ATT: No

(Attachments: No)

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BARBARA BOLTON-CARON, an individual; **WILLA BOOTH,** an individual; **BEN BRAASCH**, an individual; **DAVE BRASHEARS**, an individual; **PAMELA BRITTAIN**, an individual; **MARIE BRITTON**, an individual; **DONNA BURNS**, an individual; **ALOMA BUSH**, an individual; **TERESA CANNON**, an individual; **VIRGINIA CAREY**, an individual; **JANET CERASI**, an individual; **LINDA COLLINS,** an individual; **SHARON DAVIS**, an individual; **MARY DENNIE**, an individual; **FRANCIS DORLEY**, an individual; **GARY DUGAN**, an individual; **DARLENE EATON,** an individual; **ROBERT ENGLEMAN**, an individual; **HARRY FRIED**, an individual; **CATHERINE GASSMAN**, an individual; **JONAS GOULD**, an individual; **WAYNE GRANER**, an individual; **LINDA HAGEN**, an individual; **ROGER HARPER**, an individual; **MAXINE HARRIS**, an individual; **RAY HASLEY**, an individual; **LOGAN HOLT**, an individual; **GERALD HOWARD**, an individual; **JEANNE HOY**, an individual; **MARY HUTTON**, an individual; **BEVERLY JOHNSON**, an individual; **DIANN JOHNSON**, an individual; **MERCELLEA JONES**, an individual; **PAUL JURKOWSKI**, an individual; **VIRGINIA JUSTICE**, an individual; **JANICE KELLER**, an individual; **LAWRENCE LAVERGNE**, an individual;	**SUPERIOR COURT** **OF NEW JERSEY** **LAW DIVISION** **MIDDLESEX COUNTY** DOCKET NO.: CIVIL ACTION **COMPLAINT AND JURY DEMAND**

MARI LEECH, an individual;
JEFFERY LEWIS, an individual;
JOHNNIE MASON, an individual;
JUNE MATHOT, an individual;
LOUISE MATTHEWS, an individual;
MICHAEL MCMAHON, an individual;
NANCY MEIGS, an individual;
JUANITA MIGGLETTO, an individual;
ROBERT MORGAN, an individual;
LINDA MORRIS, an individual;
BARBARA MOUNTAIN, an individual;
JANICE NELSON, an individual;
SHIRLEY NOLAND, an individual;
LYNETTE RODRIGUEZ, an individual;
ROBERT RUBLE, an individual;
PORTIA SANDERS, an individual;
ALVIN SCHLIESKE, an individual;
MARGARET SHAMBURGER, an individual;
SANDRA STACY, an individual;
ELIZABETH STANDIFERD, an individual;
CLARA STIERLEY, an individual;
LEWIS STROBLE, an individual;
DONALD THOMPSON, an individual;
STEVEN TROC, an individual;
CHARLYNN TRUITT, an individual;
JOSEPH WAGNER, an individual;
RALPH WALENTOWSKI, an individual;
DIANE WALSH, an individual;
LLOYD WEBER, an individual;
JOHN WESSELINK, an individual;
TERRY WHEAT, an individual;
KATHY WHITEHEAD, an individual;
BRENDA WILLIAMS, an individual;
MYRNA YENTER, an individual;
ROBERT YOUNG, an individual;
JANET BACON, an individual;
ROSE BADSTIBNER, an individual;
JUDITH BLAKE, an individual;
LOIS COBB, an individual;
POLLY DARLING, an individual;
GEORGIA DRAYTON, an individual;
MARILYN FLEMING, an individual;
ROGER HALE, an individual;
JAMES MCCONNELL, an individual;
BETTY PAULSON, an individual;
PORTER BEANE, an individual;

ANNIE BOYD, an individual;
STEPHEN BRONCHUK, an individual;
MICHIGAN HILL, an individual;
RANDEAN KUSSOW, an individual;
SHIRLEY LOPER, an individual;
MATTIE MANGUM, an individual;
ROBERT MASON, an individual;
KENNETH NICHOLS, an individual;
CAROLYN O'DELL, an individual;
DAWN BASCO, an individual;
ROSIA BEAN, an individual;
MARGARET BROKAW, an individual;
FLORENCE HERNANDEZ-RAMOS, an individual; and
JOSEPH LEMERISE, an individual;

Plaintiffs,

v.

MERCK & CO., INC., a corporation;
MERCK SHARP & DOHME CORP., a corporation; and **McKESSON CORP**., a corporation,

Defendants.

Plaintiffs, by and through their attorneys, MARC J. BERN & PARTNERS LLP, complain and allege against Defendants MERCK & CO., INC., MERCK SHARP & DOHME CORP., and McKESSON CORP. (collectively, "Defendants"), as follows:

INTRODUCTION

1. Plaintiffs bring this action for personal injuries and damages suffered as a direct and proximate result of being inoculated with the ZOSTAVAX vaccine intended for the prevention of shingles as designed, manufactured, marketed, promoted, distributed, and sold by Defendants.

2. The subject of the present matter is the ZOSTAVAX vaccine, intended for the prevention of herpes zoster; the shingles virus. At all times relevant to this action, Defendants

developed, designed, set specifications for, licensed, manufactured, prepared, compounded, assembled, processed, sold, distributed and/or marketed the ZOSTAVAX vaccine to be administered to patients throughout the United States, including New Jersey.

3. All named Plaintiffs' claims for damages relate to Defendants' design, manufacture, sale, testing, marketing, labeling, advertising, promotion, and/or distribution of the faulty ZOSTAVAX vaccine.

4. The ZOSTAVAX vaccine that is the subject of this action reached and was administered to all Plaintiffs, by and through their physicians, medical facilities and pharmacies without substantial change in condition from the time the ZOSTAVAX vaccine left Defendants' possession.

5. Plaintiffs, their physicians, and their pharmacists used the ZOSTAVAX vaccine in the manner in which it was intended.

6. Defendants are solely responsible for any alleged design, manufacture or information defect the ZOSTAVAX vaccine may contain.

7. Defendants do not allege that any other person or entity is comparatively at fault for any alleged design, manufacture, or informational defect regarding its ZOSTAVAX vaccine.

PARTIES

8. Plaintiff BARBARA BOLTON-CARON at all times relevant to this action was and is a citizen of the State of Washington, and residing at 1264 E. Caples Court, La Center, Washington 98629. On or about September 9, 2009, BARBARA BOLTON-CARON was inoculated with the ZOSTAVAX vaccine at The Vancouver Clinic, located in Vancouver, Washington, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and BARBARA

BOLTON-CARON subsequently contracted a persistent strain of herpes zoster. On or about September 25, 2016, BARBARA BOLTON-CARON was treated by The Vancouver Clinic from Navin Nagaraj, M.D., located in Aurora, Illinois, for the onset of a severe vesicular rash, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff BARBARA BOLTON-CARON suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff BARBARA BOLTON-CARON has suffered significant medical expenses, and pain and suffering, and other damages.

9. Plaintiff WILLA BOOTH at all times relevant to this action was and is a citizen of the State of Ohio, and residing at 5609 Tompkins Avenue, apartment number C3, Cincinnati, Ohio 45227. In 2016, WILLA BOOTH was inoculated with the ZOSTAVAX vaccine at the Kroger Pharmacy, located in Cincinnati, Ohio, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and WILLA BOOTH subsequently contracted a persistent strain of herpes zoster. In 2016, WILLA BOOTH was treated by the Mercy Health- Rookwood Medical Center, located in Cincinnati, Ohio, for the onset of a severe vesicular rash, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff WILLA BOOTH suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff WILLA BOOTH has suffered significant medical expenses, and pain and suffering, and other damages.

10. Plaintiff BEN BRAASCH at all times relevant to this action was and is a citizen of the State of Maine, and resides at 31 Brookside Lane, Portland, Maine 04103. In 2016, BEN BRAASCH was inoculated with the ZOSTAVAX vaccine at the Rite Aid Pharmacy, located in

Portland, Maine, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and BEN BRAASCH subsequently contracted a persistent strain of herpes zoster. In 2017, BEN BRAASCH was treated by the Martin's Point Healthcare from Douglas G. Couper, M.D., located in Portland, Maine, for the onset of a severe vesicular rash, which was diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff BEN BRAASCH suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff BEN BRAASCH has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

11. Plaintiff DAVE BRASHEARS at all times relevant to this action was and is a citizen of the State of South Carolina, and resides at 2180 Quiet Creek Place, Rock Hill, South Carolina 29732. On or about March 26, 2015, DAVE BRASHEARS was inoculated with the ZOSTAVAX vaccine at the Walgreens Pharmacy, located in Rock Hill, South Carolina, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and DAVE BRASHEARS subsequently contracted a persistent strain of herpes zoster. In 2017, DAVE BRASHEARS was treated by Ashok V. Patel, M.D., located in Charlotte, North Carolina, for a vesicular outbreak, which was diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff DAVE BRASHEARS suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff DAVE BRASHEARS has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

12. Plaintiff PAMELA BRITTAIN at all times relevant to this action was and is a citizen of the State of Texas, and resides at 4016 Morning Drive, Amarillo, Texas 79108. In 2015, PAMELA BRITTAIN was inoculated with the ZOSTAVAX vaccine at the City Care Facility, located in Amarillo, Texas, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and PAMELA BRITTAIN subsequently contracted a persistent strain of herpes zoster. On or about August 4, 2016, PAMELA BRITTAIN was treated by the City Care Facility, located in Amarillo, Texas, for the onset of a vesicular rash, which was diagnosed as herpes zoster. PAMELA BRITTAIN was prescribed Valtrex for management of her painful symptoms and chronic pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff PAMELA BRITTAIN suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff PAMELA BRITTAIN has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

13. Plaintiff MARIE BRITTON at all times relevant to this action was and is a citizen of the State of South Carolina, and resides at 2134 Woodfield Drive, Columbia, South Carolina 29223. In 2006, MARIE BRITTON was inoculated with the ZOSTAVAX vaccine from Erik Crook, M.D., located in Columbia, South Carolina, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and MARIE BRITTON subsequently contracted a persistent strain of herpes zoster. On or about May 8, 2014, MARIE BRITTON was treated by Philip Flynn IV, O.D., located in Columbia, South Carolina, for the onset of a vesicular rash, which was diagnosed as herpes zoster with ocular manifestations. MARIE BRITTON was prescribed Acyclovir for management of her

painful symptoms and chronic pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff MARIE BRITTON suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff MARIE BRITTON has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

14. Plaintiff DONNA BURNS, at all times relevant to this action was and is a citizen of the State of Texas, and resides at 2806 Bowie Trail, Temple, Texas 76502. In 2011, DONNA BURNS was inoculated with the ZOSTAVAX vaccine at the Bell County Public Health District, located in Temple, Texas, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles, and DONNA BURNS subsequently contracted a persistent strain of herpes zoster. In 2016, DONNA BURNS was treated by Cathleen M. Rivera, M.D., located in Temple, Texas, for the onset of a severe vesicular rash, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff DONNA BURNS suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff DONNA BURNS has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

15. Plaintiff ALOMA BUSH at all times relevant to this action was and is a citizen of the State of Alabama, and resides at 11350 Marvin Drive, Coaling, Alabama 35453. In 2015, ALOMA BUSH was inoculated with the ZOSTAVAX vaccine by Bob Grubbs, M.D., located in Tuscaloosa, Alabama, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles and ALOMA BUSH subsequently contracted a persistent strain of herpes zoster. In 2016, ALOMA BUSH was treated by the Crimson

Care Veterans Center, located in Tuscaloosa, Alabama, for the onset of a severe vesicular rash, which was diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff ALOMA BUSH suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff ALOMA BUSH has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

16. Plaintiff TERESA CANNON at all times relevant to this action was and is a citizen of the State of Tennessee, and resides at 2100 Sandra Drive, Knoxville, Tennessee 37918. On or about September 21, 2017, TERESA CANNON was inoculated with the ZOSTAVAX vaccine at the CVS Pharmacy, located in Knoxville, Tennessee, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles and TERESA CANNON subsequently contracted a persistent strain of herpes zoster. On or about September 25, 2017, TERESA CANNON was treated by Kaneez Leonard, M.D., located in Knoxville, Tennessee, for the onset of a vesicular rash, which was diagnosed as herpes zoster. TERESA CANNON was prescribed Valtrex for management of her painful symptoms and chronic pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff TERESA CANNON suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff TERESA CANNON has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

17. Plaintiff VIRGINIA CAREY at all times relevant to this action was and is a citizen of the State of Arizona and resides at 39170 N. Ocotillo Ridge Drive, Cave Creek, Arizona 85331. In 2011, VIRGINIA CAREY was inoculated with the ZOSTAVAX vaccine at the Mayo Clinic,

located in Scottsdale, Arizona, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and VIRGINIA CAREY subsequently contracted a persistent strain of herpes zoster. On or about May 25, 2016, VIRGINIA CAREY was treated by the Mayo Clinic from Neil Hay-Roe, M.D., located in Scottsdale, Arizona, for the onset of a severe vesicular rash, which was diagnosed as acute zoster. VIRGINIA CAREY was prescribed Famvir and Lidocaine patches for management of her painful symptoms and chronic pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff VIRGINIA CAREY suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff VIRGINIA CAREY has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

18. Plaintiff JANET CERASI at all times relevant to this action was and is a citizen of the State of North Carolina, and residing at 6212 Regal Court, Charlotte, North Carolina 28269. In 2013, JANET CERASI was inoculated with the ZOSTAVAX vaccine at the Charlotte Medical Clinic, located in Charlotte, North Carolina, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and JANET CERASI subsequently contracted a persistent strain of herpes zoster. On or about July 30, 2016, JANET CERASI was treated by the Carolinas HealthCare System/CHC Urgent Care Prosperity Crossing, located in Charlotte, North Carolina, for the onset of a vesicular rash, which was diagnosed as shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff JANET CERASI suffered painful injuries and damages, and required extensive medical care and treatment. As a

further proximate result, Plaintiff JANET CERASI has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

19. Plaintiff SHARON DAVIS at all times relevant to this action was and is a citizen of the State of Texas, and resides at 802 East Neches Street, Palestine, Texas 75801. On or about March 2, 2012, SHARON DAVIS was inoculated with the ZOSTAVAX vaccine at Kroger Pharmacy, located in Palestine, Texas, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and SHARON DAVIS subsequently contracted a persistent strain of herpes zoster. On or about August 25, 2016, SHARON DAVIS was treated by Alec B. Law, M.D., located in Palestine, Texas, for the onset of a vesicular rash, which was diagnosed as severe herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff SHARON DAVIS suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff SHARON DAVIS has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

20. Plaintiff MARY DENNIE at all times relevant to this action were and was a citizen of the State of South Carolina, and resided at 2114 A. Easley Highway, Piedmont, South Carolina 29673. In 2015, MARY DENNIE was inoculated with the ZOSTAVAX vaccine at the CVS Pharmacy, located in West Pelzer, South Carolina, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and MARY DENNIE subsequently contracted a persistent strain of herpes zoster. On or about August 18, 2016, MARY DENNIE was treated by the AnMed Health Wren Family Medicine from Michael Seemuller, M.D., located in Piedmont, South Carolina, for the onset of a

severe vesicular rash accompanied, which was diagnosed as shingles. MARY DENNIE was prescribed Capsaicin and Valtrex for management of her painful symptoms and chronic pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff MARY DENNIE suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff MARY DENNIE has suffered significant medical expenses, and pain and suffering, and other damages.

