctly warn the Plaintiffs, the public, the medical and healthcare profession, ondansetron ANDA holders, and the FDA of the dangers of Zofran for pregnant women;

h. Failing to evaluate available data and safety information concerning Zofran use in pregnant women;

i. Advertising and recommending the use of Zofran without sufficient knowledge as to its dangerous propensities to cause birth defects;

j. Representing that Zofran was safe for treating pregnant women, when, in fact, it was and is unsafe;

k. Representing that Zofran was safe and efficacious for treating morning sickness and hyperemesis gravidarum when GSK was aware that neither the safety nor efficacy for such treatment has been established;

l. Representing that GSK's animal studies in rats and rabbits showed no harm to fetuses, when the data revealed impairment of ossification (incomplete bone growth) and other signs of toxicity;

m. Failing to provide adequate instructions regarding birth defects including cleft palate and cardiac malformations;

n. Failing to accompany Zofran with proper and/or accurate warnings regarding all possible adverse side effects associated with the use of Zofran;

o. Failing to include a black box warning concerning the birth defects associated with Zofran;

p. Failing to issue sufficiently strengthened warnings following the existence of reasonable evidence associating Zofran use with the increased risk of birth defects;

q. Failing to advise ondansetron ANDA holders that neither the safety nor the efficacy of Zofran for treating pregnancy-related nausea has been established and that the risks of the using the drug for that condition outweigh any putative benefit; and

r. Failing to correct its misrepresentations that the safety and efficacy of Zofran for treating morning sickness had been established.

133. GSK increased the risk of harm to Plaintiff children by materially altering their circumstances and placing both mothers and children in a worse position that they would

otherwise have been in had not GSK undertaken the actions and duties described above. Had GSK not undertaken to promote and establish ondansetron as a safe, medically-accepted standard of care for care for pregnancy-related nausea and vomiting, and/or undertaken to instruct, advise and warn doctors and prescribing health care professionals about its alleged safe use in pregnant women, the Plaintiff mothers would surely not have been prescribed ondansetron and their doctors would have been adequately and fully warned of its teratogenic side effects such that each could have made a fully-informed decision that its benefits did not outweigh its risks for each Plaintiff mother. This is particularly true given that several other kinds of anti-nausea medicines were readily available, including antihistamines and dopamine antagonists that have no demonstrated teratogenic effects. Moreover, because most pregnancy-related nausea and vomiting is not life-threatening to either mother or child, doctors and prescribing health care professionals could also have decided not to prescribe any drugs at all in some cases had they known of ondansetron's teratogenic side effects.

134. GSK's duties to Plaintiffs were continuing at all relevant times. First, it was reasonably foreseeable by GSK that actively instructing, advising, and warning doctors and prescribing health care professionals in Alabama and elsewhere, regarding the use of ondansetron for treatment of pregnancy-related nausea and vomiting, an unapproved, "off-label" use, would result in both such use of ondansetron by Plaintiff mothers and other pregnant women and, as a result, in harm to some of their unborn children.

135. Second, it was reasonably foreseeable by GSK promotion and establishment among doctors, prescribing health care professionals, and in the medical community in Alabama and the United States in general, of the use of ondansetron as a safe, medically-accepted standard of care for treatment for pregnancy-related nausea and vomiting would result in both such use of

ondansetron by Plaintiff mothers and other pregnant women and, as a result, in harm to some of their unborn children.

136. Moreover, as demonstrated above, as late as 2012, GSK had to agree, as part of a plea agreement with DOJ not to prosecute it further for GSK's sales, marketing and promotion of Zofran® [ondansetron] for off-label use in pregnant women, finally to stop such promotion. Also as demonstrated above, by that time, GSK's undertaking had materially changed in the medical community and among doctors and prescribing health care professionals ondansetron's safety profile for use in pregnant women and established it as a safe, medically-accepted standard of care for treatment for pregnancy-related nausea and vomiting. GSK's Zofran® sales had already tripled prior to the entry of generic manufacturers into the market in 2006, and, thereafter, 31 generic manufacturers had entered the burgeoning market for ondansetron that GSK created by its undertaking.

137. In addition or in the alternative, GSK undertook to perform a duty to doctors and prescribing health care professionals that manufacturers of generic forms of ondansetron were obligated to perform and GSK negligently performed such a duty. Under Alabama law, a manufacturer of a prescription drug, whether a brand-name drug or a generic substitute, has a duty to warn only the prescribing physician of potential side effects and risks because, as a "learned intermediary," it is the physician who decides whether a prescription drug's therapeutic benefits outweigh any potential adverse side effects. GSK undertook that duty owed by generic manufacturers, if any, with regard to the use of ondansetron for treatment of pregnancy-related nausea and vomiting, an unapproved, off-label use of the drug.

138. As demonstrated above, before any generic manufacturer was even permitted to enter the market for ondansetron, GSK preemptively undertook to instruct, advise, and warn

doctors regarding the use of ondansetron for treatment of pregnancy-related nausea, an unapproved use. Moreover, by 2006, when GSK's patent expired, GSK had already established the safety profile for ondansetron's use in pregnant women and the drug as a safe, medically-approved standard of care for treatment of pregnancy-related nausea. Because they are not required to conduct clinical, epidemiological, or animal studies for even approved uses for a prescription drug, no generic ondansetron manufacturer was even in a position to warn doctors knowledgeably regarding its unapproved use in pregnant women. As a result, GSK completely supplanted all generic ondansetron manufacturers in assuming their duty to warn physicians and prescribing health care professionals with regard to the use of ondansetron for treatment of pregnancy-related nausea and vomiting, an unapproved, off-label use of the drug.

139. GSK breached its undertaken duties, as outlined above, by the following:

a. Failing to provide adequate and accurate warnings and information to doctors, prescribing health care professionals, and the medical community regarding the dangers associated with and, in particular, the teratogenic side effects of the use of ondansetron in pregnant women.

b. Providing false and misleading warnings and information to doctors, prescribing health care professionals, and the medical community regarding the safety of the use of ondansetron in pregnant women and, in particular, the teratogenic side effects of the use of ondansetron in pregnant women.

c. Failing to conduct adequate testing, including pre-clinical and clinical testing and post-marketing surveillance to determine the safety risks of Zofran for treating pregnant women while promoting the use of Zofran and providing kickbacks to

health care professionals to convince health care professionals to prescribe Zofran for pregnancy-related nausea;

d. Marketing Zofran for the treatment of morning sickness in pregnant women without testing it determine whether or not Zofran was safe for this use;

e. Designing, manufacturing, producing, promoting, formulating, creating, and/or designing Zofran without adequately and thoroughly testing it;

f. Selling Zofran without conducting sufficient tests to identify the dangers posed by Zofran to pregnant women;

g. Failing to adequately and correctly warn the Plaintiffs, the public, the medical and healthcare profession, ondansetron ANDA holders, and the FDA of the dangers of Zofran for pregnant women;

h. Failing to evaluate available data and safety information concerning Zofran use in pregnant women;

i. Advertising and recommending the use of Zofran without sufficient knowledge as to its dangerous propensities to cause birth defects;

j. Representing that Zofran was safe for treating pregnant women, when, in fact, it was and is unsafe;

k. Representing that Zofran was safe and efficacious for treating morning sickness and hyperemesis gravidarum when GSK was aware that neither the safety nor efficacy for such treatment has been established;

l. Representing that GSK's animal studies in rats and rabbits showed no harm to fetuses, when the data revealed impairment of ossification (incomplete bone growth) and other signs of toxicity;

m. Failing to provide adequate instructions regarding birth defects including cleft palate and cardiac malformations;

n. Failing to accompany Zofran with proper and/or accurate warnings regarding all possible adverse side effects associated with the use of Zofran;

o. Failing to include a black box warning concerning the birth defects associated with Zofran;

p. Failing to issue sufficiently strengthened warnings following the existence of reasonable evidence associating Zofran use with the increased risk of birth defects;

q. Failing to advise ondansetron ANDA holders that neither the safety nor the efficacy of Zofran for treating pregnancy-related nausea has been established and that the risks of the using the drug for that condition outweigh any putative benefit; and

r. Failing to correct its misrepresentations that the safety and efficacy of Zofran for treating morning sickness had been established.

140. Mother Plaintiff ingested ondansetron during the first trimester of her pregnancy. Such exposure to ondansetron *in utero* proximately caused Minor Plaintiff to suffer birth defects herein described. As a result of their injuries, Plaintiffs have suffered damages in excess of the jurisdictional amount.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the Seventh Amendment of the U.S. Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against GSK on each of the above-referenced claims and Causes of Action and as follows:

a) For general damages in a sum in excess of the jurisdictional minimum of this Court;

b) For medical, incidental and hospital expenses according to proof;

c) For pre-judgment and post-judgment interest as provided by law;

d) For full refund of all purchase costs of Zofran;

e) For consequential damages in excess of the jurisdictional minimum of this Court;

f) For compensatory damages in excess of the jurisdictional minimum of this Court;

g) For attorneys' fees, expenses and costs of this action; and

h) For such further and other relief as this Court deems necessary, just and proper.

Dated: October 30, 2015

Respectfully submitted,

/s/ W. Roger Smith, III

W. Roger Smith, III (SMITW1691)
Andy D. Birchfield, Jr. (ASB-3625-C48A)
Elizabeth A. Eiland (ASB-4028-V40K)
BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.
234 Commerce Street
Post Office Box 4160
Montgomery, Alabama 36103-4160
(334) 269-2343 Telephone
(334) 954-7555 Facsimile
Roger.Smith@BeasleyAllen.com
Andy.Birchfield@BeasleyAllen.com

Ed Blizzard
Scott Nabers
Matt Greenberg
440 Louisiana, Suite 1710
Houston, TX 77002
713/844-3750 telephone
713/844-3755 facsimile
eblizzard@blizzardlaw.com
snabers@blizzardlaw.com
mgreenberg@blizzardlaw.com

Counsel for Plaintiffs

U.S. Department of Justice

Carmen M. Ortiz
United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

June 27, 2012

Geoffrey E. Hobart
Matthew J. O'Connor
Covington & Burling, LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401

Re: United States v. GlaxoSmithKline LLC

Dear Counsel:

This letter sets forth the Agreement between the United States Attorney for the District of Massachusetts ("the U.S. Attorney") and the United States Department of Justice ("collectively, the "United States") and your client, GlaxoSmithKline LLC ("GSK"), in the above-referenced case. The Agreement is as follows:

1. Change of Plea

At the earliest practicable date, GSK shall waive indictment and plead guilty to a three-count Information attached to this Agreement as Exhibit A. Count One charges GSK with delivery into interstate commerce of a misbranded drug, Paxil, in violation of 21 U.S.C. §§ 331(a), 333(a)(1) and 352(a). Count Two charges GSK with delivery into interstate commerce of a misbranded drug, Wellbutrin, in violation of 21 U.S.C. §§ 331(a), 333(a)(1), and 352(f). Count Three charges GSK with failure to report data relating to clinical experience, along with other data and information, regarding Avandia to the FDA as required by law, in violation of 21 U.S.C. §§ 331(e), 333(a)(1), and 355(k)(1). GSK expressly and unequivocally admits that it committed the crimes charged in the Information, and is in fact guilty of those offenses. GSK also agrees to waive venue, to waive any applicable statute of limitations, and to waive any legal or procedural defects in the Information.

2. Penalties

GSK faces the following maximum penalties with respect to the counts of conviction:

a. Count One (21 U.S.C. §§ 331(a), 333(a)(1), 352(a) regarding Paxil):

i. A fine of $200,000, or twice the gross gain derived from the offense or twice the gross loss to a person other than the defendant, whichever is greater. *See* 18 U.S.C. §§ 3571(c)(5) and (d). Given GSK's gross gain from the offense in Count One was $99,855,000, the maximum possible fine in connection with this Count is $199,710,000;

ii. A term of probation of not more than five (5) years. *See* 18 U.S.C. § 3561(c)(2);

iii. Restitution to any victims of the offense. *See* 18 U.S.C. § 3563; and

iv. A mandatory special assessment of $125. *See* 18 U.S.C. § 3013(a)(1)(B)(iii).

b. Count Two (21 U.S.C. §§ 331(a), 333(a)(1), 352(f) regarding Wellbutrin):

i. A fine of $200,000, or twice the gross gain derived from the offense or twice the gross loss to a person other than the defendant, whichever is greater. *See* 18 U.S.C. §§ 3571(c)(5) and (d). Given GSK's gross gain from the offense in Count Two was $346,521,000, the maximum possible fine in connection with this Count is $693,042,000;

ii. A term of probation of not more than five (5) years. *See* 18 U.S.C. § 3561(c)(2);

iii. Restitution to any victims of the offense. *See* 18 U.S.C. § 3563; and

iv. A mandatory special assessment of $125. *See* 18 U.S.C. § 3013(a)(1)(B)(iii).