21. Plaintiff FRANCIS DORLEY at all times relevant to this action was and is a citizen of the State of New Hampshire, and resides at 67 Miller Avenue, Portsmouth, New Hampshire 03801. In 2014, FRANCIS DORLEY was inoculated with the ZOSTAVAX vaccine at the Martin's Point Health Care, located in Portsmouth, New Hampshire, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and FRANCIS DORLEY subsequently contracted a persistent strain of herpes zoster. In 2016, FRANCIS DORLEY was treated by the Martin's Point Health Care from Elizabeth L. Remillong, M.D., located in Portsmouth, New Hampshire, for the onset of a severe vesicular rash, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff FRANCIS DORLEY suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff FRANCIS DORLEY has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

22. Plaintiff GARY DUGAN at all times relevant to this action was and is a citizen of State the Pennsylvania, and resides at 224 Lee Street, Portage, Pennsylvania 15946. On or about

November 28, 2012, GARY DUGAN was inoculated with the ZOSTAVAX vaccine at Portage Health Center, located in Portage, Pennsylvania, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and GARY DUGAN subsequently contracted a persistent strain of herpes zoster. On or about June 27, 2016, GARY DUGAN was treated by the Conemaugh Memorial Medical Center from Amina Shikara, M.D., located in Johnstown, Pennsylvania, for the onset of a severe vesicular rash, which was diagnosed as shingles. GARY DUGAN was prescribed Tramadol and Valtrex for management of his painful symptoms and chronic pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff GARY DUGAN suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff GARY DUGAN has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

23. Plaintiff DARLENE EATON at all times relevant to this action was and is a citizen of the State of Oregon, and resides at 12154 SE 114th Court, number 104, Happy Valley, Oregon 97086. On or about December 10, 2010, DARLENE EATON was inoculated with the ZOSTAVAX vaccine at the Walgreens Pharmacy, located in Milwaukie, Oregon, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and DARLENE EATON subsequently contracted a persistent strain of herpes zoster. In 2016, DARLENE EATON was treated by Rui Yang, M.D., located in Portland, Oregon, for the onset of a severe vesicular rash, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff DARLENE EATON suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate

result, Plaintiff DARLENE EATON has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

24. Plaintiff ROBERT ENGLEMAN all times relevant to this action was and is a citizen of the State of Illinois, and resides at 2511 34th Street, Rock Island, Illinois 61201. In 2014, ROBERT ENGLEMAN was inoculated with the ZOSTAVAX vaccine by Ahmed Okba, M.D., FACP, located in Moline, Illinois, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and ROBERT ENGLEMAN subsequently contracted a persistent strain of herpes zoster. In 2016, ROBERT ENGLEMAN was treated by the Unity Point Hospital (Emergency Department), located in Rock Island, Illinois, for the onset of a vesicular rash, which was diagnosed as severe herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles. Plaintiff ROBERT ENGLEMAN suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff ROBERT ENGLEMAN has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

25. Plaintiff HARRY FRIED at all times relevant to this action was and is a citizen of the State of Missouri, and resides at 102 E. 2nd Street, apartment number 805, Joplin, Missouri 64801. In 2016, HARRY FRIED was inoculated with the ZOSTAVAX vaccine at the Walgreens Pharmacy, located in Joplin, Missouri, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and HARRY FRIED subsequently contracted a persistent strain of herpes zoster. Later in 2016, HARRY FRIED was treated by the Joplin Health and Rehabilitation Center, located in Joplin, Missouri, for the onset of a vesicular rash, which was diagnosed as herpes zoster or shingles. As a

direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff HARRY FRIED suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff HARRY FRIED has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

26. Plaintiff CATHERINE GASSMAN at all times relevant to this action was and is a citizen of the State of Virginia, and resides at 62 Briarwood Circle, Staunton, Virginia 24401. In 2007, CATHERINE GASSMAN was inoculated with the ZOSTAVAX vaccine by the Florida Department of Health (Sarasota County), located in Twin Falls, Sarasota, Florida, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and CATHERINE GASSMAN subsequently contracted a persistent strain of herpes zoster. In 2016, CATHERINE GASSMAN was treated by David Herring, M.D., located in Waynesboro, Virginia, for the onset of a vesicular rash accompanied by weakened immune symptoms, which was diagnosed as severe herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff CATHERINE GASSMAN suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff CATHERINE GASSMAN has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

27. Plaintiff JONAS GOULD at all times relevant to this action was and is a citizen of the State of North Carolina, and resides at 557 Harrison Drive NW, Concord, North Carolina 28027. In 2014, JONAS GOULD was inoculated with the ZOSTAVAX vaccine at the Rite Aid Pharmacy, located in Toms River, New Jersey, as recommended for routine adult health

maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and JONAS GOULD subsequently contracted a persistent strain of herpes zoster. On or about July 2, 2015, JONAS GOULD was treated by the Ocean County Internal Medicine from Johnathan I. Cohen, M.D., located in Lakewood, New Jersey, for the onset of a severe vesicular rash, which was diagnosed as severe herpes zoster. JONAS GOULD was prescribed Valtrex for management of his painful symptoms and chronic pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff JONAS GOULD suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff JONAS GOULD has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

28. Plaintiff WAYNE GRANER at all times relevant to this action was and is a citizen of the State of North Dakota, and resides at 6308 8th Avenue, Mandan, North Dakota 58554. On or about September 6, 2012, WAYNE GRANER was inoculated with the ZOSTAVAX vaccine at the Bismarck VA Clinic, located in Bismarck, North Dakota, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and WAYNE GRANER subsequently contracted a persistent strain of herpes zoster. In 2016, WAYNE GRANER was treated by the Bismarck VA Clinic, located in Bismarck, North Dakota, for a persistent vesicular rash, which was diagnosed as chronic herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff WAYNE GRANER suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff WAYNE GRANER has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

29. Plaintiff LINDA HAGEN at all times relevant to this action was and is a citizen of the State of Minnesota, and resides at 45154 140th Street, Donnelly, Minnesota 56235. In 2012, LINDA HAGEN was inoculated with the ZOSTAVAX vaccine at the Stevens Community Medical Center, located in Morris, Minnesota, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and LINDA HAGEN subsequently contracted a persistent strain of herpes zoster. In 2015, LINDA HAGEN was treated by the Stevens Community Medical Center, located in Morris, Minnesota, for a persistent and severe vesicular rash, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles. Plaintiff LINDA HAGEN suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff LINDA HAGEN has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

30. Plaintiff ROGER HARPER at all times relevant to this action was and is a citizen of the State of West Virginia, and resides at 124 Kimberly Way, Lost Creek, West Virginia 26385. On or about July 29, 2014, ROGER HARPER was inoculated with the ZOSTAVAX vaccine at the Louis A. Johnson VA Medical Center, located in Clarksburg, West Virginia, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and ROGER HARPER subsequently contracted a persistent strain of herpes zoster. In 2016, ROGER HARPER was treated by the Louis A. Johnson VA Medical Center, located in Clarksburg, West Virginia, for the onset of a severe vesicular rash, which was diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff

ROGER HARPER suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff ROGER HARPER has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

31. Plaintiff MAXINE HARRIS at all times relevant to this action was and is a citizen of the State of Ohio, and resides at 16515 Walden Avenue, Cleveland, Ohio 44128. On or about September 5, 2014, MAXINE HARRIS was inoculated with the ZOSTAVAX vaccine at the MetroHealth Center, located in Cleveland, Ohio, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and MAXINE HARRIS subsequently contracted a persistent strain of herpes zoster. In 2016, MAXINE HARRIS was treated by the MetroHealth Broadway Health Center, located in Cleveland, Ohio, for a persistent and severe vesicular rash, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff MAXINE HARRIS suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff MAXINE HARRIS has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

32. Plaintiff RAY HASLEY at all times relevant to this action was and is a citizen of the State of Minnesota, and resides at 7652 13th Street North, Oakdale, Minnesota 55128. On or about January 26, 2016, RAY HASLEY was inoculated with the ZOSTAVAX vaccine at the CVS Pharmacy, located in St. Paul, Minnesota, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and RAY HASLEY subsequently contracted a persistent strain of herpes zoster. Later in 2016, RAY HASLEY was treated by the Health East Clinic from Andrew J. Hanson, M.D., located in Oakdale,

Minnesota, for a persistent and severe vesicular rash, which was diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff RAY HASLEY suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff RAY HASLEY has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

33. Plaintiff LOGAN HOLT at all times relevant to this action was and is a citizen of the State of Texas, and resides at 1305 S. Closner Boulevard, Edinburg, Texas 78539. On or about July 17, 2008, LOGAN HOLT was inoculated with the ZOSTAVAX vaccine at the Hidalgo County Health Department (McAllen Clinic), located in McAllen, Texas, as recommended for routine adult health maintenance and for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and LOGAN HOLT subsequently contracted a persistent strain of herpes zoster. In 2016, LOGAN HOLT was treated by the McAllen Outpatient Clinic VA, located in McAllen, Texas, for a persistent and severe vesicular rash, which was diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff LOGAN HOLT suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff LOGAN HOLT has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

34. Plaintiff GERALD HOWARD at all times relevant to this action was and is a citizen of the State of Maine, and resides at 445 Duck Pond Road, Westbrook, Maine 04092. On or about March 1, 2012, GERALD HOWARD was inoculated with the ZOSTAVAX vaccine at the Maine Medical Partners Falmouth Family Medicine, located in Falmouth, Maine, as

recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and GERALD HOWARD subsequently contracted a persistent strain of herpes zoster. In 2015, GERALD HOWARD was treated by the Martin's Health Care Center, located in Portland, Maine, for a vesicular rash, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff GERALD HOWARD suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff GERALD HOWARD has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

35. Plaintiff JEANNE HOY at all times relevant to this action was and is a citizen of the State of Minnesota, and resides at 1348 Judith Avenue, Roseville, Minnesota 55113. In 2013, JEANNE HOY was inoculated with the ZOSTAVAX vaccine at the HealthPartners North Suburban Family Physicians Facility, located in Roseville, Minnesota, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and JEANNE HOY subsequently contracted a persistent strain of herpes zoster. In 2016, JEANNE HOY was treated by the HealthPartners Eagan Urgent Care, located in Eagan, Minnesota, for a vesicular outbreak, which was diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff JEANNE HOY suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff JEANNE HOY has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

36. Plaintiff MARY HUTTON at all times relevant to this action was and is a citizen of the State of Washington, and resides at 2715 E. 16th Street, Vancouver, Washington 98661. On or about February 20, 2013, MARY HUTTON was inoculated with the ZOSTAVAX vaccine at the Kaiser Permanente Medical Office, located in Vancouver, Washington, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and MARY HUTTON subsequently contracted a persistent strain of herpes zoster. In 2016, MARY HUTTON was treated by the Kaiser Permanente Medical Office, located in Vancouver, Washington, for a persistent vesicular rash, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff MARY HUTTON suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff MARY HUTTON has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

37. Plaintiff BEVERLY JOHNSON at all times relevant to this action was and is a citizen of the State of Georgia, and resides at 801 Hickory Level Road, apartment number 4214, Villa Rica, Georgia 30180. On or about December 4, 2013, BEVERLY JOHNSON was inoculated with the ZOSTAVAX vaccine at the Carroll County Health Department, located in Carrollton, Georgia, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and BEVERLY JOHNSON subsequently contracted a persistent strain of herpes zoster. On or about July 22, 2016, BEVERLY JOHNSON was treated by the Wellstar Hospital Austell, located in Austell, Georgia, for a vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles,

Plaintiff BEVERLY JOHNSON suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff BEVERLY JOHNSON has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

38. Plaintiff DIANN JOHNSON at all times relevant to this action was and is a citizen of the State of Texas, and resides at 117 77th Street, Lubbock, Texas 79404. In 2014, DIANN JOHNSON was inoculated with the ZOSTAVAX vaccine at the Walgreens Pharmacy, located in Lubbock, Texas, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and DIANN JOHNSON subsequently contracted a persistent strain of herpes zoster. Later in 2016, DIANN JOHNSON was treated by the Lubbock Family Medicine, located in Lubbock, Texas, for a severe vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff DIANN JOHNSON suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff DIANN JOHNSON has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

39. Plaintiff MERCELLEA JONES at all times relevant to this action was and is a citizen of the State of Missouri, and resides at 7133 Monroe Street, Kansas City, Missouri 64132. In 2014, MERCELLEA JONES was inoculated with the ZOSTAVAX vaccine at the Research Medical Center, located in Kansas City, Missouri, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and MERCELLEA JONES subsequently contracted a persistent strain of herpes zoster. In 2017, MERCELLEA JONES was treated by the Research Medical Center, located in Kansas City,

Missouri, for a persistent vesicular outbreak accompanied by weakened immune symptoms, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff MERCELLEA JONES suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff MERCELLEA JONES has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

40. Plaintiff PAUL JURKOWSKI at all times relevant to this action was and is a citizen of the State of Virginia, and resides at 6507 Clemson Avenue, Norfolk, Virginia 23518. In 2016, Plaintiff PAUL JURKOWSKI was inoculated with the ZOSTAVAX vaccine at the Eastern Virginia Medical School, located in Norfolk, Virginia, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and PAUL JURKOWSKI subsequently contracted a persistent strain of herpes zoster with complications. Later in 2016, PAUL JURKOWSKI was treated by the Bayview Medical Center from Eric C. Fee, M.D., located in Norfolk, Virginia, for a persistent vesicular outbreak accompanied by weakened immune symptoms, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff PAUL JURKOWSKI suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff PAUL JURKOWSKI has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

41. Plaintiff VIRGINIA JUSTICE at all times relevant to this action was and is a citizen of the State of Virginia, and resides at 1723 Ballenger Road, Oakwood, Virginia 24631. In 2011, VIRGINIA JUSTICE was inoculated with the ZOSTAVAX vaccine at the Health Buchanan

County Health Department, located in Grundy, Virginia, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and VIRGINIA JUSTICE subsequently contracted a persistent strain of herpes zoster. In 2016, VIRGINIA JUSTICE was treated by Ladonna B. Osborne, N.P., located in Tazewell, Virginia, for a vesicular outbreak, which was diagnosed as shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff VIRGINIA JUSTICE suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff VIRGINIA JUSTICE has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

42. Plaintiff JANICE KELLER at all times relevant to this action was and is a citizen of the State of North Carolina, and resides at 477 Howard Harmon Road, Sugar Grove, North Carolina 28679. On or about March 2, 2012, JANICE KELLER was inoculated with the ZOSTAVAX vaccine at the Walgreens Pharmacy, located in Sugar Grove, North Carolina, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and JANICE KELLER subsequently contracted a persistent strain of herpes zoster. On or about August 10, 2016, JANICE KELLER was treated by Charles Davant III, M.D., located in Blowing Rock, North Carolina, for a vesicular outbreak, which was diagnosed as shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff JANICE KELLER suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff JANICE KELLER has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

43. Plaintiff LAWRENCE LAVERGNE at all times relevant to this action was and is a citizen of the State of Texas, and resides at 9295 Mapes Street, Beaumont, Texas 77707. On or about July 29, 2013, LAWRENCE LAVERGNE was inoculated with the ZOSTAVAX vaccine at the Michael E. DeBakey VA Medical Center, located in Houston, Texas, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and LAWRENCE LAVERGNE subsequently contracted a persistent strain of herpes zoster. On or about August 22, 2016, LAWRENCE LAVERGNE was treated by the Beaumont Internal Medicine and Geriatric Associates, located in Beaumont, Texas, for a vesicular outbreak, which was diagnosed as shingles. LAWRENCE LAVERGNE was prescribed Acyclovir and Gabapentin for management of his painful symptoms and chronic pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff LAWRENCE LAVERGNE suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff LAWRENCE LAVERGNE has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

44. Plaintiff MARI LEECH at all times relevant to this action was and is a citizen of the State of Indiana, and resides at 3446 S. Pennsylvania Street, Indianapolis, Indiana 46227. On or about September 18, 2013, MARI LEECH was inoculated with the ZOSTAVAX vaccine at the Kroger Pharmacy, located in Indianapolis, Indiana, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and MARI LEECH subsequently contracted a persistent strain of herpes zoster. On or about August 9, 2016, MARI LEECH was treated by the I U Medical Group-Primary Care from Mark E. Tiritilli, M.D., located in Indianapolis, Indiana, for a vesicular outbreak, which was diagnosed

as shingles. MARI LEECH was prescribed Acyclovir and Oxycodone for management of her painful symptoms and chronic pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff MARI LEECH suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff MARI LEECH has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

45. Plaintiff JEFFERY LEWIS at all times relevant to this action was and is a citizen of the State of Arizona, and resides at 1529 E. South Fork Drive, Phoenix, Arizona 85048. In 2015, JEFFERY LEWIS was inoculated with the ZOSTAVAX vaccine at the Safeway Pharmacy, located in Phoenix, Arizona, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and JEFFERY LEWIS subsequently contracted a persistent strain of herpes zoster. In 2016, JEFFERY LEWIS was treated by the Dignity Health Urgent Care, located in Phoenix, Arizona, or a vesicular outbreak, which was diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff JEFFERY LEWIS has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

46. Plaintiff JOHNNIE MASON at all times relevant to this action was and is a citizen of the State of Georgia, and resides at 284 Windsong Drive, Cataula, Georgia 38104. In 2013, JOHNNIE MASON was inoculated with the ZOSTAVAX vaccine at the Atlanta VA Medical Center, located in Decatur, Georgia, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and JOHNNIE

MASON subsequently contracted a persistent strain of herpes zoster. In 2016, JOHNNIE MASON was treated by the Internal Medicine Associates, located in Columbus, Georgia, for a vesicular outbreak, which was diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff JOHNNIE MASON suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff JOHNNIE MASON has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

47. Plaintiff JUNE MATHOT at all times relevant to this action was and is a citizen of the State of Texas, and resides at 1512 Baslow Lane, Burleson, Texas 76028. In 2013, JUNE MATHOT was inoculated with the ZOSTAVAX vaccine at the Best Value Pharmacy, located in Burleson, Texas, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and JUNE MATHOT subsequently contracted a persistent strain of herpes zoster. In 2016, JUNE MATHOT was treated by the Questcare Medical Clinic from Kurtt R. Wix, D.O., located in Burleson, Texas, for a vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff JUNE MATHOT suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff JUNE MATHOT as suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

48. Plaintiff LOUISE W. MATTHEWS at all times relevant to this action was and is a citizen of the State of Virginia, and resides at 5027 Gooney Manor Loop, Browntown, Virginia

22610. In 2007, LOUISE W. MATTHEWS was inoculated with the ZOSTAVAX vaccine by Thomas E. Patterson II, M.D., located in Front Royal, Virginia, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and LOUISE W. MATTHEWS subsequently contracted a persistent strain of herpes zoster. In 2016, LOUISE W. MATTHEWS was treated by Guna R. Subedi, M.D., located in Front Royal, Virginia, for a vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff LOUISE W. MATTHEWS suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff LOUISE W. MATTHEWS has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

49. Plaintiff MICHAEL MCMAHON at all times relevant to this action was and is a citizen of the State of Illinois, and resides at 6933 W 63rd Street, Chicago, Illinois 60638. In 2015, MICHAEL MCMAHON was inoculated with the ZOSTAVAX vaccine at the Walgreens Pharmacy, located in Chicago, Illinois, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and MICHAEL MCMAHON subsequently contracted a persistent strain of herpes zoster. In 2016, MICHAEL MCMAHON was treated by the MacQueen Eye Care Center from Gary V. Rubin, located in Chicago, Illinois, for a vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff MICHAEL MCMAHON suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result,

Plaintiff MICHAEL MCMAHON as suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

50. Plaintiff NANCY MEIGS at all times relevant to this action was and is a citizen of the State of Alabama, and resides at 202 Pine Street, Valley, Alabama 36854. In 2008, NANCY MEIGS was inoculated with the ZOSTAVAX vaccine by Michael Grossman, M.D., located in Valley, Alabama, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and NANCY MEIGS subsequently contracted a persistent strain of herpes zoster. On or about August 20, 2016, NANCY MEIGS was treated by the East Alabama Medical Center from David G. Fagan, M.D., located in Valley, Alabama, for a vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff NANCY MEIGS has suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff NANCY MEIGS has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

51. Plaintiff JUANITA MIGGLETTO at all times relevant to this action was and is a citizen of the State of Oklahoma, and resides at 1102 West Red Oak Street, Stilwell, Oklahoma 74960. On or about January 10, 2013, JUANITA MIGGLETTO at was inoculated with the ZOSTAVAX vaccine at the Wilma Mankiller Health Clinic, located in Stilwell, Oklahoma, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and JUANITA MIGGLETTO at subsequently contracted a persistent strain of herpes zoster. In 2016, JUANITA MIGGLETTO was treated by the Wilma Mankiller Health Clinic, located in Stilwell, Oklahoma, for a severe vesicular outbreak, which was

diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff JUANITA MIGGLETTO at suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff JUANITA MIGGLETTO at has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

52. Plaintiff ROBERT MORGAN at all times relevant to this action was and is a citizen of the State of Georgia, and resides at 637 Valley Road, Cedartown, Georgia 30125. On or about October 21, 2014, ROBERT MORGAN was inoculated with the ZOSTAVAX vaccine at the Rite Aid Pharmacy, located in Cedartown, Georgia, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and ROBERT MORGAN subsequently contracted a persistent strain of herpes zoster. In 2016, ROBERT MORGAN was treated by Todd H. Robinson, M.D., located in Cedartown, Georgia, for a vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff ROBERT MORGAN suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff ROBERT MORGAN has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

53. Plaintiff LINDA MORRIS at all times relevant to this action was and is a citizen of the State of Arizona, and resides at 1750 East Orange Drive, Phoenix, Arizona 85016. On or about November 20, 2013, LINDA MORRIS was inoculated with the ZOSTAVAX vaccine at the Central Phoenix Medical Clinic, located in Phoenix, Arizona, as recommended for routine adult

health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and LINDA MORRIS subsequently contracted a persistent strain of herpes zoster. On or about August 20, 2016, LINDA MORRIS was treated by the CVS Minute Clinic, located in Phoenix, Arizona, for a vesicular rash, which was diagnosed as herpes zoster or shingles. On or about August 29, 2016, LINDA MORRIS sought subsequent treatment from the Central Phoenix Medical Clinic from Barbara C. Lipschitz, M.D., located in Phoenix, Arizona for a vesicular rash, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff LINDA MORRIS suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff LINDA MORRIS has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

54. Plaintiff BARBARA MOUNTAIN at all times relevant to this action was and is a citizen of the State of Washington, and resides at 4323 Hoyt Avenue, unit number 2, Everett, Washington 98203. In 2012, BARBARA MOUNTAIN was inoculated with the ZOSTAVAX vaccine at the Safeway Pharmacy, located in Everett, Washington, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and BARBARA MOUNTAIN subsequently contracted a persistent strain of herpes zoster. On or about August 12, 2016, BARBARA MOUNTAIN was treated by the Everett Clinic from Khan H. Tran, M.D., located in Everett, Washington, for a vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff BARBARA MOUNTAIN suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff BARBARA MOUNTAIN has suffered

and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

55. Plaintiff JANICE NELSON at all times relevant to this action was and is a citizen of the State of Missouri, and resides at 11380 N. Highway, Platte City, Missouri 64079. On or about March 10, 2014, JANICE NELSON was inoculated with the ZOSTAVAX vaccine at the Tallgrass Family Medicine, located in Topeka, Kansas, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and JANICE NELSON subsequently contracted a persistent strain of herpes zoster. On or about September 14, 2015, JANICE NELSON was treated by the Direct Medical Care from Ann Riggs, D.O., located in Platte City, Missouri, for a vesicular outbreak, which was diagnosed as shingles. JANICE NELSON was prescribed Famvir and Elavil for management of her painful symptoms and chronic pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff JANICE NELSON suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff JANICE NELSON has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

56. Plaintiff SHIRLEY NOLAND at all times relevant to this action was and is a citizen of the State of Michigan, and resides at 468 Stewart Road, Monroe, Michigan 48162. In 2014, SHIRLEY NOLAND was inoculated with the ZOSTAVAX vaccine at the Walgreens Pharmacy, located in Monroe, Michigan, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and SHIRLEY NOLAND subsequently contracted a persistent strain of herpes zoster. In 2016, SHIRLEY NOLAND was treated by John Burroughs, M.D., located in Monroe, Michigan, for a severe vesicular outbreak,

which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff SHIRLEY NOLAND suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff SHIRLEY NOLAND has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

57. Plaintiff LYNETTE RODRIGUEZ at all times relevant to this action was and is a citizen of the State of Michigan, and resides at 3500 E. Jefferson Avenue, apartment number 315, Detroit, Michigan 48207. In 2015, LYNETTE RODRIGUEZ was inoculated with the ZOSTAVAX vaccine at the Oakwood Canton Internal Medicine, located in Canton, Michigan, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and LYNETTE RODRIGUEZ subsequently contracted a persistent strain of herpes zoster. On or about August 8, 2016, LYNETTE RODRIGUEZ was treated by the Oakwood Canton Internal Medicine, located in Canton, Michigan, located in Phoenix, Arizona, for a vesicular outbreak, which was diagnosed as herpes zoster. LYNETTE RODRIGUEZ was prescribed Valtrex, Percocet and Medrol for management of her painful symptoms and excruciating pain. On or about August 25, 2016, LYNETTE RODRIGUEZ sought subsequent treatment from the Oakwood Canton Internal Medicine, located in Canton, Michigan, located in Phoenix, Arizona, for a persistent vesicular rash, which was diagnosed as post-herpetic neuralgia, a chronic condition of pain and nerve damage secondary to herpes zoster infections. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff LYNETTE RODRIGUEZ suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result,

Plaintiff LYNETTE RODRIGUEZ has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

58. Plaintiff ROBERT RUBLE at all times relevant to this action was and is a citizen of the State of Missouri, and resides at 8709 NE 168th Street, Kearney, Missouri 64060. On or about April 22, 2009, ROBERT RUBLE was inoculated with the ZOSTAVAX vaccine at the Kansas City VA Medical Center, located in Kansas City, Missouri, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and ROBERT RUBLE subsequently contracted a persistent strain of herpes zoster. In 2016, ROBERT RUBLE was treated by the Family Medicine Specialist from Teresa J. Short, FNP, located in Excelsior Springs, Missouri, for a vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff ROBERT RUBLE suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff ROBERT RUBLE has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

59. Plaintiff PORTIA SANDERS at all times relevant to this action were and was a citizen of the State of Indiana, and resided at 4045 North Barnor Drive, Indianapolis, Indiana 46226. In 2014, PORTIA SANDERS was inoculated with the ZOSTAVAX vaccine at the Community Physicians Network by Sunita N. Premkumar, M.D., located in Indianapolis, Indiana, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and PORTIA SANDERS subsequently contracted a persistent strain of herpes zoster. On or about May 8, 2016, PORTIA SANDERS was treated by the Community Hospital Oncology Physicians Facility from Anuj K. Agarwala, M.D., located in

Indianapolis, Indiana, for a vesicular outbreaks, which were diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff PORTIA SANDERS suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff PORTIA SANDERS has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

60. Plaintiff ALVIN SCHLIESKE at all times relevant to this action was and is a citizen of the State of Texas, and resides at 10897 Edith Lane, Conroe, Texas 77385. In 2009, ALVIN SCHLIESKE was inoculated with the ZOSTAVAX vaccine at the Walgreens pharmacy, located in Conroe, Texas, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and ALVIN SCHLIESKE subsequently contracted a persistent strain of herpes zoster. On or about July 22, 2016, ALVIN SCHLIESKE was treated by the Lone Star Family Health Center, located in Conroe, Texas, for a vesicular outbreak accompanied by weakened immune symptoms, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff ALVIN SCHLIESKE suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff ALVIN SCHLIESKE has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

61. Plaintiff MARGARET SHAMBURGER at all times relevant to this action were and was a citizen and resident of the State of Oklahoma, resides at 214 West 11th Avenue, Stillwater, Oklahoma 74047. On or about January 17, 2011, MARGARET SHAMBURGER was inoculated with The ZOSTAVAX vaccine at the Walgreens Pharmacy, located in Stillwater,

Oklahoma, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and MARGARET SHAMBURGER subsequently contracted a persistent strain condition of herpes zoster. In 2016, MARGARET SHAMBURGER was treated by the Utica Park Clinic from Jeffrey Galles, D.O., located in Owasso, Oklahoma, for a severe vesicular outbreak, which was diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff MARGARET SHAMBURGER suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff MARGARET SHAMBURGER has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

62. Plaintiff SANDRA STACY at all times relevant to this action was and is a citizen of the State of Virginia, and resided at 109 Kelli Drive, Cedar Bluff, Virginia 24609. In 2014, SANDRA STACY was inoculated with the ZOSTAVAX vaccine at the Claypool Hill Pharmacy, located in Cedar Bluff, Virginia, as recommended for routine adult health maintenance and for the prevention of shingles. The vaccine did not prevent shingles as intended, and SANDRA STACY subsequently contracted a persistent strain of herpes zoster. On or about August 20, 2016, SANDRA STACY was treated by the Clinch Valley Health Urgent Care, at located in Pounding Mill, Virginia, for a severe vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff SANDRA STACY suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff SANDRA STACY has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

63. Plaintiff ELIZABETH STANDIFERD at all times relevant to this action was and is a citizen and resident of the State of Texas, residing at 803 South Washington Street, Beeville, TX 78102. In 2016, ELIZABETH STANDIFERD was inoculated with the ZOSTAVAX vaccine at Walgreens Pharmacy, located in Beeville, Texas, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and ELIZABETH STANDIFERD subsequently contracted a persistent strain condition of herpes zoster. Later in 2016, ELIZABETH STANDIFERD was treated by the Beeville Family Practice LLP, located in Beeville, Texas, for a blistering vesicular outbreak and decreased immune symptoms which was then diagnosed as severe herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff ELIZABETH STANDIFERD suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff ELIZABETH STANDIFERD has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

64. Plaintiff THOMAS STIERLEY, at all times relevant to this action, was the spouse of Plaintiff's Decedent CLARA STIERLEY, and was and is a citizen and resident of the State of Illinois, and resided at 301 E. Miller Drive, Jerseyville, Illinois 62052. In 2015, CLARA STIERLEY was inoculated with the ZOSTAVAX vaccine at the Jersey County Health Department, located in Jerseyville, Illinois, as recommended for routine adult health maintenance for the long-term prevention of shingles. The vaccine did not prevent shingles as intended, and CLARA STIERLEY subsequently contracted a persistent strain condition of herpes zoster. In 2016, CLARA STIERLEY was treated by the Jersey Community Hospital, located in Jerseyville, Illinois, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As

a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff's Decedent CLARA STIERLEY suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff's Decedent CLARA STIERLEY has suffered significant medical expenses, and pain and suffering, and other damages. On January 7, 2017, CLARA STIERLEY passed away. Plaintiff THOMAS STIERLEY is the proposed administrator of the Estate of CLARA STIERLEY, and has independently suffered damages, including loss of consortium.