c. Count Three (21 U.S.C. §§ 331(e), 333(a)(1), 355(k)(1) regarding Avandia):

i. A fine of $200,000, or twice the gross gain derived from the offense or twice the gross loss to a person other than the defendant, whichever is greater. *See* 18 U.S.C. §§ 3571(c)(5) and (d). Given GSK's gross gain from the offense in Count Three was $151,633,000, the maximum possible fine in connection with this Count is $303,266,000;

ii. A term of probation of not more than five (5) years. *See* 18 U.S.C. § 3561(c)(2);

iii. Restitution to any victims of the offense. *See* 18 U.S.C. § 3563; and

iv. A mandatory special assessment of $125. *See* 18 U.S.C. § 3013(a)(1)(B)(iii).

3. Fed. R. Crim. P. 11(c)(1)(C) Plea

This plea agreement is made pursuant to Fed. R. Crim. P. 11(c)(1)(C), and GSK's plea will be tendered pursuant to that provision. In accordance with Fed. R. Crim. P. 11(c)(1)(C), if the District Court ("Court") accepts this plea agreement, the Court must include the agreed disposition in the judgment. If the Court rejects any aspect of this plea agreement or fails to impose a sentence consistent herewith, this Agreement shall be null and void at the option of either the United States or GSK, with the exception of Paragraph 12 (Waiver of Defenses) which shall remain in full effect. GSK expressly understands that it may not withdraw its plea of guilty unless the Court rejects this Agreement under Fed. R. Crim. P. 11(c)(5) or fails to impose a sentence consistent herewith.

GSK may seek sentencing by the District Court immediately following the Rule 11 plea hearing. The United States does not object to the Court proceeding to sentence GSK immediately following the Rule 11 plea hearing or in the absence of a Presentence Report in this case. GSK understands that the decision whether to proceed immediately following the plea hearing with the sentencing proceeding, and to do so without a Presentence Report, is exclusively that of the United States District Court.

4. Sentencing Guidelines

The parties agree that while the fine provisions of the United States Sentencing Guidelines ("U.S.S.G.") do not apply to organizational defendants for misdemeanor violations of the Food, Drug and Cosmetic Act, *see* U.S.S.G. § 8C2.1, the agreed upon fine is consonant with those guidelines and takes into account GSK's conduct under 18 U.S.C. §§ 3553 and 3572, as follows:

a. The parties agree that the base fine is $598,009,000 in that such amount was the reasonably estimated pecuniary gain to the organization from the offenses *See* U.S.S.G. §§ 8C2.4(a), 8C2.3;

b. Pursuant to U.S.S.G. § 8C2.5, the culpability score is eight (8), which is determined as follows:

i. Base culpability score is five (5) pursuant to U.S.S. G. § 8C2.5(a);

ii. Add five (5) points pursuant to U.S.S.G. § 8C2.5(b)(1)(A); and

iii. Deduct two (2) points for GSK's full cooperation and acceptance of responsibility for its criminal conduct pursuant to U.S.S.G. § 8C2.5(g)(2).

c. Pursuant to U.S.S.G. § 8C2.6, the appropriate multiplier range associated with a culpability score of eight (8) is 1.6 to 3.2; and

d. Thus, the advisory Guideline Fine Range is $956,814,400 to $1,196,018,000. *See* U.S.S.G. §§ 8C2.7(a), (b); 18 U.S.C. §§ 3571(c), (d).

The U.S. Attorney may, at her sole option, be released from her commitments under this Agreement, including, but not limited to, her agreement that Paragraph 5 constitutes the appropriate disposition of this case, if at any time between GSK's execution of this Agreement and sentencing, GSK:

(a) Fails to admit a complete factual basis for the plea;

(b) Fails to truthfully admit its conduct in the offenses of conviction;

(c) Falsely denies, or frivolously contests, relevant conduct for which GSK is accountable under U.S.S.G. § 1B1.3;

(d) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which GSK is accountable under U.S.S.G. § 1B1.3;

(e) Engages in acts which form a basis for finding that GSK has obstructed or impeded the administration of justice under U.S.S.G. § 3C1.1;

(f) Commits a crime; or

(g) Attempts to withdraw its guilty plea.

5. Agreed Disposition

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and GSK agree that the appropriate disposition of this case is as follows, and will result in imposition of a reasonable sentence that is sufficient, but not greater than necessary, taking into consideration all of the factors set forth in 18 U.S.C. §§ 3553(a) and 3572:

a. a criminal fine in the amount of $956,814,400 to be imposed as follows:

i. Count One: $159,768,000

ii. Count Two: $554,433,600

iii. Count Three: $242,612,800

GSK shall pay this fine within one week of the date of sentencing;

b. a mandatory special assessment in the amount of $375 pursuant to 18 U.S.C. § 3013;

c. forfeiture in the amount of $43,185,600 to be paid within one week of the date of sentencing;

d. The United States agrees that it will not seek a separate restitution order as to GSK as part of the resolution of the Information and the Parties agree that the appropriate resolution of this case does not include a restitution order for the following reasons:

i. Counts One and Two: In light of the pending civil actions, including United States et al. ex rel. Thorpe, et al. v. GSK et al., Civ. No. 11-10398 (D. Mass.), and the Civil Settlement Agreement between GSK and the United States and others (which is being signed contemporaneously with this Plea Agreement, and is attached hereto as Exhibit B), which requires payment of $1,042,612,800 plus interest from December 1, 2011, the parties agree that the complication and prolongation of the sentencing process that would result from an attempt to fashion a restitution order outweighs the need to provide restitution to the non-federal victims, if any, in this case, given that numerous unknown individuals and insurance companies purchased Paxil and Wellbutrin, that many of those persons and companies have obtained restitution in private actions, and that tracing reimbursements to the various unknown insurance companies and patients and determining the apportionment of payment pertaining to the products at issue would be extraordinarily difficult, if not impossible. *See*, 18 U.S.C. § 3663(a)(3); *Cf.* 18 U.S.C. § 3663(a)(1)(B)(ii).