65. Plaintiff LEWIS STROBLE at all times relevant to this action was and is a citizen and resident of the State of Pennsylvania, and resides at 657 W. 5th Street, Mount Carmel, Pennsylvania 17851. In 2010, LEWIS STROBLE was inoculated with the ZOSTAVAX vaccine at the Community Pharmacy, located in Mount Carmel, Pennsylvania, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and LEWIS STROBLE subsequently contracted a persistent strain condition of herpes zoster. In 2016, LEWIS STROBLE was treated by Jeffrey Greco, M.D., located in Mount Carmel, Pennsylvania, for a blistering vesicular outbreak, which was diagnosed as severe herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff LEWIS STROBLE suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff LEWIS STROBLE has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

66. Plaintiff DONALD THOMPSON at all times relevant to this action was and is a citizen and resident of the State of Pennsylvania, and resides at 320 S. Penn Street, Chambersburg, Pennsylvania 17257. In 2016, Plaintiff DONALD THOMPSON was inoculated with the

ZOSTAVAX vaccine at the Summit Physicians Services, located in Chambersburg, Pennsylvania, recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and DONALD THOMPSON subsequently contracted a persistent strain condition of herpes zoster. In 2016, DONALD THOMPSON was treated by the Summit Physicians Services, located in Chambersburg, Pennsylvania the Summit Physicians Services, located in Chambersburg, Pennsylvania, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of these malfunctions, Plaintiff DONALD THOMPSON suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff DONALD THOMPSON has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

67. Plaintiff STEVEN TROC at all times relevant to this action was and is a citizen and resident of the State of Illinois, and resides at1244 Pendleton Drive, Lamont, Illinois 60439. In 2015, STEVEN TROC was inoculated with the ZOSTAVAX vaccine at the Walgreens Pharmacy, located in Lamont, Illinois, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and STEVEN TROC subsequently contracted a persistent strain condition of herpes zoster. In 2016, STEVEN TROC was treated by the Advocate Good Samaritan Outpatient and Immediate Care Center, located in Lamont, Illinois, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff STEVEN TROC suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate

result, Plaintiff STEVEN TROC has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

68. Plaintiff CHARLYNN TRUITT at all times relevant to this action was and is a citizen and resident of the State of Kansas, and resides at 1300 Soule Street, Dodge City, Kansas 67801. In 2015, CHARLYNN TRUITT was inoculated with the ZOSTAVAX vaccine at the Gibson's Pharmacy and Unique Gifts, located in Dodge City, Kansas, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and CHARLYNN TRUITT subsequently contracted a persistent strain condition of herpes zoster. In 2016, CHARLYNN TRUITT was treated by the Dodge City Medical Center, located in Dodge City, Kansas, for a blistering vesicular outbreak, which was diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff CHARLYNN TRUITT suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff CHARLYNN TRUITT has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

69. Plaintiff JOSEPH WAGNER at all times relevant to this action was and is a citizen and resident of the State of West Virginia, and resides 3130 Robert Ridge Road, Moundsville, West Virginia 26041. In 2015, JOSEPH WAGNER was inoculated with the ZOSTAVAX vaccine at the Wal-Mart Pharmacy, located in Moundsville, West Virginia, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and JOSEPH WAGNER subsequently contracted a persistent strain condition of herpes zoster. In 2016, JOSEPH WAGNER was treated by the Reynolds Memorial Hospital, located in Glendale, West Virginia, for a blistering vesicular outbreak, which was diagnosed as herpes zoster

or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff JOSEPH WAGNER suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff JOSEPH WAGNER has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

70. Plaintiff RALPH WALENTOWSKI at all times relevant to this action was and is a citizen and resident of the State of Wisconsin, and resides at 7110 W. Lakeview Street, Crandon, Wisconsin 54520. In 2014, Plaintiff RALPH WALENTOWSKI was inoculated with the ZOSTAVAX vaccine at the Walgreens Pharmacy, located in Kenosha, Wisconsin, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and RALPH WALENTOWSKI subsequently contracted a persistent strain condition of herpes zoster. In 2016, RALPH WALENTOWSKI was treated by the Ministry Medical Group Crandon Specialty from Steven R. Brooks, located in Crandon, Wisconsin, for a blistering vesicular outbreak, which was diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff RALPH WALENTOWSKI suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff RALPH WALENTOWSKI has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

71. Plaintiff DIANE WALSH at all times relevant to this action was and is a citizen and resident of the State of Pennsylvania, and resides at 1307 Somerset Avenue, Windber, Pennsylvania 15963. In 2015, Plaintiff DIANE WALSH was inoculated with the ZOSTAVAX vaccine at the Rite Aid Pharmacy, located in Windber, Pennsylvania, as recommended for routine

adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and DIANE WALSH subsequently contracted a persistent strain condition of herpes zoster. In 2016, DIANE WALSH was treated by the Gray Medical Associates PC, located in Windber, Pennsylvania, for a blistering vesicular outbreak, which was diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff DIANE WALSH suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff DIANE WALSH has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

72. Plaintiff LLOYD WEBER at all times relevant to this action was and is a citizen and resident of the State of Iowa, and resides at 2673 Highway 22, Riverside, Iowa 52327. On or about September 17, 2007, LLOYD WEBER was inoculated with the ZOSTAVAX vaccine at the Hy-Vee Pharmacy, located in Iowa City, Iowa, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and LLOYD WEBER subsequently contracted a persistent strain condition of herpes zoster. On or about August 9, 2016, LLOYD WEBER was treated by the U I Family Care Southeast, located in Iowa City, Iowa, for a blistering vesicular outbreak, which was diagnosed as herpes zoster and post herpetic neuralgia, a chronic condition of pain and nerve damage secondary to herpes zoster infections. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff LLOYD WEBER suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff LLOYD WEBER has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

73. Plaintiff JOHN WESSELINK at all times relevant to this action was and is a citizen and resident of the State of Washington, and resides at 808 20th Street, Bellingham, Washington 98225. In 2015, JOHN WESSELINK was inoculated with the ZOSTAVAX vaccine at the Rite Aid Pharmacy, located in Bellingham, Washington, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and JOHN WESSELINK subsequently contracted a persistent strain condition of herpes zoster. In 2016, JOHN WESSELINK was treated by PeaceHealth Medical Group from Ivan Radu, N.P., located in Bellingham, Washington, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff JOHN WESSELINK suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff JOHN WESSELINK has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

74. Plaintiff TERRY WHEAT at all times relevant to this action was and is a citizen and resident of the State of Louisiana, and resides at 386 W. Whatley Road, Oakdale, Louisiana 71463. In 2016, TERRY WHEAT was inoculated with the ZOSTAVAX vaccine at the Albertson's Pharmacy, located in Alexandria, Louisiana, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and TERRY WHEAT subsequently contracted a persistent strain condition of herpes zoster. Later in 2016 TERRY WHEAT was treated by Alejandro Perez, M.D., located in Alexandria, Louisiana, for a blistering vesicular outbreak, which was then diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff TERRY WHEAT suffered painful injuries and damages, and

required extensive medical care and treatment. As a further proximate result, Plaintiff TERRY WHEAT has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

75. Plaintiff KATHY WHITEHEAD at all times relevant to this action was and is a citizen and resident of the State of Kentucky, and resides at 95 Sparrow Lane, Box 49, Leslie, Kentucky 40868. In 2017, KATHY WHITEHEAD was inoculated with the ZOSTAVAX vaccine at the Mary Breckinridge ARH Hospital, located in Hyden, Kentucky, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and KATHY WHITEHEAD subsequently contracted a persistent strain condition of herpes zoster. Later in 2017, KATHY WHITEHEAD was treated by Mary Breckinridge ARH Hospital, located in Hyden, Kentucky, for a blistering vesicular outbreak, which was then diagnosed as herpes or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff KATHY WHITEHEAD suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff KATHY WHITEHEAD has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

76. Plaintiff BRENDA WILLIAMS at all times relevant to this action was and is a citizen and resident of the State of South Carolina, and resides at 208 Sonora Drive, Easley, South Carolina 29640. In 2015, BRENDA WILLIAMS was inoculated with the ZOSTAVAX vaccine at the Sam Club, located in Easley, South Carolina, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and BRENDA WILLIAMS subsequently contracted a persistent strain condition of herpes zoster. Later in 2016, BRENDA WILLIAMS was treated by David Hoenicke, M.D., located in Greenville,

South Carolina, for a blistering vesicular outbreak, which was diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff BRENDA WILLIAMS suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff BRENDA WILLIAMS has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

77. Plaintiff MYRNA YENTER at all times relevant to this action was and is a citizen and resident of the State of Minnesota, and resides at 1719 Kathleen Drive, Mankato, Minnesota 56003. On or about October 6, 2009, MYRNA YENTER was inoculated with the ZOSTAVAX vaccine at the Walgreens Pharmacy, located in Mankato, Minnesota, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and MYRNA YENTER subsequently contracted a persistent strain condition of herpes zoster. On or about June 19, 2014, MYRNA YENTER was treated by the Mankato Clinic, located Mankato, Minnesota, for a blistering vesicular outbreak, which was diagnosed as shingles. MYRNA YENTER was prescribed Valtrex for management of her painful symptoms and chronic pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff MYRNA YENTER suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff MYRNA YENTER has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

78. Plaintiff ROBERT YOUNG at all times relevant to this action was and is a citizen and resident of the State of Pennsylvania, and resides at 1533 Pine Run Road, Rochester, Pennsylvania 15074. In 2007, ROBERT YOUNG was inoculated with the ZOSTAVAX vaccine

at the Beaver Health Mart Pharmacy, located in Beaver, Pennsylvania, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and ROBERT YOUNG subsequently contracted a persistent strain condition of herpes zoster. In 2016, ROBERT YOUNG was treated by Michael S. Heinle, M.D., located in Beaver, Pennsylvania, for a blistering vesicular outbreak, which was diagnosed as herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff ROBERT YOUNG suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff ROBERT YOUNG has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

79. Plaintiff JANET BACON all times relevant to this action was and is a citizen and resident of the State of Oregon, and resides at 19348 SE Sun Crest Drive, Happy Valley, Oregon 97086. In 2007, JANET BACON was inoculated with the ZOSTAVAX vaccine at the Portland Clinic, located in Portland, Oregon, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and JANET BACON subsequently contracted a persistent strain condition of herpes zoster. In 2011, JANET BACON was treated by the Portland Clinic, located in Portland, Oregon, for a blistering vesicular outbreak, which was diagnosed as severe herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff JANET BACON suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff JANET BACON has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

80. Plaintiff ROSE BADSTIBNER at all times relevant to this action was and is a citizen and resident of the State of Pennsylvania, and resides at 853 Punta Gorda Street, East McKeesport, Pennsylvania 15035. In 2014, ROSE BADSTIBNER was inoculated with the ZOSTAVAX vaccine at the Premier Medical Associates, located in Pittsburgh, Pennsylvania, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and ROSE BADSTIBNER subsequently contracted a persistent strain condition of herpes zoster. In 2015, ROSE BADSTIBNER was treated by the Premier Medical Associates from John R. Smith, M.D., located in Pittsburgh, Pennsylvania, for a blistering vesicular outbreak, which was diagnosed as severe herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, ROSE BADSTIBNER suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff ROSE BADSTIBNER has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

81. Plaintiff JUDITH BLAKE at all times relevant to this action was and is a citizen and resident of the Colorado, and resides at 3550 S. Harlan Street 10-319, Denver, Colorado 80235. In 2016, JUDITH BLAKE was inoculated with the ZOSTAVAX vaccine at the Colorado Permanente Medical Group, located in Littleton, Colorado, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and JUDITH BLAKE subsequently contracted a persistent strain condition of herpes zoster. Later in 2016, JUDITH BLAKE was treated by the Kaiser Permanente Lakewood Medical Offices, located in Lakewood, Colorado, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or

despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff JUDITH BLAKE suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff JUDITH BLAKE has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

82. Plaintiff LOIS COBB at all times relevant to this action was and is a citizen and resident of the State of Arkansas, and resides at 4825 Dill Road, Little Rock, Arkansas 72210. In 2006, LOIS COBB was inoculated with the ZOSTAVAX vaccine at the Little Rock Family Practice PC, located in Little Rock, Arkansas, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and LOIS COBB subsequently contracted a persistent strain condition of herpes zoster. On or about March 28, 2016, LOIS COBB was treated by the Dr. Jay Flaming Dermatology Center, located in Little Rock, Arkansas, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff LOIS COBB suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff LOIS COBB has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

83. Plaintiff POLLY DARLING at all times relevant to this action was and is a citizen and resident of the State of Texas, and resides at 504 Frontier Court, Colleyville, Texas 76034. In 2006, POLLY DARLING was inoculated with the ZOSTAVAX vaccine at the Family Healthcare Associates by Mark W. Taylor, M.D., located in Colorado Colleyville, Texas, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and POLLY DARLING subsequently contracted a persistent strain condition

of herpes zoster. In 2015, POLLY DARLING was treated by Ajay K. Dubey, M.D., located in Grapevine, Texas, for a blistering vesicular outbreak, which was diagnosed as a herpes zoster, or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff POLLY DARLING suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff POLLY DARLING has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

84. Plaintiff GEORGIA F. DRAYTON at all times relevant to this action was and is a citizen and resident of the State of Michigan, and resides at 7821 Waterview Drive, Orchard, Michigan 21226. In 2016, GEORGIA F. DRAYTON was inoculated with the ZOSTAVAX vaccine at the Rite Aid Pharmacy, located in Pasadena, Maryland, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and GEORGIA F. DRAYTON subsequently contracted a persistent strain condition of herpes zoster. Later in 2016, GEORGIA F. DRAYTON was treated by the Anne Arundel Medical Group from Lauren M. Parmer, D.O., located in Pasadena, Maryland, for a blistering vesicular outbreak, which was diagnosed as shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff GEORGIA F. DRAYTON suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff GEORGIA F. DRAYTON has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

85. Plaintiff MARILYN FLEMING at all times relevant to this action was and is a citizen and resident of the State of Texas, and resides at 2125 County Road 169, Cisco, Texas

76437. On or about November 5, 2012, MARILYN FLEMING was inoculated with the ZOSTAVAX vaccine at the Love Oak Pharmacy, located in Eastland, Texas, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and MARILYN FLEMING subsequently contracted a persistent strain condition of herpes zoster. On or about December 10, 2015, MARILYN FLEMING was treated by Marc McLean, M.D., located in Eastland, Texas, for a blistering vesicular outbreak, which was diagnosed as zoster keratitis. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff MARILYN FLEMING suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff MARILYN FLEMING has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

86. Plaintiff ROGER HALE at all times relevant to this action was and is a citizen and resident of the State of Maryland, and resides at 4308 Northcliff Road, Glen Arm, Maryland 21057. On or about November 7, 2013, ROGER HALE was inoculated with the ZOSTAVAX vaccine at the Walgreens Pharmacy, located in Lutherville-Timonium, Maryland, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and ROGER HALE subsequently contracted a persistent strain condition of herpes zoster. In 2014, ROGER HALE was treated by the VIP Family Medicine from William Cheatham Jr., D.O., located in Pompano Beach, Florida, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff ROGER HALE suffered painful injuries and damages, and required extensive medical care and

treatment. As a further proximate result, Plaintiff ROGER HALE has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

87. Plaintiff JAMES MCCONNELL at all times relevant to this action was and is a citizen and resident of the State of North Carolina, and resides at 161 Martindale Road, Winston-Salem, North Carolina 27107. In 2015, JAMES MCCONNELL was inoculated with the ZOSTAVAX vaccine at the Rite Aid Pharmacy, located in Winston- Salem, North Carolina, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and JAMES MCCONNELL subsequently contracted a persistent strain condition of herpes zoster. On or about August 2, 2016, JAMES MCCONNELL was treated by Mark Maier, M.D., located in Winston- Salem, North Carolina, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff JAMES MCCONNELL suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff JAMES MCCONNELL has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

88. Plaintiff BETTY PAULSON at all times relevant to this action was and is a citizen and resident of the State of Michigan, and resides at 6050 West Lily Lake Road, Harrison, Michigan 487625. On or about October 23, 2007, ROGER HALE was inoculated with the ZOSTAVAX vaccine at the Central Michigan Community Hospital, located in Pleasant, Michigan as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and BETTY PAULSON subsequently contracted a persistent strain condition of herpes zoster. On or about July 3, 2016, BETTY PAULSON was treated by the

McLaren Central Ready Care from Tammy Cingano, PA-C, located in Pleasant, Michigan, for a blistering vesicular outbreak, which was diagnosed as herpes zoster. BETTY PAULSON was prescribed Prednisone, Tramadol and Ketoconazole for management of her painful symptoms and excruciating pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff BETTY PAULSON suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff BETTY PAULSON has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

89. Plaintiff PORTER BEANE at all times relevant to this action was and is a citizen and resident of the State of Georgia, and resides at 27 Valley View, Newnan, Georgia 30265. On or about October 11, 2012, PORTER BEANE was inoculated with the ZOSTAVAX vaccine at the Publix Pharmacy, located in Newnan, Georgia, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and PORTER BEANE subsequently contracted a persistent strain condition of herpes zoster. On or about October 4, 2013, PORTER BEANE was treated by Care Specialist, P.C., located in Newnan, Georgia, for a blistering vesicular outbreak, which was diagnosed as herpes zoster. PORTER BEANE was prescribed Valtrex for management of his painful symptoms and chronic pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff PORTER BEANE suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff PORTER BEANE has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

90. Plaintiff ANNIE BOYD at all times relevant to this action was and is a citizen and resident of the State of District of Columbia, and resides at 2649 30th Street S.E., Washington, District of Columbia 20020. On or about September 17, 2014, ANNIE BOYD was inoculated with the ZOSTAVAX vaccine at the Kaiser Permanente Capitol Hill Medical Center, located in Washington, D.C., as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and ANNIE BOYD subsequently contracted a persistent strain condition of herpes zoster. Later in 2014, ANNIE BOYD was treated by the Kaiser Permanente Capitol Hill Medical Center, located in Washington, D.C., for a blistering vesicular outbreak, which was diagnosed as herpes zoster. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff ANNIE BOYD suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff ANNIE BOYD has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

91. Plaintiff STEPHEN BRONCHUK at all times relevant to this action was and is a citizen and resident of the State of Massachusetts, and resides at 54 F. Fox Meadow Road, Leominster, Massachusetts 01453. On or about August 20, 2012, STEPHEN BRONCHUK was inoculated with the ZOSTAVAX vaccine at the Reliant Medical Group, located in Fitchburg, Massachusetts, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and STEPHEN BRONCHUK subsequently contracted a persistent strain condition of herpes zoster. In 2015, STEPHEN BRONCHUK was treated by the Health Alliance Hospital, located in Fitchburg, Massachusetts, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct

and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff STEPHEN BRONCHUK suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff STEPHEN BRONCHUK has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

92. Plaintiff MICHIGAN HILL at all times relevant to this action was and is a citizen and resident of the State of Colorado, and resides at 1722 S. Uvalda Street, Aurora, Colorado 80012. In 2010, MICHIGAN HILL was inoculated with the ZOSTAVAX vaccine at the Walgreens Pharmacy, located in Aurora, Colorado, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and MICHIGAN HILL subsequently contracted a persistent strain condition of herpes zoster. On or about June 14, 2016, MICHIGAN HILL was treated by the Aurora Family Medicine from Andrea Moon, PA-C., located in Aurora, Colorado, for a blistering vesicular outbreak, which was diagnosed as herpes zoster. MICHIGAN HILL was prescribed Valtrex and Lyrica for management of her painful symptoms and excruciating pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff MICHIGAN HILL suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff MICHIGAN HILL has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

93. Plaintiff RANDEAN KUSSOW at all times relevant to this action was and is a citizen and resident of the State of Wisconsin, and resides at 121 N. Winnebago Street, De Pere, Wisconsin 54115. In 2015, RANDEAN KUSSOW was inoculated with the ZOSTAVAX vaccine at the Oneida Community Health Center, located in Oneida, Wisconsin, as recommended for

routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and RANDEAN KUSSOW subsequently contracted a persistent strain condition of herpes zoster. On or about August 3, 2016, RANDEAN KUSSOW was treated by the HSHS St. Vincent Hospital, located in Green Bay, Wisconsin, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff RANDEAN KUSSOW suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff RANDEAN KUSSOW has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

94. Plaintiff SHIRLEY LOPER at all times relevant to this action was and is a citizen and resident of the State of Tennessee, and resides at 4010 Stone Ridge Lane, apartment number 234, Memphis, Tennessee 38115. On or about February 27, 2014, SHIRLEY LOPER was inoculated with the ZOSTAVAX vaccine at the Walgreens Pharmacy, located in Collierville, Tennessee, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and SHIRLEY LOPER subsequently contracted a persistent strain condition of herpes zoster. On or about December 2, 2014, SHIRLEY LOPER was treated by the Methodist Medical Group-Primary Care, located in Memphis, Tennessee, for a blistering vesicular outbreak, which was diagnosed as shingles. SHIRLEY LOPER was prescribed Acyclovir for management of her painful symptoms and chronic pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff SHIRLEY LOPER suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff SHIRLEY LOPER

has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

95. Plaintiff MATTIE MANGUM at all times relevant to this action was and is a citizen and resident of the State of Missouri, and resides at 4710 East 45th Street, Kansas City, Missouri 64130. On or about March 11, 2008 MATTIE MANGUM was inoculated with the ZOSTAVAX vaccine at the Albers Medical Pharmacy, located in Kansas City, Missouri, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and MATTIE MANGUM subsequently contracted a persistent strain condition of herpes zoster. In 2010, MATTIE MANGUM was treated by the St. Luke's Hospital, located in in Kansas City, Missouri, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff MATTIE MANGUM suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff MATTIE MANGUM has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

96. Plaintiff ROBERT MASON at all times relevant to this action was and is a citizen and resident of the State of Colorado, and resides at 280 S. Elizabeth Street, Ridgway, Colorado 81432. On or about December 10, 2008, ROBERT MASON was inoculated with the ZOSTAVAX vaccine at the Grand Junction VAMA, located in Grand Junction, Colorado, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and ROBERT MASON subsequently contracted a persistent strain condition of herpes zoster. On or about November 20, 2014, ROBERT MASON was treated by the Grand Junction VAMC from Scott E. Faulkner, M.D., located in Grand Junction, Colorado, for a

blistering vesicular outbreak, which was diagnosed as shingles. ROBERT MASON was prescribed Acyclovir, Lidocaine and Gabapentin for management of his painful symptoms and excruciating pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff ROBERT MASON suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff ROBERT MASON has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

97. Plaintiff KENNETH NICHOLS at all times relevant to this action was and is a citizen and resident of the State of Texas, and resides at 25 Avenue of the Oaks, Beaumont, Texas 77707. In 2008, KENNETH NICHOLS was inoculated with the ZOSTAVAX vaccine at the Beaumont Public Health Facility, located in Beaumont, Texas, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and KENNETH NICHOLS subsequently contracted a persistent strain condition of herpes zoster. Later in 2008, KENNETH NICHOLS was treated by the Second Advent Medical Center from Suresh Indupalli, M.D., located in Beaumont, Texas, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff KENNETH NICHOLS suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff KENNETH NICHOLS has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

98. Plaintiff CAROLYN O'DELL at all times relevant to this action was and is a citizen and resident of the State of South Carolina, and resides at 149 Loche Adele Drive, Spartanburg,

South Carolina 29307. On or about May 15, 2013, CAROLYN O'DELL was inoculated with the ZOSTAVAX vaccine at the Walgreens Pharmacy, located in Spartanburg, South Carolina, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and CAROLYN O'DELL subsequently contracted a persistent strain condition of herpes zoster. In 2015, CAROLYN O'DELL was treated at the Family Medical Center, located in Spartanburg, South Carolina, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff CAROLYN O'DELL suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff CAROLYN O'DELL has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

99. Plaintiff DAWN BACSO at all times relevant to this action was and is a citizen and resident of the State of Arizona, and resides at 19124 N 97th Lane, Peoria, Arizona 85382. In 2013, DAWN BACSO was inoculated with the ZOSTAVAX vaccine at the CVS Pharmacy, located in Peoria, Arizona, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and DAWN BRASCO subsequently contracted a persistent strain condition of herpes zoster. Later in 2013, DAWN BACSO was treated by Deborah Solomon Hahn, D.O., located in Glendale, Arizona, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff DAWN BACSO suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff DAWN BACSO has suffered

and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

100. Plaintiff ROSIA BEAN at all times relevant to this action was and is a citizen and resident of the State of Michigan, and resides at 724 Chicago Avenue, Lansing, Michigan 48915. In 2014, ROSIA BEAN was inoculated with the ZOSTAVAX vaccine at the McLaren Greater Lansing Internal Medicine, located in Lansing, Michigan, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and ROSIA BEAN subsequently contracted a persistent strain condition of herpes zoster. In 2015, ROSIA BEAN was treated by the McLaren Greater Lansing Internal Medicine from Mark Mills, M.S., located in Lansing, Michigan, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff ROSIA BEAN suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff ROSIA BEAN has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

101. Plaintiff MARGARET BROKAW at all times relevant to this action was and is a citizen and resident of the State of Texas, and resides at 404 Oakwood Road, Kerrville, Texas 78028. In 2007, MARGARET BROKAW was inoculated with the ZOSTAVAX vaccine at the HEB Pharmacy, located in Kerrville, Texas, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and MARGARET BROKAW subsequently contracted a persistent strain condition of herpes zoster. On or about October 14, 2010, MARGARET BROKAW was treated by Fred Speck Jr., M.D., located in Kerrville, Texas, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or

shingles. MARGARET BROKAW was prescribed Valtrex for management of her painful symptoms and chronic pain. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff MARGARET BROKAW suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff MARGARET BROKAW has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

102. Plaintiff FLORENCE HERNANDEZ RAMOS at all times relevant to this action was and is a citizen and resident of the State of Colorado, and resides at 3731 Wyandot Street, Denver, Colorado 80211. In 2013, FLORENCE HERNANDEZ RAMOS was inoculated with the ZOSTAVAX vaccine at the Kaiser Permanente Franklin Medical Offices, located in Denver, Colorado, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and FLORENCE HERNANDEZ RAMOS subsequently contracted a persistent strain condition of herpes zoster. On or about December 24, 2015, FLORENCE HERNANDEZ RAMOS was treated by the Kaiser Permanente Franklin Medical Offices, located in Denver, Colorado, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff FLORENCE HERNANDEZ RAMOS suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff FLORENCE HERNANDEZ RAMOS has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

103. Plaintiff JOSEPH LEMERISE at all times relevant to this action was and is a citizen and resident of the State of Pennsylvania, and resides at 8040 Rowland Avenue, apartment number

C253, Philadelphia, Pennsylvania 19136. In 2014, JOSEPH LEMERISE was inoculated with the ZOSTAVAX vaccine at the K-Mart Pharmacy, located in Philadelphia, Pennsylvania, as recommended for routine adult health maintenance for the prevention of shingles. The vaccine did not prevent shingles as intended, and JOSEPH LEMERISE subsequently contracted a persistent strain condition of herpes zoster. Later in 2014, JOSEPH LEMERISE was treated by the Nazareth Hospital, located in Philadelphia, Pennsylvania, for a blistering vesicular outbreak, which was diagnosed as herpes zoster or shingles. As a direct and proximate result of the ZOSTAVAX vaccine, and/or despite receiving ZOSTAVAX for long-term prevention of shingles, Plaintiff JOSEPH LEMERISE suffered painful injuries and damages, and required extensive medical care and treatment. As a further proximate result, Plaintiff JOSEPH LEMERISE has suffered and will continue to suffer significant medical expenses, and pain and suffering, and other damages.

104. At all relevant times to this action, as further detailed herein, Defendants MERCK & CO., MERCK SHARP & DOHME CORP., AND McKESSON CORP., were engaged in the business of researching, developing, testing, designing, setting specifications for, licensing, manufacturing, preparing, compounding, assembling, packaging, processing, labeling, marketing, promoting, distributing, selling and/or introducing into interstate commerce and into the State of New Jersey, either directly or indirectly through third parties or related entities, the ZOSTAVAX vaccine, which was to be administered to patients throughout the United States, including New Jersey.

105. Defendant Merck & Co., Inc. (“Merck”), is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business located at 2000 Galloping Hill Road, Kenilworth, New Jersey 07033. At all times relevant to this action, Merck researched, developed, tested, designed, set specifications for, licensed, manufactured, prepared,

compounded, assembled, packaged, processed, labeled, marketed, promoted, distributed, and sold the ZOSTAVAX vaccine to be administered to patients throughout the United States, including New Jersey. Merck has conducted business and derived substantial revenue from within the State of New Jersey, from including, but not limited to, its business activities related to the ZOSTAVAX vaccine.

106. Defendant Merck Sharp & Dohme Corp. ("MSD"), is a wholly-owned subsidiary of Defendant Merck and part of the Merck family of companies. MSD is a corporation organized and existing under the laws of the State of New Jersey with its headquarters located at 2000 Galloping Hill Road, Kenilworth, New Jersey 07033. At all times relevant to this action, through the actions of its parent, Merck, or, based on information and belief, its own actions, Merck, developed, tested, designed, set specifications for, licensed, manufactured, prepared, compounded, assembled, packaged, processed, labeled, marketed, promoted, distributed, and/or sold the ZOSTAVAX vaccine to be administered to patients throughout the United States, including New Jersey. Merck has conducted business and derived substantial revenue from within the State of New Jersey, from including, but not limited to, its business activities related to the ZOSTAVAX vaccine.