ii. Count Three: No identifiable economic loss appears to have been suffered by the federal Food and Drug Administration ("FDA"), and the parties were unable to determine any economic loss to others directly and proximately caused by this offense of conviction in this case. In addition, in light of the Civil Settlement Agreement between

the United States and GSK (being signed contemporaneously with this Plea Agreement, and attached hereto as Exhibit C) which requires the payment of $657,387,200, plus interest from December 1, 2011, the parties agree that the complication and prolongation of the sentencing process that would result from an attempt to fashion a restitution order outweighs the need to provide restitution to any non-federal victims in this case if any such victims exist given that establishing causation of loss to others by the delay in providing this particular information to the FDA would be extraordinarily difficult, if not impossible. *Cf.* 18 U.S.C. § 3663(a)(1)(B)(ii).

e. The United States agrees that it will not seek a term of probation in light of (i) the Compliance Measures and Certifications attached hereto as Addendum A; and (ii) the Corporate Integrity Agreement entered into between GSK and the Office of Inspector General of the Department of Health and Human Services, attached as Exhibit D.

6. No Further Prosecution of GSK

Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States agrees that, other than the charges in the attached Information, it shall not further prosecute GSK for any additional federal criminal charges with respect to the conduct covered by the Information, conduct that was the subject of the grand jury investigation in the District of Massachusetts, or facts currently known to the United States regarding:

(a) GSK's sales, marketing and promotion of Imitrex, Lamictal, Lotronex, Flovent, Paxil, Valtrex, Wellbutrin, and Zofran between January 1998 and December 2004;

(b) GSK's sales, marketing and promotion of Advair between January 1998 and June 2010;

(c) GSK's communications with and reporting to the FDA in connection with Advair, Paxil, and Wellbutrin between July 1998 and December 2004;

(d) GSK's sales, marketing and promotion of Avandia, Avandamet, and Avandaryl between January 2000 and December 2010; and

(e) GSK's communications with and reporting to the FDA in connection with Avandia, Avandamet, and Avandaryl.

This declination is expressly contingent upon:

(1) the guilty plea of GSK to the attached Information being accepted by the Court and not withdrawn or otherwise challenged; and

(2) GSK's performance of all of its obligations as set forth in this Agreement and the attached Civil Settlement Agreements.

If GSK's guilty plea is not accepted by the Court or is withdrawn for any reason, or if GSK should fail to perform any obligation under this Agreement or the Civil Settlement Agreements, this declination of prosecution shall be null and void.

The United States expressly reserves the right to prosecute any individual, including but not limited to present and former officers, directors, employees, and agents of GSK, in connection with the conduct encompassed by this plea agreement, within the scope of the grand jury investigation, or known to the United States.

7. Payment of Mandatory Special Assessment

GSK shall pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing.

8. Waiver of Right to Appeal and to Bring Other Challenge

a. GSK has conferred with its attorneys and understands that it has the right to challenge its convictions in the United States Court of Appeals for the First Circuit ("direct appeal"). GSK waives any right it has to challenge its conviction on direct appeal or in any future proceeding;

b. GSK has conferred with its attorneys and understands that defendants ordinarily have a right to appeal their sentences and may sometimes challenge their sentences in future proceedings. GSK understands, however, that once the Court accepts this Rule 11(c)(1)(C) plea agreement, the Court is bound by the parties' agreed-upon sentence. GSK may not contest the agreed-upon sentence in an appeal or challenge the sentence in a future proceeding in federal court. Similarly, the Court has no authority to modify an agreed-upon sentence under 18 U.S.C. § 3582(c), even if the Sentencing Guidelines are later modified in a way that appears favorable to GSK. Given that a defendant who agrees to a specific sentence cannot later challenge it, and also because GSK desires to obtain the benefits of this Agreement, GSK agrees that it will not challenge the sentence imposed in an appeal or other future proceeding. GSK also agrees that it will not seek to challenge the sentence in an appeal or future proceeding even if the Court rejects one or more positions advocated by any party at sentencing; and

c. The United States agrees that it will not appeal the imposition by the Court of the sentence agreed to by the parties as set out in Paragraph 5, even if the Court rejects one or more positions advocated by a party at sentencing.

9. Probation Department Not Bound By Agreement

The sentencing disposition agreed upon by the parties and their respective calculations under the Sentencing Guidelines are not binding upon the United States Probation Office.

10. Forfeiture

GSK will forfeit to the United States assets subject to forfeiture pursuant to 21 U.S.C. § 334 and 28 U.S.C. § 2461(c) as a result of its guilty plea.

GSK admits that the value of the quantities of Paxil and Wellbutrin that were misbranded and distributed in violation of 21 U.S.C. § 331, totaled at least $43,185,600 in United States currency. GSK acknowledges and agrees that the quantities of Paxil and Wellbutrin which were misbranded and distributed in violation of 21 U.S.C. § 331 cannot be located upon exercise of due diligence, or have been transferred or sold to, or deposited with, a third party, placed beyond the jurisdiction of the Court, substantially diminished in value, or commingled with other property which cannot be divided without difficulty. Accordingly, GSK agrees that the United States is entitled to forfeit as "substitute assets" any other assets of GSK up to the value of the now missing directly forfeitable assets.

GSK agrees that, no later than one week after sentencing, it shall remit the amount of $43,185,600 in United States currency to the United States Marshals Service pursuant to wire instructions provided by the United States Attorney's Office. GSK and the United States agree that this payment shall satisfy any and all forfeiture obligations that GSK may have as a result of its guilty plea.

Forfeiture of substitute assets shall not be deemed an alteration of GSK's sentence. The forfeitures set forth herein shall not satisfy or offset any fine, restitution, cost of imprisonment, or other penalty imposed upon GSK, nor shall the forfeiture be used to offset GSK's tax liability or any other debt owed to the United States.

GSK agrees to consent to the entry of orders of forfeiture for the $43,185,600 in United States currency, and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding the notice of the forfeiture in the charging instrument, entry of a preliminary order of forfeiture, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. GSK acknowledges that it understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the Court to advise it of this, pursuant to Rule 11(b)(1)(J), at the time the guilty plea is accepted.

In addition to all other waivers or releases set forth in this Agreement, GSK hereby waives any and all claims arising from or relating to the forfeitures set forth in this section, including, without limitation, any claims arising under the Double Jeopardy Clause of the Fifth Amendment, or the Excessive Fines Clause of the Eighth Amendment, to the United States Constitution, or any other provision of state or federal law.

The United States District Court for the District of Massachusetts shall retain jurisdiction to enforce the provisions of this section.

11. Civil and Administrative Liability

By entering into this Agreement, the United States does not compromise any civil or administrative liability, including but not limited to any False Claims Act or tax liability, which GSK may have incurred or may incur as a result of its conduct and its plea of guilty to the attached Information.

GSK's civil liability to the United States in connection with certain of the matters under investigation by the United States is resolved in the attached Civil Settlement Agreements, according to the terms set forth in those Agreements.

12. Waiver of Defenses

If GSK's guilty plea is not accepted by the Court for whatever reason, if GSK's guilty plea is later withdrawn or otherwise successfully challenged by GSK for whatever reason, or if GSK breaches this Agreement, GSK hereby waives, and agrees it will not interpose, any defense to any charges brought against it which GSK might otherwise have under the Constitution for pre-indictment delay, any statute of limitations, or the Speedy Trial Act, except any such defense that GSK may already have for (a) conduct occurring before October 19, 2000, as further described in the parties' tolling agreement dated December 1, 2011, and attached hereto as Exhibit E; and (b) conduct occurring before May 1, 2010, as further described in the parties' tolling agreement dated September 21, 2011, attached hereto as Exhibit F. This waiver is effective provided that charges are filed within six months of the date on which such guilty plea is rejected, withdrawn, or successfully challenged, or a breach is declared by the United States.

13. Breach of Agreement

If the United States determines that GSK has failed to comply with any material provision of this Agreement (which shall not include a failure to comply with the provisions in Addendum A, any alleged breach of which is governed solely by the terms of Addendum A), the United States may, at its sole option, be released from its commitments under this Agreement in its entirety by notifying GSK, through counsel or otherwise, in writing. The United States may also pursue all remedies available under the law, even if it elects not to be released from its commitments under this

Agreement. GSK recognizes that no such breach by GSK of an obligation under this Agreement shall be grounds for withdrawal of its guilty plea. GSK understands that should it breach any material provision of this Agreement, the United States will have the right to use against GSK before any grand jury, at any trial or hearing, or for sentencing purposes, any statements which may be made by GSK, and any information, materials, documents or objects which may be provided by it to the government subsequent to this Agreement, without any limitation.

GSK understands and agrees that this Rule 11(c)(1)(C) plea agreement and its agreed upon criminal disposition:

a. are wholly dependant upon GSK's timely compliance with the material provisions of the attached Civil Settlement Agreements; and

b. failure by GSK to comply fully with the material terms of this Agreement (which, as described above, shall not include a breach of the provisions of Addendum A) or the attached Civil Settlement Agreements will constitute a breach of this Agreement.

In the event GSK at any time hereafter breaches any material provision of this Agreement (other than a failure to comply with the provisions in Addendum A, which, as described above, shall not constitute a breach of this Agreement), GSK understands that (1) the United States will as of the date of that breach be relieved of any obligations it may have in this Agreement and the attached Civil Settlement Agreements, including but not limited to the promise not to further prosecute GSK as set forth in this Agreement; and (2) GSK will not be relieved of its obligation to make the payments set forth in this Agreement and the attached Civil Settlement Agreements, nor will it be entitled to return of any monies already paid. Moreover, in the event of a material breach of this Agreement, GSK understands and agrees that the United States may pursue any and all charges that might otherwise have been brought but for this Agreement, and GSK hereby waives, and agrees it will not interpose, any defense to any charges brought against it which it might otherwise have under the Constitution for pre-indictment delay, any statute of limitations, or the Speedy Trial Act, except any such defense that GSK may already have for conduct occurring before October 19, 2000 as further described in the tolling agreement attached as Exhibit E, and for conduct occurring before May 1, 2010, as further described in the tolling agreement attached as Exhibit F.

Any breach of the provisions of Addendum A shall not constitute a breach of this Agreement and shall be resolved solely under the breach provision of that Addendum.

14. Who Is Bound By Agreement

With respect to matters set forth in Paragraph 6, this Agreement is binding upon GSK and the Office of the United States Attorney for the District of Massachusetts, the United States Attorney's Offices for each of the other 92 judicial districts of the United States, and the Consumer Protection Branch of the Civil Division of the Department of Justice. The non-prosecution provisions in Paragraph 6 are also binding on the Criminal Division of the United States Department of Justice, with the exception of any investigations of GSK that are or may be conducted in the future by the

Fraud Section of the Criminal Division regarding possible violations of the Foreign Corrupt Practices Act and related offenses in connection with the sales and marketing of GSK's products to foreign customers, which investigations are specifically excluded from the release in Paragraph 6. A copy of the letter to United States Attorney Carmen M. Ortiz from the Assistant Attorney General, Criminal Division, Department of Justice, authorizing this Agreement is attached as Exhibit G. GSK understands that this Agreement does not bind any state or local prosecutive authorities, the Tax Division of the U.S. Department of Justice or the Internal Revenue Service of the U.S. Department of the Treasury.

15. Corporate Authorization

GSK's acknowledgment of this Agreement and execution of this Agreement on behalf of the limited liability company is attached as Exhibit H. GSK shall provide to the U.S. Attorney and the Court a certified copy of a resolution of the governing authority of GSK, affirming that it has authority to enter into the Plea Agreement and has (1) reviewed the Information in this case and the proposed Plea Agreement; (2) consulted with legal counsel in connection with the matter; (3) authorized execution of the proposed Plea Agreement; (4) authorized GSK to plead guilty to the charge specified in the Information; and (5) authorized the corporate officer identified below to execute the Plea Agreement and all other documents necessary to carry out the provisions of the Plea Agreement. A copy of the resolution is attached as Exhibit I. GSK agrees that either a duly authorized corporate officer or a duly authorized attorney for GSK, at the discretion of the Court, shall appear on behalf of GSK and enter the guilty plea and will also appear for the imposition of sentence.