107. Defendant McKesson Corp. ("McKesson") is a Delaware Corporation with its principal place of business at 2710 Gateway Oaks Drive, Sacramento, California, 95833. At all relevant rimes, McKesson was in the business of manufacturing, labeling, selling, marketing, packaging, re-packaging, and distributing the ZOSTAVAX vaccine, on information and belief, the ZOSTAVAX vaccine administered to the Plaintiffs. McKesson does business throughout the United States and in the State of New Jersey, and regularly, continuously, and presently does business with this State, including manufacturing, marketing, selling and distributing the

ZOSTAVAX vaccine. McKesson had and continues to have substantial contacts with New Jersey, purposefully availed itself of the privilege of conducting activities and business within the State of New Jersey, derived substantial revenue from its contacts with the State of New Jersey, and its conduct in New Jersey directly relates to Plaintiffs' claim in this action. Plaintiffs' claim arises out of McKesson's contacts with the State of New Jersey.

108. Affiliates have provided Merck with support in the development and distribution of the ZOSTAVAX vaccine. McKesson acts as such affiliate and does regularly, and continuously conduct business throughout the State of New Jersey, including this County.

109. Based upon information and belief, McKesson either directly or through its agents, servants and employees, does business in New Jersey, and at all times relevant hereto, created, developed, and implemented the marketing and promotional campaign and materials for the ZOSTAVAX vaccine in New Jersey for dissemination throughout the United States.

110. Based upon information and belief, McKesson either directly or through its agents, servants and employees, does business in New Jersey, and at all times relevant hereto, has sold and distributed the ZOSTAVAX vaccine throughout the United States, including in New Jersey.

111. Based on information and belief, Merck advertised the ZOSTAVAX vaccine to patients, doctors and hospitals throughout the United States.

112. Joinder of Plaintiffs in this Complaint for Damages is proper pursuant to N.J. R. 4:29-1(a) which allows permissive joinder of parties if feasible for claims that are similarly situated. In the present Complaint, all Plaintiffs' claims arise from a common nucleus of fact and joinder is not prejudicial and is conducive to efficiency of based on commonality. Plaintiffs assert a right to relief in respect of or arising out of the same transaction, occurrence, or common nucleus,

series of transactions or occurrences, and questions of law and fact common to all such Plaintiffs will arise in the action.

JURISDICTION AND VENUE

113. This action is brought by Plaintiffs, each of them resident citizens of the United States of America, pursuant to N.J. R. 4:4-3(a)(1).

114. This Court has personal jurisdiction over Merck and MSD pursuant to N.J. R. 4:4-4(a)(6), as resident corporations of the State of New Jersey.

115. This Court has personal jurisdiction over McKesson, conducting business in the State of New Jersey, and pursuant to N.J. R. 4:4-4(b)(1)(A).

116. This Court has personal jurisdiction over McKesson an agent of Merck, conducting business in the State of New Jersey, and pursuant to N.J. R. 4:4-4(b)(1)(A).

117. This Court has personal jurisdiction over McKesson an agent of MSD, conducting business in the State of New Jersey, and pursuant to N.J. R. 4:4-4(b)(1)(A)

118. Venue is proper in this Court pursuant to N.J. R. 4:3-2 because venue is deemed proper in the Superior Court in the county in which cause of action arose, or where any party to the action resides. Further, pursuant to N.J. R. 4:3-2(b) a corporation is deemed to reside in any county in which its registered office is located or in any county in which is it actually doing business. Defendants Merck and MSD are situated and incorporated in New Jersey. Further, a substantial amount of the defendants' conduct, as alleged herein by Plaintiffs, took place throughout the State of New Jersey, including in Middlesex County.

119. Requiring Defendants to litigate these claims in New Jersey does not offend traditional notions of fair play and substantial justice and is permitted by the United States Constitution.

120. Moreover, each Defendant systematically availed themselves of the State of New Jersey by conducting regular and sustained business and engaging in substantial commerce and business activity in New Jersey, including without limitation researching, developing, designing, setting specifications for, licensing, manufacturing, preparing, compounding, assembling, processing, marketing, promoting, distributing, selling, and/or introducing into interstate commerce in the State of New Jersey, either directly or indirectly, its products, including ZOSTAVAX vaccine. Defendants, and each of them, expected or should have expected that their acts would have consequences within the United States, specifically, in the State of New Jersey; Defendants, each of them, derived and, based on information and belief, some if not all continue to derive substantial revenue from their actions, dealings, associations, relationships, or otherwise, as described herein, in connection with the ZOSTAVAX vaccine.

121. Each of the above-named Plaintiff's claims arise from and relate to Defendants' purposeful avail of the State of New Jersey because resident Defendants' wrongful conduct in researching, developing, designing, setting specifications for, licensing, manufacturing, preparing, compounding, assembling, processing, marketing, promoting, distributing, selling, ZOSTAVAX vaccines took place, in whole or in part, in the State of New Jersey. Therefore, the claims of Plaintiffs relate to and arise from Defendants' explicit contacts and purposeful avail of the State of New Jersey.

122. The instant Complaint for Damages does not confer diversity jurisdiction upon the federal courts pursuant to 28 U.S.C. § 1332. Likewise, federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 is not invoked by the instant Complaint, as it sets forth herein exclusively state law claims against the Defendants. Nowhere do Plaintiffs plead, expressly or implicitly, any cause of action or request any remedy that arises under or is founded upon federal

law, and any alleged federal rights or remedies are expressly disavowed. The issues presented by Plaintiffs do not implicate substantial federal questions, do not turn on the necessary interpretation of federal law, and do not affect the federal system as a whole. The assertion of federal jurisdiction over claims made herein would improperly disturb the congressionally approved balance of federal and state responsibilities.

ALTER-EGO, VICARIOUS AND SUCCESSOR LIABILITY, AND PIERCING THE CORPORATE VEIL AS A RESULT OF THE RELATIONSHIPS BETWEEN MERCK MSD, and McKESSON CORP.

123. Plaintiffs incorporate by reference all prior allegations.

124. At all times herein mentioned, Defendants Merck, MSD, and McKesson were agents, servants, partners, aiders and abettors, co-conspirators and/or joint venturers, and were all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy and/or joint venture and rendered substantial assistance and encouragement to each other, knowing their collective conduct constituted a breach of duty owed to Plaintiffs.

125. There exists and, at all times herein mentioned, a unity of interest in ownership between Defendants Merck and MSD in such that any individuality and separateness between them has ceased and these particular Defendants are alter egos. Adherence to the fiction of the separate existence of these particular Defendants as entities distinct from each other will permit an abuse of corporate privilege and would sanction a fraud and/or promote injustice.

126. As such, there are sufficient grounds, in and of themselves, for disregarding the corporate form and extending liability to Defendants MSD and Merck through piercing the corporate veil.

127. At all times herein mentioned, Merck, MSD, and McKesson, and each of them, were engaged in the business of, or were successors in interest to, entities in the business of researching, designing, formulating, compounding, testing, manufacturing, producing, processing, assembling, inspecting, distributing, marketing, labeling, promoting, packaging, prescribing, and/or advertising for sale, and selling the ZOSTAVAX vaccine for use by consumers, Plaintiffs, their health care providers, and pharmacists. As such, each Defendant is individually, as well as jointly and severally, liable to Plaintiffs for their damages.

128. At all times herein mentioned, the officers and/or directors of Merck and MSD mentioned or referred to herein participated in, authorized and/or directed the production and promotion of the aforementioned ZOSTAVAX vaccine when they knew, or with exercise of reasonable care and diligence should have known, of the hazards and dangerous propensities of said products, and thereby actively participated in the tortious conduct that results in the injuries suffered by Plaintiffs.

129. Plaintiffs, would not have an adequate remedy if Defendants MSD and McKesson were not named parties in this action.

130. Defendant MSD and Merck exercised, and continues to exercise, complete and domination of the finances, policy, and business practices regarding the ZOSTAVAX vaccine of Defendant McKesson to such an extent that McKesson has no separate minds, wills or existences of its own.

131. The aforesaid control was used by Defendant Merck and/or MSD to negligently research, design, formulate, compound, test, manufacture, produce, process, assemble, inspect, distribute, market, label, promote, package, prescribe, and/or advertise, and sell ZOSTAVAX vaccine for use by patients like Plaintiffs, their health care providers, and their pharmacists.

132. As such, there are sufficient grounds, in and of themselves, to extend liability to McKesson for the acts of Merck and/or MSD regarding the development, design, manufacture, research, promotion, packaging, re-packaging, labeling, marketing, distribution, and sale of the ZOSTAVAX vaccine.

133. Defendant McKesson exercised, and continues to exercise, complete control, and/or equal participation in the policy and business practices of Merck and/or MSD regarding the production, promotion, packaging, advertising, distribution, and selling of the ZOSTAVAX vaccine to such an extent that Defendants Merck and McKesson have no separate mind, will or own existence in this regard.

134. The aforesaid control over Merck and MSD was used by McKesson, acting as an agent of Merck, to negligently research, design, formulate, compound, test, manufacture, produce, process, assemble, inspect, distribute, market, label, promote, package, prescribe, and/or advertise, and sell ZOSTAVAX vaccine for use by patients like Plaintiffs, their health care providers, and their pharmacists.

135. McKesson, through its employees, agents, servants, partners, aiders and abettors, co-conspirators and/or joint venturers, created, developed and implemented the marketing strategy to promote and sell and distribute the ZOSTAVAX vaccine nationwide.

136. McKesson, through its employees, agents, servants, partners, aiders and abettors, co-conspirators and/or joint venturers, created, developed and implemented the marketing strategy to promote and sell and distribute the ZOSTAVAX vaccine nationwide in the State of New Jersey.

137. McKesson, as Merck's agent, and through its employees, agents, servants, partners, aiders and abettors, co-conspirators and/or joint venturers, created, developed and implemented the marketing strategy to promote and sell and distribute the ZOSTAVAX vaccine nationwide.

138. McKesson, as Merck's agent, and through its employees, agents, servants, partners, aiders and abettors, co-conspirators and/or joint venturers, created, developed and implemented the marketing strategy to promote and sell and distribute the ZOSTAVAX vaccine nationwide.

139. McKesson, through its employees, agents, servants, partners, aiders and abettors, co-conspirators and/or joint venturers, developed the "Vaccine Information Statement" for the ZOSTAVAX vaccine with Merck for distribution nationwide, including in the state of New Jersey.

140. McKesson published the ZOSTAVAX "Vaccine Information Statement."

141. McKesson disseminated the ZOSTAVAX "Vaccine Information Statement."

142. Merck and/or MSD impliedly and explicitly consented to have Defendant McKesson act on Merck and/or MSD's behalf with regard to the marketing, distribution, and wide dissemination of the ZOSTAVAX vaccine throughout the United States, and within New Jersey. Defendant Merck manifested Defendant McKesson's authority to act on Merck's behalf by allowing Defendant McKesson to create, develop, and implement the marketing strategy and campaign for the ZOSTAVAX vaccine.

143. Merck and/or MSD manifested the authority of McKesson to act on Merck's and/or MSD's behalf by allowing McKesson to develop, publish, and disseminate the "Vaccine Information Statement" for the ZOSTAVAX vaccine.

144. Merck and/or MSD manifested the authority of McKesson to act on Merck's and/or MSD's behalf by allowing McKesson to develop, publish, and disseminate marketing and promotional materials for the ZOSTAVAX vaccine.

145. McKesson is liable for all misrepresentations made by Defendants Merck and/or MSD because McKesson is the business partner and agent of Defendants Merck and MSD.

146. McKesson knew or should have known that its misrepresentations and omissions regarding the ZOSTAVAX vaccine as alleged herein were false.

147. McKesson knew or should have known that the ZOSTAVAX vaccine that it marketed, advertised, packaged, distributed, and sold on behalf of Defendant Merck and/or MSD was not safe for human use and/or consumption

148. As such, there are sufficient grounds to extend liability to Merck and/or MSD for the acts of McKesson regarding the development, design, manufacture, research, promotion, packaging, re-packaging, labeling, marketing, distribution, and sale of the ZOSTAVAX vaccine.

149. As such, there are sufficient grounds to disregard the corporate form and to extend for Merck's acts and omissions to McKesson because Merck and McKesson are alter egos of each other.

150. As such, there are sufficient grounds to disregard the corporate form and to extend liability for MSD's acts and omissions to McKesson because MSD and McKesson are alter egos of each other.

151. As such, there are sufficient grounds to disregard the corporate form and to extend liability for Merck's acts and omissions to McKesson because Merck and McKesson are agents of each other.

152. As such, there are sufficient grounds to disregard the corporate form and to extend liability for MSD's acts and omissions to McKesson because MSD and McKesson are agents of each other.

153. Based on the foregoing, "Merck" where used hereinafter, shall refer to all subsidiaries, affiliates, divisions, franchises, partners, joint venturers, organizational units of any kind, predecessors-in-interest including but not limited to Schering-Plough Corporation,

successors, assigns, officers, directors, employees, agents and representatives of Merck, MSD, and each of them.

154. "MSD" where used hereinafter, shall include and refer to all predecessor(s)-in-interest including but not limited to Schering Plough Corporation, successor(s)-in-interest, assigns, officers, directors, employees, agents, subsidiaries, affiliates, divisions, franchises, partners, joint venturers, and/or representatives of MSD.

155. "Defendants" where used hereinafter, shall refer to all subsidiaries, affiliates, divisions, franchises, partners, joint venturers, organizational units of any kind, predecessors, successors, assigns, officers, directors, employees, agents and representatives of Merck, MSD, McKesson, and each of them "Merck" where used hereinafter, shall include and refer to all subsidiaries, affiliates, divisions, franchises, partners, joint venturers, organizational units of any kind, predecessor(s)-in-interest, successor(s)-in-interest, assigns, officers, directors, employees, agents and representatives of Merck, and MSD, and each of them.

ESTOPPEL FROM PLEADING STATUTES OF LIMITATIONS OR REPOSE

156. Plaintiffs incorporate by reference all prior allegations.

157. Plaintiffs are within the applicable statute of limitations for their claims because Plaintiffs, and their health care professionals, did not discover, and could not reasonably discover, the defects and unreasonably dangerous condition of the ZOSTAVAX vaccine.

158. Plaintiffs' ignorance of the defective and unreasonably dangerous nature of the ZOSTAVAX vaccine and the causal connection between these defects and each Plaintiffs' injuries and damages, is due in large part to Defendants' acts and omissions in fraudulently concealing information from the public and misrepresenting and/or downplaying the serious threat to public safety its products present.

159. In addition, Defendants are estopped from relying on any statutes of limitation or repose by virtue of unclean hands, acts of fraudulent concealment, affirmative misrepresentations and omissions.

160. Such conduct includes intentional concealment from Plaintiffs, prescribing health care professionals, pharmacists, and the general consuming public and the FDA of material information that ZOSTAVAX had not been demonstrated to be safe or effective, and carried with them the risks and dangerous defects described herein.

161. Defendants had a duty to disclose the fact that the ZOSTAVAX vaccine was not safe or effective, was defective, unreasonably dangerous, and that being inoculated with the ZOSTAVAX vaccine as a measure of routine health maintenance and prevention carried the above-described risks.