16. Complete Agreement

This Agreement and the attachments hereto, together with an additional Civil Settlement Agreement and attachments thereto that is set forth as Exhibit J (civil agreement regarding pricing), and the side letter with GlaxoSmithKline plc (attached as Exhibit K), set forth the complete and only agreement between the parties relating to the disposition of this case and are the complete and only agreements between the parties. No promises, agreements, or conditions have been entered into other than those set forth or referred to in the above-identified documents. This Agreement supersedes prior understandings, if any, of the parties, whether written or oral. This Agreement cannot be modified other than in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the Agreement between the United States and your client, GSK, please have the authorized representative of GSK sign the Acknowledgment of Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorneys Sara

Miron Bloom and Susan G. Winkler of the United States Attorney's Office for the District of Massachusetts.

Very truly yours,

CARMEN M. ORTIZ
UNITED STATES ATTORNEY
DISTRICT OF MASSACHUSETTS

Sara Miron Bloom
Susan G. Winkler
Shannon T. Kelley
Amanda Strachan
Brian Perez-Dapple
Assistant U.S. Attorneys

STUART F. DELERY
ACTING ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION
DEPARTMENT OF JUSTICE

Patrick Jasperse
Jill Furman
Mark L. Josephs
David Frank
Timothy Finley
Trial Attorneys
Consumer Protection Branch
U.S. Department of Justice

ADDENDUM A

COMPLIANCE MEASURES AND CERTIFICATIONS

GlaxoSmithKline LLC ("GSK") agrees that, prior to entering its plea of guilty, it has instituted and will maintain policies and procedures to prevent further violations of the Federal Food, Drug and Cosmetic Act ("FDCA") in its sales, marketing and promotion of prescription pharmaceutical products, and specifically for at least five years following entry of the plea, will do the following:

I. COMPLIANCE MEASURES

A. Compensation and Incentives Not Based on Sales

GSK will maintain policies and procedures that shall (1) be designed to ensure that financial incentives do not inappropriately motivate prescriber-facing field sales professionals or their direct managers to engage in improper promotion, sales, and marketing of GSK's prescription pharmaceutical products; and (2) include mechanisms, where appropriate to exclude from incentive compensation sales that may indicate off-label promotion of prescription pharmaceutical products. These policies and procedures are collectively referred to as the "Patient First Program." Pursuant to the Patient First Program, which GSK has already implemented, GSK shall not provide financial reward (through compensation, including incentive compensation or otherwise) or discipline (through tangible employment action) to its prescriber-facing field sales professionals or their direct managers based upon the volume of sales of GSK products within a given employee's own territory or the manager's district. Instead, GSK will evaluate its sales representatives based on business acumen, customer engagement, and scientific knowledge about GSK's products.

B. Full, Fair and Accurate Reporting of Scientific Data

For at least the next five years, GSK will continue to maintain standards, policies and practices (consistent with GSK's Policy 408) regarding full, fair, and accurate reporting and transparency in scientific data in the following ways:

(1) GSK will, in relation to GSK-sponsored studies of prescription pharmaceutical products, publicly disclose: (a) at the time of primary publication of a human research study, the full clinical study protocol (with the removal of any personally identifiable information), (b) a protocol summary before enrollment begins and after completion of the study, a summary of primary and secondary efficacy endpoints, and safety results for interventional human subject research studies (in which participants are administered medical care, medicinal products, and/or medical/scientific procedures as described in a research protocol), (c) a

summary protocol and, after completion, a summary of the results for observational studies designed to inform safety, efficacy, or effectiveness (including cost-effectiveness); and (d) a protocol summary or plan for analysis and, after completion, a summary of results for meta-analyses and pooled analyses designed to inform appropriate, effective, or safe use.

(2) GSK will register summary results from all applicable GSK-sponsored clinical trials of GSK prescription pharmaceutical products, and report results of such clinical trials on the National Institutes of Health sponsored website (www.clinicaltrials.gov) in compliance with all federal requirements, and any changes to those requirements.

(3) GSK will seek to publish the results of GSK-sponsored research studies, certain GSK-sponsored observational research studies and certain GSK-sponsored meta-analyses and pooled analyses, in peer-reviewed, searchable journals. GSK will also continue its operating practices that require, among other requirements, implementation of data dissemination plans that establish prospective publication strategies for GSK-sponsored research and address requirements for appropriateness, accuracy, and balance in publications of GSK-sponsored research. In all publications about GSK-sponsored research, GSK shall acknowledge its role as the funding source.

(4) GSK will require all GSK-sponsored research to be approved by its medical and/or research organizations. GSK will maintain its current policy that no sales, marketing or other commercial personnel may participate in the design, conduct, or publication of GSK-sponsored research, with limited exceptions relating to non-interventional health outcome studies (for which a relevant GSK medical group has oversight). GSK will continue to assure its human subject research and resulting publications are intended to foster increased understanding of scientific, clinical or medical issues.

(5) GSK will require as a condition of its funding that all researchers disclose in any publication of GSK-sponsored research GSK's support and any financial interest the researcher may have in GSK (including any interest in any GSK prescription pharmaceutical product). GSK will require all authors of journal articles about GSK-sponsored research to adhere to International Committee of Medical Journal Editors (ICMJE) requirements regarding authorship except when a journal requires an alternative procedure.

(6) GSK will, by September 1, 2012, require that its employees and medical writing contractors complete, and GSK will maintain for ten years, as to any publication regarding GSK-sponsored research on which the employee or contractor is listed as an author, a certification that the publication provides a fair, accurate, and balanced summary of the GSK-sponsored research.

(7) GSK will require that a person will be represented as an "author" on any GSK publication of GSK-sponsored research only if he or she has made substantial contributions to the study and has final approval of the version to be published.

(8) GSK will properly report adverse event data to the FDA. GSK will maintain policies and procedures designed to ensure that all periodic reports to the FDA contain all required information and data regarding clinical studies. GSK will require investigators to report study-related information and data, including data about adverse events before receiving final payment from GSK.

C. Payer Related Obligations

For a period of at least five years from the entry of the plea, GSK will adopt and maintain policies and procedures governing its strategies and practices in contracting, Payer negotiations and interactions, providing of discounts and rebates, and interactions relating to formularies and co-pay status and amounts ("Payer-Related Functions"), which policies shall provide that GSK will perform these functions in compliance with all applicable laws and federal and state health care program requirements, and shall be consistent with GSK U.S. Commercial Practices Policy regarding "Administration of Contracts with Payers."

D. No Sales and Marketing Role in Independent Medical Education

GSK will maintain policies that prohibit commercial involvement in independent medical education ("IME") programs, while also ensuring that this programming is focused on genuine educational need and scientific development. GSK will require that the content, organization, and operation of the IME program (including the faculty, educational methods, materials, and venue) be independent of GSK's control. GSK's commercial organization (including the sales and marketing departments) will have no involvement in, or influence over, the review and approval of independent medical education grants.

E. Require Confirmation That Requests for Information Were Unsolicited

GSK will maintain its policy that prohibits sales personnel from engaging in off-label promotion (directly or indirectly) and requiring sales personnel to refer all requests for

information about off-label uses to Medical Affairs personnel. GSK will require sales personnel to obtain a signature from the medical professional who verbally requested written information regarding off-label uses in order to confirm the information requested and that the request was unsolicited.

II. NOTIFICATION OF SETTLEMENT

Within ninety (90) days of the public announcement of the settlement, GSK will send a letter to health care providers that GSK currently details regarding the products at issue in this resolution, the terms of the resolution, and a link to a website that will contain all of the relevant public resolution documents relating to this matter.

Within ninety (90) days of the public announcement of the settlement, GSK will send a letter to all payers with whom GSK currently has contracts or enters into contracts for formulary access or rebates (including all state Medicaid programs) regarding the products at issue in this resolution, the terms of the resolution, and a link to a website that will contain all of the relevant public resolution documents relating to this matter.

III. CERTIFICATIONS AND REPORTING TO THE UNITED STATES

In addition to any commitment to provide any certifications and reports to other government agencies or entities, GSK shall provide the following reports and certifications to the United States Department of Justice for a period of five years commencing on the date of sentencing. The certifications and reports shall be sent to:

Chief, Health Care Fraud Unit
U.S. Attorney's Office
One Courthouse Way, Suite 9200
Boston, MA 02210

and

Director, Consumer Protection Branch
Civil Division
Department of Justice
450 5th Street, NW
Washington, DC 20530

A. Annual GSK's U.S. President Certification

The President of GSK's North America Pharma division ("GSK's U.S. President") shall conduct a review of the effectiveness of GSK's Compliance Program as it relates to the marketing, promotion, and sale of prescription pharmaceutical products during the preceding year. The first review period shall run from the date of sentencing through December 31, 2013. Thereafter, the reviews will be conducted on an annual basis. Based on his or her review, GSK's

U.S. President shall submit to the United States a signed certification stating that, to the best of his or her knowledge, during the period [insert time period]: (1) GSK's Compliance Program continued to include the compliance policies and procedures set forth in the section of this Addendum entitled "COMPLIANCE MEASURES," and (2) to the extent that a Reportable Incident (as that term is defined below) has been determined to have occurred, GSK has fully complied with the Reportable Incident reporting requirements of this Addendum. The certification by GSK's U.S. President shall summarize the review described above that he or she conducted to provide the required certification. If GSK's U.S. President is unable to provide any part of this certification regarding GSK's compliance, he or she shall provide an explanation of why he or she is unable to provide such certification. This certification shall be provided within 60 calendar days following the end of each review period.

B. Annual Board of Directors Resolution

The Board of Directors of GlaxoSmithKline plc, or a designated Committee thereof (the "Board"), shall conduct a review of the effectiveness of GSK's Compliance Program as it relates to the marketing, promotion, and sale of prescription pharmaceutical products. This review shall be conducted on an annual basis and shall include, but not be limited to, updates and reports by GSK's Compliance Officer and other compliance personnel. The Board shall evaluate the effectiveness of the Compliance Program, including, among other means, by receiving updates about the activities of the Compliance Officer and other compliance personnel and updates about adoption and implementation of policies, procedures, and practices designed to ensure compliance with applicable Federal health care program and FDA requirements. The first review will cover the time period from the date of sentencing through December 31, 2013. Thereafter the reviews will be conducted on an annual basis. Based on its review, the Board shall submit to the United States a resolution that summarizes its review and oversight of GSK's compliance with Federal health care program requirements and FDA requirements and, at a minimum, includes the following language:

> The Board of Directors has made a reasonable inquiry into the operations of GSK's Compliance Program for the time period [insert time period], including the performance of the Compliance Officer and the compliance personnel who are Covered Persons under the Corporate Integrity Agreement ("CIA") between GSK and the Office of Inspector General of the United States Department of Health and Human Services ("OIG-HHS"). The Board has concluded that, to the best of its knowledge, GSK has implemented an effective Compliance Program to meet Federal health care program requirements, FDA requirements, and the requirements of the Addendum to the Plea Agreement.

If the Board is unable to provide any part of this statement, it shall include in the resolution an explanation of the reasons why it is unable to provide such a statement about the effectiveness of GSK's Compliance Program. This resolution shall be provided within 60 calendar days following the end of each review period.

C. Reportable Incidents

Fifteen days after the end of each calendar quarter (that is, by January 15 for the calendar quarter ending December 31, April 15 for the calendar quarter ending March 31, July 15 for the calendar quarter ending June 30, and October 15 for the calendar quarter ending September 30) GSK shall submit a report to the United States in writing stating whether any Reportable Incidents have been determined to have occurred during the preceding calendar quarter, and providing updated information about Reportable Incidents that occurred during any other calendar quarters. A Reportable Incident is any matter that a reasonable person would consider a probable violation of the FDCA, 21 U.S.C. §§ 331(a) or (k), related to the misbranding of a prescription pharmaceutical product within the meaning of 21 U.S.C. § 352; and/or a probable violation of 21 U.S.C. §§ 331(e) and 355(k) related to the failure to provide required reports for prescription pharmaceutical products, including reports of data relating to clinical experience and other information as required by the FDA. A Reportable Incident may be the result of an isolated event or a series of occurrences. The written report to the United States shall include: (i) a complete description of the Reportable Incident, including the relevant facts, identity of persons involved, and legal authorities implicated; (ii) a description of GSK's actions taken to investigate and correct the Reportable Incident; and (iii) a description of any further steps GSK plans to take to address the Reportable Incident and prevent it from recurring. Any Reportable Incident determined to have occurred by GSK shall be promptly reported to the President of GSK's North America Pharma division. The first calendar quarter for which a report shall be due under this Paragraph is the quarter ending December 31, 2012.

D. SEC Filings

Within seven (7) days of filing, GSK shall submit copies of each Securities and Exchange Commission Form 6-K.