FACTUAL BACKGROUND

162. The National Childhood Vaccine Injury Act of 1986 ("Vaccine Act"), 42 U.S.C. §§ 300aa-1 et seq. does not preempt Plaintiffs from filing this Complaint.

a. Pursuant to §11(c)(1)(A) of the Vaccine Act, the Vaccine Court has jurisdiction to only hear cases listed on the Vaccine Injury Table.

b. The ZOSTAVAX vaccine is not a vaccine listed in the Vaccine Injury Table. At all times hereinafter mentioned, Merck designed, manufactured, licensed, labeled, tested, distributed, marketed and sold the ZOSTAVAX vaccine.

163. ZOSTAVAX was designed, developed, marketed, and sold with the intended purpose of preventing shingles, which is caused by the varicella zoster virus (VZV).

164. Varicella zoster is a virus that causes chickenpox.

165. Once the varicella zoster virus causes chickenpox, the virus remains inactive (dormant) in the nervous system for many years.

166. VZV can be reactivated due to factors such as disease, stress, aging, and immune modulation caused by vaccination. The reactivated VZV infection of sensory nerve ganglion and the peripheral nerve and its branches persists latently in dorsal root ganglia. Such reactivation causes inflammation of nerve axons as well as vesicular eruptions on skin of involved dermatome.

167. When reactivated, varicella zoster replicates in nerve cells and is carried down the nerve fibers to the area of skin served by the ganglion that harbored the dormant virus.

168. In May of 2006, the U.S. Food and Drug Administration ("FDA") approved the ZOSTAVAX vaccine to be manufactured, marketed, distributed, and sold in the United States by Merck.

169. In May of 2006, the U.S. Food and Drug Administration ("FDA") approved the ZOSTAVAX vaccine to be manufactured, marketed, distributed, and sold in the United States by MSD.

170. ZOSTAVAX was initially indicated for the "the prevention of herpes zoster (shingles) in individuals 60 years of age and older when administered as a single-dose." FDA Approval Letter, May 25, 2006.

171. FDA approval was based in large part on the results of the Shingles Prevention Study ("SPS") supported by Merck.

172. The results of the SPS were published in the *New England Journal of Medicine* on June 2, 2005. The paper was titled "A Vaccine to Prevent Herpes Zoster and Postherpetic Neuralgia in Older Adults". *N. Engl. J. Med.* 2005; 352(22):2271-84.

a. Shingles results from reactivation of latent varicella zoster virus (VZV), which is the virus that causes chickenpox. The incidence and severity of shingles increases as people age.

b. As further described in this paper, "[t]he pain and discomfort associated with herpes zoster can be prolonged and disabling, diminishing the patient's quality of life and ability to function to a degree comparable to

that in diseases such as congestive heart failure, myocardial infarction, diabetes mellitus type 2, and major depression." *N. Engl. J.Med.* 2005; 352(22) at 2272.

c. The ZOSTAVAX vaccine is essentially the same vaccine as that used for chickenpox, except significantly stronger.

d. ZOSTAVAX contains live VZV. The virulence of the virus is reduced or "attenuated." Attenuated vaccines are designed to activate the immune system with the decreased risk of actually developing the disease.

e. ZOSTAVAX is developed from a live attenuated version of the Oka/Merck VZV vaccine strain.

f. One of the paper's more significant findings was "[t]he greater number of early cases of herpes zoster in the placebo group, as compared with the vaccine group, and the fact that no vaccine virus DNA was detected, indicate that the vaccine did not cause or induce herpes zoster."

173. A risk of using a live virus vaccine is that it is not weakened enough or "under-attenuated".

174. Under-attenuated live virus creates an increased risk of developing the disease the vaccine was to prevent.

175. Under-attenuated live VZV has been shown to reactivate. Leggiadro, R. J. (2000). "Varicella Vaccination: Evidence for Frequent Reactivation of the Vaccine Strain in Healthy Children." *The Pediatric Infectious Disease Journal*, 19(11), 1117–1118; Krause, P. R., & Klinman, D. M. (2000). *Nature Medicine*, 6(4), 451–454.

176. Once injected, attenuated live virus has been shown to recombine into more virulent strains causing disease.

177. Shingles is a reactivation of the latent VZV, that afflicts in nearly 1 million cases annually in the United States, at an occurrence of three to seven times higher incidence in geriatric patients.

178. The approval granted by the FDA to allow the selling and marketing of this vaccine came with certain post-marketing commitments that Merck agreed to complete, among other things, to insure the safety of this vaccine. These included the following:

a. A randomized, placebo-controlled safety study to assess the rates of serious adverse events in 6,000 people receiving the vaccine as compared to 6,000 who receive a placebo.

b. An observational study using a health maintenance organization (HMO) and 20,000 vaccinated people to address safety issues in the course of clinical practice. This study is specifically to detect "potential safety signals following administration of ZOSTAVAX." This study was to be submitted to the FDA by December 2008.

179. Since the publication of the SPS in the *New England Journal of Medicine*, there have been questions raised regarding the safety of ZOSTAVAX vaccine in scientific and medical journals.

180. ZOSTAVAX is a stronger, more potent version of Merck's chickenpox vaccine, Varivax.

181. Varivax contains a minimum of 1,350 PFU (plaque-forming units) of the virus while ZOSTAVAX contains a minimum of 19,400 PFU.

182. In the clinical studies evaluating ZOSTAVAX, more than 90% of the vaccinated subjects received 32,300 PFU.

183. Merck, MSD, and McKesson added several adverse reactions to its package insert/prescribing information since Varivax was approved.

a. The biological system in which the most adverse reactions were added was the nervous system.

b. Added reactions include: encephalitis, cerebrovascular accident, transverse myelitis, Guillain-Barré syndrome, Bell's palsy, ataxia, non-febrile seizures, aseptic meningitis, dizziness, and paresthesia.

c. Acute Disseminated Encephalomyelitis is a type of encephalitis.

184. As of July 2012, the patient information sheet, label, and prescribing information distributed with the ZOSTAVAX vaccine contain no clear reference to the potential risk of viral infection.

185. Individuals with compromised immune systems should not receive a live virus vaccine because those individuals can develop the disease that the vaccine is designed to prevent.

186. Instances of zoster virus activation occurs at a rate twenty times higher in immunocompromised patients. Immunocompromised patients encompass a wide spectrum of health conditions ranging from HIV, lymphoma and other cancers, bone marrow transplant recipients, or patients in remission or otherwise who had recently been treated with chemotherapy or prednisone. For those who may be immunocompromised, the shingles will have atypical manifestations that are attributable to more severe skin legions, increased severity of pain and more diffuse involvement.

187. At all times relevant hereto, the patient information sheet, as well as the label and prescribing information for ZOSTAVAX, did not adequately, if at all, address the risk of viral infection. All that was addressed was the concern that a rash and itching might develop at the injection site. This was despite the fact that shingles was a noted occurrence during clinical trials of the vaccine.

188. The prescribing information for ZOSTAVAX contains a warning that "[t]ransmission of vaccine virus may occur between vaccines and susceptible contacts."

a. The risk of transmission of vaccine virus is due to active viral infection in individuals receiving the ZOSTAVAX vaccine.

189. Being inoculated with the zoster vaccine too closely to the pneumococcal vaccine ("P23') is known to reduce the immune system's response to the zoster vaccine. Additionally, the CDC states that live-virus attenuated vaccines should not be administered within four weeks of

each other. Commonly administered live-vaccines include: Measles, Mumps and Rubella vaccine (MMR); Rotavirus vaccine; Vaccina vaccine; and the Influenza Vaccine ("Flumist:) are all in the category of potential interactions with the ZOSTAVAX vaccine. Receiving any two of these vaccines too closely together can decrease the efficacy of the zoster vaccine. While the prescribing information furnished by Merck mentions decreased efficacy with the pneumococcal vaccine, as of the present, the patient information sheet, label, and prescribing information distributed with the ZOSTAVAX vaccine does not adequately, if at all, address the potential risk of interactions between ZOSTAVAX and other common vaccinations, such as the Flumist influenza vaccination.

190. At all times relevant hereto, the patient information sheet, as well as the label and prescribing information for ZOSTAVAX, did not adequately, if at all, address the risk of viral infection or possible diseases of the nervous system. This was despite the fact that Varivax, a less potent vaccine, had added several neurological diseases and symptoms as adverse reactions to the Varivax vaccine.

191. Since ZOSTAVAX's introduction in 2006, Vaccine Adverse Event Reports ("VAERS") appeared in significant numbers addressing various adverse effects, including, but not limited to, viral infection resulting in disease of the central nervous system, including acute disseminated encephalomyelitis.

192. Documented adverse reactions to vaccines must be reported to the federal government in a compulsory and mandated database, the Vaccine Adverse Event Reporting System ("VAERS".) As of September of 2015, there had been 1,111 submissions received of serious adverse event reports regarding the Zoster vaccine, including 36 deaths. These reports included depicting recurrent instances of: myalgia; arthralgia; lymphadenopathy; rash; actinic

keratosis; severe cutaneous disease; peripheral neuropathy; cellulitis; herpes keratis resulting in vision loss; facial paralysis; pneumonia; brain inflammation (encephalitis); and death.

193. Other than postherpetic neuralgia, shingles can lead to other serious complications, such as scarring, bacterial superinfection, allodynia, cranial and motor neuron palsies, pneumonia, encephalitis, visual impairment, hearing loss, and death.

194. Unlike the live-attenuated vaccine, ZOSTAVAX, protein-based vaccine alternatives are safe and effective even in immunocompromised patients. Non-live-attenuated vaccines carry no risk of reactivation inducing shingles after inoculation.

195. Unlike the ZOSTAVAX vaccine, non-live-attenuated vaccines also maintain efficacy, with existing non-live-attenuated alternative vaccines to ZOSTAVAX for the prevention of shingles having efficacy of 84.7% after four years. ZOSTAVAX's existing alternative non-live-attenuated vaccines steadily maintain their efficacy rate for many years.

196. Merck and MSD knew, or should have known, that the pharmaceutical efficacy and overall safety and benefit of a protein-based vaccine was and is a safer alternative to the ZOSTAVAX vaccine.

197. The existence of safer alternatives to shingles-preventative care which is widely known to the scientific community and has been tested in clinical trials alongside the ZOSTAVAX vaccine comparing efficacy show that such dangers of the ZOSTAVAX vaccine were known or discoverable.

198. The existence of safer and more effective alternatives to the ZOSTAVAX vaccine for the prevention of shingles has been known to Merck, MSD, and McKesson, since before the ZOSTAVAX vaccine was approved by the FDA in 2006 for marketing and sale to consumers.

Defendants cannot claim that risks or alternatives were "scientifically undiscoverable" to them in the context of the state-of-the-art defense.

199. McKesson, individually and as agents of Merck and/or MSD, distributed the ZOSTAVAX vaccine to consumers and patients throughout the United States, including in New Jersey.

200. McKesson independently created, designed, developed, and disseminated marketing materials to warrant the safety and effectiveness of the ZOSTAVAX vaccine to consumers.

201. McKesson independently created, designed, developed, and implemented the marketing and promotional strategy for the ZOSTAVAX vaccine in New Jersey and disseminated marketing materials to warrant the safety and effectiveness of the ZOSTAVAX vaccine to consumers.

202. Like Merck and MSD, McKesson, as a leader in the pharmaceutical industry, was equally aware of safer (non-live/inactivated/other) alternatives to the ZOSTAVAX vaccine for the prevention of shingles, and likewise knew of the serious risks posed by the ZOSTAVAX vaccine, but failed to include those adverse effects in their marketing materials.

203. The Center for Disease Control and Prevention ("CDC") published that the ZOSTAVAX vaccine wanes in efficacy within five years, having almost no remaining preventative effects after seven years. This allegation is not included on any labeling or packaging literature to alert users of decreased efficacy of the vaccine with time.

204. The instructions and information published by Merck, MSD, and McKesson regarding the ZOSTAVAX vaccine indicate that only one inoculation is recommended. There is no booster vaccine or recommendation to re-vaccine. Patients who received the ZOSTAVAX

vaccine do so with the intention to have long-term protection from herpes zoster, although even upon perfect use, the efficacy of the vaccine will decrease significantly after four years (according to the CDC).

205. Additionally, unlike the live-attenuated vaccine, ZOSTAVAX, protein-based vaccine alternatives, are safe and effective even in immunocompromised patients. Non-live vaccines, no risk of reactivation inducing shingles after inoculation. Unlike ZOSTAVAX, non-live vaccines, also maintain efficacy, with 88% lower risk to develop shingles after four years than ZOSTAVAX, which diminishes in efficacy steadily with time.

206. Defendants knew, or should have known, that the pharmaceutical efficacy and overall safety and benefit of a protein based vaccine, is a safer alternative to the ZOSTAVAX vaccine. The existence of safer alternatives to shingles-preventative care which is widely known to the scientific community has been tested in clinical trials alongside ZOSTAVAX comparing efficacy and shows that such dangers of ZOSTAVAX were known or discoverable, as was a safer and more effective alternative. Defendants cannot claim that risks or alternatives were "scientifically undiscoverable" in the context of the state-of-the-art defense.

207. It follows that given the increased risk of viral infection due to vaccination, such complications are also possible complications of ZOSTAVAX. It also follows that post-vaccination viral infection can cause significant issues in the nervous system due to the replication of the latent virus in the nervous system.

208. Despite this information and the potential correlation between being administered the ZOSTAVAX vaccine and developing an infection within a relatively short period of time, leading to the development of shingles or varicella-zoster virus pneumonia, Defendants failed to

properly address and provide this information both to patients and the medical providers prescribing the vaccine.

209. As a direct result of the vaccine, Plaintiffs suffered, are suffering and/or will continue to suffer from mental and emotional distress due to resulting physical limitations and seriousness of their condition.

210. As a result of the manufacture, marketing, advertising, promotion, distribution and/or sale of ZOSTAVAX, Plaintiffs sustained severe and permanent personal injuries. Further, as a tragic consequence of Defendants' wrongful conduct, Plaintiffs suffered serious, progressive, permanent, and incurable injuries, as well as significant conscious pain and suffering, mental anguish, emotional distress, loss of enjoyment of life, physical impairment and injury.

211. Plaintiffs have incurred and will continue to incur medical expenses and other economic harm as a direct result of use of ZOSTAVAX.

COUNT I:
NEGLIGENCE
(Against all Defendants)

212. Plaintiffs incorporate by reference all prior allegations.

213. At all relevant times, as set forth, *supra*, Defendants, and each of them, engaged in the business of researching, developing, testing, designing, setting specifications for, licensing, manufacturing, preparing, compounding, assembling, packaging, processing, labeling, marketing, promoting, distributing, selling and/or introducing into interstate commerce the ZOSTAVAX vaccine, and, through that conduct, have knowingly and intentionally placed the ZOSTAVAX vaccine into the stream of commerce with full knowledge that they reach consumers such as Plaintiffs who would become administered the vaccine.

214. Defendants, each of them, had a duty to exercise reasonable care in the design, research, manufacture, marketing, testing, advertisement, supply, promotion, packaging, sale, and distribution of ZOSTAVAX including the duty to take all reasonable steps necessary to manufacture, market, and sell a product that was not defective and unreasonably dangerous to consumers and users of the product.

215. Defendants failed to exercise reasonable care in the design, formulation, manufacture, sale, testing, quality assurance, quality control, labeling, marketing, promotions, and distribution of ZOSTAVAX because Defendants knew, or should have known, that the ZOSTAVAX vaccine caused viral infection, and was therefore not safe for administration to consumers.