E. DEFINITIONS

For the purpose of this addendum, the following terms shall have the following meaning:

1. The term "certification" shall mean a statement sworn to under the pains and penalties of perjury and which shall set forth that the representations contained therein may be provided to, relied upon and material to the government of the United States, and that a knowing false statement could result in criminal or civil liability for the signatory.

2. The term "Compliance Officer" refers to the Vice President and Compliance Officer for GSK's North America Pharma division. For at least the term of this Addendum, the Compliance Officer shall be a member of GSK's senior management of the North America Pharma division and GSK's U.S. Compliance Committee. Not later than thirty

(30) days after the date of sentencing, GSK shall notify the United States in writing of the name of the Compliance Officer and provide a written description of that person's responsibilities with respect to complying with the FDCA and FDA's regulations and guidance documents relating to the marketing, promotion, and sale of prescription pharmaceutical products. GSK shall, in writing, report to the United States any changes in the identity of or any material changes in the position and responsibilities of the Chief Compliance Officer within fifteen (15) days of any such change.

3. The term "U.S. Compliance Committee" refers to the North America Pharma Risk Management & Compliance Board which, in conjunction with the Compliance Officer, assists in the implementation and enhancement of the Compliance Program. For at least the term of this Addendum, this committee shall, at a minimum, include the Chief Compliance Officer and other members of North America Pharma division senior management with responsibilities concerning the marketing, promotion, and sale of GSK's prescription pharmaceutical products. Not later than thirty (30) days after the date of sentencing, GSK shall notify the United States in writing of the names of the members of the U.S. Compliance Committee and provide a written description of their responsibilities with respect to complying with the FDCA and FDA's regulations and guidance documents relating to the marketing, promotion, and sale of prescription pharmaceutical products. GSK shall, in writing, report to the United States any changes in the composition of the U.S. Compliance Committee. This report shall be provided within fifteen (15) days of any such change.

4. The term "Compliance Program" refers to the policies, procedures, practices, and other measures that GSK has established or will establish to address regulatory compliance issues relating to the marketing, promotion and sale of prescription pharmaceutical products, including GSK's compliance with FDCA and FDA regulations and guidance documents.

5. The term "prescription pharmaceutical products" means drugs marketed, promoted, or sold in the United States and intended for use by humans which must be used under the supervision of a practitioner licensed by law to administer such drugs. 21 U.S.C. § 353(b)(1).

6. The term "Payers" refers to entities that provide a drug health benefit program for prescription pharmaceutical products, including but not limited to government payers (e.g., Medicaid and Medicare) or individuals or entities under contract with or acting on behalf of government payers and commercial health plans.

IV. BREACH OF THIS ADDENDUM

GSK recognizes that each of the terms in this Addendum constitutes a material term of this Addendum. As a contractual remedy, GSK and the United States agree that failure to comply with the obligations set forth in this Addendum may lead to the imposition of the following monetary penalties (hereafter referred to as "Stipulated Penalties") in accord with the following provisions.

A. A Stipulated Penalty of $20,000 per day for each day GSK (1) fails to maintain each of the compliance measures set forth in Subsection I, above (if more than one compliance measure fails to be maintained, the Stipulated Penalty will apply separately to each compliance measure); or (2) fails to timely supply any of the certifications or reports required in Subsection III, above. With regard to the certifications and reports, the Stipulated Penalty will begin to accrue on the day after the date the obligation was due, subject to the provisions for extension of time for compliance and the opportunity to cure set forth below.

B. GSK may submit a timely written request for an extension of time to provide any certification or report required in Subsection III. A written request is timely if received by the Chief of the Healthcare Fraud Unit for the U.S. Attorney's Office for the District of Massachusetts at least five business days prior to the date by which the certification or report is due. Timely requests for extension will not be unreasonably denied. If an extension of time is granted in writing, Stipulated Penalties shall not accrue until one day after GSK fails to meet the revised deadline. If not granted, Stipulated Penalties shall not begin to accrue until three business days after GSK receives the United States' written denial of such request or the original due date, whichever is later.

C. Upon the United States' sole reasonable determination that GSK has failed to comply with any of the obligations described herein, the United States shall notify GSK in writing of GSK's failure to comply and the United States' exercise of its contractual right to demand payment of the Stipulated Penalties (the "Demand Letter"). The Demand Letter shall set forth: (i) the provision breached; (ii) the date of the breach; (iii) a description of the breach sufficient to permit GSK to cure (as described below); and (iv) the amount of Stipulated Penalties claimed by the United States as of the date of the Demand Letter. Within fourteen (14) days after receipt of the Demand Letter, or such other period as the United States may agree in writing, GSK shall cure the breach to the United States' reasonable satisfaction ("Cure Period"). If GSK cures the breach within the Cure Period, no Stipulated Penalties shall be due. If GSK fails to cure the breach during the Cure Period, Stipulated Penalties calculated from the date of breach to the date of payment shall be immediately payable to the United States. The Stipulated

Penalties shall be paid by electronic fund transfer according to wire instructions that will be provided by the United States. A joint reasonable determination by the United States Attorney for the District of Massachusetts and the Assistant Attorney General for the Civil Division regarding GSK's failure to comply with any of the obligations described herein will be final and non-appealable. GSK agrees that the United States District Court for the District of Massachusetts shall have jurisdiction over any action to collect such a penalty.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Alabama

Elizabeth Shellstrom and Justin Shellstrom, Individually and as Parents and Natural Guardians of D.M.S., a Minor,

Plaintiff(s)

v.

GLAXOSMITHKLINE, LLC,

Defendant(s)

Civil Action No. 15-cv-00558

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* GLAXOSMITHKLINE, LLC,
1403 Soulk Road
Wilmington, DE 19803

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: W. Roger Smith, III
Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.
Post Office Box 4160
Montgomery, AL 36103

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 15-cv-00558

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

15-CV-558-N

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Elizabeth Shellstrom and Justin Shellstrom, Individually and as Parents and Natural Guardians of D.M.S., a Minor,

(b) County of Residence of First Listed Plaintiff Baldwin County, AL
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
W. Roger Smith, III, Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.
Post Office Box 4160, Montgomery, AL 36103; (334) 269-2343

DEFENDANTS

GlaxoSmithKline, LLC

County of Residence of First Listed Defendant New Castle, DE
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. § 1332 (Diversity)

Brief description of cause:
Product Liability, Fraud, Misrepresentation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
10/30/2015

SIGNATURE OF ATTORNEY OF RECORD
/s/ W. Roger Smith, III

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____