216. Defendants failed to exercise due care in the labeling of ZOSTAVAX and failed to issue to consumers and/or their healthcare providers adequate warnings as to the risk of serious bodily injury, including viral infection, resulting from its use. Defendants failed to exercise due care in the labeling of ZOSTAVAX and failed to issue to consumers and/or their healthcare providers adequate warnings as to the risk of serious bodily injury, including viral infection, resulting from its use.

217. Defendants failed to exercise reasonable care in the design, formulation, manufacture, sale, testing, quality assurance, quality control, labeling, marketing, promotions, and distribution of ZOSTAVAX because Defendants knew, or should have known, that the ZOSTAVAX vaccine caused viral infection, and was therefore not safe for administration to consumers.

218. Merck and MSD continued to manufacture and market the ZOSTAVAX vaccine despite the knowledge, whether direct or ascertained with reasonable care, that ZOSTAVAX posed a serious risk of bodily harm to consumers. This is especially true given its tenuous efficacy.

219. McKesson continued to label, package, market, promote, distribute, and sell the ZOSTAVAX vaccine without adequate instructions or warnings despite the knowledge, whether direct or ascertained with reasonable care, that ZOSTAVAX posed a serious risk of bodily harm to consumers. This is especially true given its tenuous efficacy.

220. Defendants, each of them, knew, or should have known, that consumers, such as the Plaintiff, would foreseeably suffer injury as a result of Defendants' failure to exercise ordinary care.

221. As a direct and proximate consequence of Defendants' negligence, Plaintiffs sustained serious personal injuries and related losses including, but not limited to, mental anguish, physical pain and suffering, diminished capacity for the enjoyment of life, a diminished quality of life, medical and related expenses, and other losses and damages.

WHEREFORE, Plaintiffs demand judgment against the Defendants, and request compensatory damages for past, present, and future pain and suffering, medical costs and expenses, lost wages; prejudgment and post-judgment interest as allowed by law, costs of suit and attorneys' fees, as allowed by law, punitive damages, and any and all such other relief as the Court deems just and proper; and further, demands a trial by jury of all issues so triable.

COUNT II:
PRODUCTS LIABILITY - DEFECTIVE DESIGN
(N.J. Products Liability Act-N.J.S.A. 2A:58C-1 et seq.)
(Against all Defendants)

222. Plaintiffs incorporate by reference all prior allegations.

223. Merck designed, researched, developed, manufactured, tested, labeled, advertised, promoted, marketed, sold, supplied, and/or distributed the ZOSTAVAX vaccine.

224. MSD designed, researched, developed, manufactured, tested, labeled, advertised, promoted, marketed, sold, supplied, and/or distributed the ZOSTAVAX vaccine

225. McKesson labeled, advertised, promoted, marketed, sold, supplied, and/or distributed the ZOSTAVAX vaccine.

226. The ZOSTAVAX vaccine was expected to, and did, reach the intended consumers, handlers, and persons coming in contact with the product with no substantial change in the condition in which the product was designed, produced, manufactured, sold, distributed, labeled, and marketed by Defendants, each of them.

227. The ZOSTAVAX vaccine was manufactured, designed, marketed, labeled and sold in a defective condition, for use by Plaintiff's physicians and/or healthcare providers, and all other consumers of the product, making the product unreasonably dangerous.

228. The ZOSTAVAX vaccine, as designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and distributed by Merck, MSD, and McKesson was defective in design and formulation in that when it left the hands of the manufacturers, suppliers, marketers, and distributors, the foreseeable risks of harm caused by the product exceeded the claimed benefits of the product.

229. The ZOSTAVAX vaccine, as designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and distributed by Merck, MSD, and McKesson was defective in design and formulation, because when it left the hands of Defendants, the product was unreasonably dangerous and was also more dangerous than expected by the ordinary consumer.

230. The ZOSTAVAX vaccine, as designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and distributed by Merck, MSD, and McKesson was defective due to inadequate warnings or instructions, because when it left the hands of Defendants, the product was unreasonably dangerous and was also more dangerous than expected by the ordinary consumer, and those dangers were not known or obvious to any other party except Defendants (each of them).

231. At all times relevant to this action, Defendants knew and had reason to know that the ZOSTAVAX vaccine was inherently defective and unreasonably dangerous as designed, formulated, and manufactured by Merck and MSD, and when used and administered in the form manufactured and distributed by Merck, MSD, and McKesson, and in the manner instructed by Merck, MSD, and McKesson to be used and administered to the Plaintiffs and other consumers.

232. Plaintiffs' physicians and/or healthcare providers used and administered the ZOSTAVAX vaccine for the purpose intended by Defendants, and in a manner normally intended to be used and administered, namely for vaccination against shingles (herpes zoster). Defendants had a duty to design, create, and manufacture products that were reasonably safe and not unreasonably dangerous for their normal, common, and intended use. The ZOSTAVAX vaccine was not reasonably fit, suitable, or safe for its anticipated use, and safer, reasonable alternative designs existed and could have been utilized. Reasonably prudent manufacturers, distributors, suppliers, and/or sellers would not have placed the product in the stream of commerce with knowledge of these design flaws.

233. Defendants designed, developed, researched, manufactured, tested, advertised, promoted, marketed, sold, and distributed a defective product that created an unreasonable risk of serious harm to the health, safety, and well-being of the Plaintiffs and other consumers. Merck is

therefore strictly liable for the Plaintiffs' injuries and damages sustained proximately caused by their use of the product.

234. Plaintiffs could not, by the exercise of reasonable care, discover the defective condition of the ZOSTAVAX vaccine and/or perceive its defective dangers prior to its administration by her physicians and/or healthcare providers.

235. The defective ZOSTAVAX vaccine was a substantial, proximate, and contributing factor in causing the Plaintiffs' injuries.

236. As a proximate result of Defendants' acts and omissions, the Plaintiffs' serious physical injuries and incurred substantial medical costs and expenses to treat and care for her injuries described in this Complaint, including, but not limited to, mental anguish, physical pain and suffering, diminished capacity for the enjoyment of life, a diminished quality of life, medical and related expenses, and other losses and damages.

WHEREFORE, Plaintiffs demand judgment against the Defendants, and request compensatory damages for past, present, and future pain and suffering, medical costs and expenses, lost wages; prejudgment and post-judgment interest as allowed by law, costs of suit and attorneys' fees, as allowed by law, punitive damages, and any and all such other relief as the Court deems just and proper; and further, demands a trial by jury of all issues so triable.

COUNT III:
PRODUCTS LIABILITY – FAILURE TO WARN
(N.J. Products Liability Act -N.J.S.A. 2A:58C-1)
(Against all Defendants)

237. Plaintiffs incorporate by reference all prior allegations.

238. Merck designed, researched, developed, manufactured, tested, labeled, advertised, promoted, marketed, sold, supplied, and/or distributed the ZOSTAVAX vaccine.

239. MSD designed, researched, developed, manufactured, tested, labeled, advertised, promoted, marketed, sold, supplied, and/or distributed the ZOSTAVAX vaccine.

240. McKesson labeled, advertised, promoted, marketed, sold, supplied, and/or distributed the ZOSTAVAX vaccine.

241. The ZOSTAVAX vaccine was expected to, and did, reach the intended consumers, handlers, and persons coming in contact with the product with no substantial change in the condition in which the product was designed, produced, manufactured, sold, distributed, labeled, and marketed by Defendants.

242. The ZOSTAVAX vaccine was manufactured, designed, marketed, labeled and sold in a defective condition, for use by the Plaintiff's physicians and/or healthcare providers and all other consumers of the product, making the product unreasonably dangerous.

243. Defendants researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold, and otherwise released into the stream of commerce its ZOSTAVAX vaccine and in the course of same, directly advertised or marketed the product to consumers or persons responsible for consumers, and therefore had a duty to warn of the risks associated with the use of its product

244. The ZOSTAVAX vaccine, as designed, researched, developed, manufactured, tested, advertised, promoted, marketed, sold, labeled, and distributed by Merck, MSD, and McKesson, was defective due to the product's inadequate warnings and instructions. Defendants knew, or should have known, and adequately warned that the ZOSTAVAX vaccine created a risk of serious and dangerous side effects, including but not limited to, viral infection, resulting in shingles, post-herpetic neuralgia, or other diseases of the nervous system.

245. The product was under the exclusive control of Merck, MSD, and McKesson, and was unaccompanied by appropriate and adequate warnings regarding the risk of severe and permanent injuries associated with its use, including, but not limited to, the risk of developing a disease in the nervous system due to viral infection. The warnings given did not accurately reflect the risk, incidence, symptoms, scope or severity of such injuries to the consumer.

246. Notwithstanding Defendants' knowledge of the defective condition of the ZOSTAVAX vaccine, Defendants failed to adequately warn the medical community and consumers of the product, including the Plaintiffs and their healthcare providers, of the dangers and risk of harm associated with the use and administration of the ZOSTAVAX vaccine.

247. If the Plaintiffs were equipped with the knowledge of the defective condition and potential harms of the ZOSTAVAX vaccine, they would not have purchased it and agreed to have it injected into their body.

248. If the Plaintiffs' physicians, pharmacists, or healthcare providers were equipped with the knowledge of the defective condition and potential harms of the ZOSTAVAX vaccine, they would not have recommended, prescribed, purchased, or administered it to the Plaintiffs.

249. Defendants downplayed the serious and dangerous side effects of the ZOSTAVAX vaccine to encourage sales of the product; consequently, Defendants placed their profits above their customers' safety.

250. The ZOSTAVAX vaccine was defective when it left the possession of Defendants in that it contained insufficient warnings to alert the Plaintiffs and/or their healthcare providers to the dangerous risks and reactions associated with it, including possible viral infection of the nervous system or another disease of the nervous system.

251. Even though Defendants knew or should have known of the risks and reactions associated with their product, it still failed to provide warnings that accurately reflected the signs, symptoms, incident, scope, or severity of the risks associated with the product.

252. Regulation of the Federal Food, Drug and Cosmetic Act, 21 U.S.C.S. 301 to 399 ("FDCA") requires labels to be revised as soon as there is reasonable evidence of an association of a serious hazard with a drug; thus, a causal relationship need not be proved when revisions to warning labels have been made. McDarby v. Merck & Co., Inc., 401 N.J. Super. 10 (App. Div. 2008).

253. On or about March 17, 2017, Merck requested FDA approval and regulatory action to issue a clinical efficacy supplement regarding a change in method of production of ZOSTAVAX.

254. Since May 25, 2006, Merck has requested and received approval on thirteen separate occasions to amend, supplement, revise and otherwise change the warning labels, package insert, efficacy data, intended use, and method of production of ZOSTAVAX. Each regulatory action required by or petitioned to the FDA is sufficient to overcome the rebuttable presumption that the warning labels of ZOSTAVAX are and were adequate by the standards of New Jersey Product Liability Act ("PLA").

255. New Jersey Superior Court has held that the FDCA does not pre-empt state-law tort remedies for similarly situated instances of failure to warn. McDarby v. Merck & Co., Inc., 401 N.J. Super. 10 (App. Div. 2008).

256. Plaintiffs used Merck's ZOSTAVAX vaccine as intended or in a reasonably foreseeable manner.

257. New Jersey has held the standard for similarly situated Plaintiffs injured by pharmaceutical drugs is to determine "if a reasonable person would conclude that 'the magnitude of the scientifically perceivable danger…outweighed the benefits of the way the product was so designed and marketed." Crispin v. Volkswagenwerk AG, 248 N.J. Super. 540, 558 (App. Div. 1991).

258. Plaintiffs, each of them, were not informed of the risk of contracting persistent and chronic shingles, the very condition the vaccine was intended to prevent. Moreover Plaintiffs, each of them, were not informed of the risk of contracting shingles, post-herpetic neuralgia, residual nerve pain and damage, or herpetic interference into the eyes, and vision loss. Given the knowledge of such risk, Plaintiffs would not have voluntarily become inoculated with ZOSTAVAX.

259. Merck, as a manufacturer of pharmaceutical products, is held to the level of knowledge of an expert in the field and, further, Merck had knowledge of the dangerous risks and side effects of its product.

260. MSD, as a manufacturer of pharmaceutical products, is held to the level of knowledge of an expert in the field and, further, Merck had knowledge of the dangerous risks and side effects of its product.

261. McKesson, as a manufacturer, marketing, and distributor of pharmaceutical products, is held to the level of knowledge of an expert in the field and, further, McKesson had knowledge of the dangerous risks and side effects of the product it marketed and distributed, the ZOSTAVAX vaccine.

262. Plaintiffs did not have the same knowledge as Defendants and no adequate warning was communicated to her physicians and/or healthcare providers.

263. Defendants had a continuing duty to warn consumers of the ZOSTAVAX vaccine, including the Plaintiff, of the dangers associated with its product, and by negligently and/or wantonly failing to adequately warn of the dangers of the use of its product, Defendants each breached their duty.

264. Although Defendants knew, or should have known, of the defective nature of the ZOSTAVAX vaccine, each Defendant continued to design, manufacture, market, and/or sell the ZOSTAVAX vaccine without providing adequate warnings and instructions concerning the use of the product so as to maximize Defendants' sales and profits at the expense of the public health and safety.

265. Defendants did so with knowing, conscious, and deliberate disregard of the foreseeable harm caused by the ZOSTAVAX vaccine.

266. As a direct and proximate result of Defendants' failure to adequately warn, or other acts and omissions of Defendants, each of them, described herein, Plaintiffs were caused to suffer severe and permanent injuries, pain, and mental anguish, including diminished enjoyment of life.

267. Defendants' failure to warn extended beyond the product's label and into other media available to Defendants, including but not limited to advertisements, person-to-person sales calls, medical journal articles, and medical conference presentations.

268. Upon information and belief, the ZOSTAVAX vaccine as manufactured by Merck and/or MSD, and marketed, distributed, and sold by Merck, MSD, and McKesson, was further defective due to inadequate post-market warnings or instructions.

269. Merck, MSD, and McKesson knew, or should have known, of the risk of serious bodily harm from the administration of the ZOSTAVAX vaccine, including, but not limited to,

possible viral infection, yet Defendants failed to provide adequate warnings to consumers and/or their healthcare providers about the product, knowing the product could cause serious injury.

270. The ZOSTAVAX vaccine, upon information and belief, as manufactured and supplied by Merck, was defective due to inadequate post-market warnings or instructions when it left Merck's control.

271. The ZOSTAVAX vaccine, upon information and belief, as manufactured and supplied by MSD, was defective due to inadequate post-market warnings or instructions when it left MSD's control.

272. The ZOSTAVAX vaccine, upon information and belief, as labeled, packaged, promoted, marketed, distributed, supplied, and sold by McKesson, was defective due to inadequate post-market warnings or instructions when it left McKesson's control.

273. As a proximate result of Defendants' acts and omissions and the Plaintiffs' use of the defective product, Plaintiffs suffered serious physical injuries and incurred substantial medical costs and expenses as set forth in this Complaint, including, but not limited to, mental anguish, physical pain and suffering, diminished capacity for the enjoyment of life, a diminished quality of life, medical bills and other expenses, and other losses and damages.

WHEREFORE, Plaintiffs demand judgment against the Defendants, and request compensatory damages for past, present, and future pain and suffering, medical costs and expenses, lost wages; prejudgment and post-judgment interest as allowed by law, costs of suit and attorneys' fees, as allowed by law, punitive damages, and any and all such other relief as the Court deems just and proper; and further, demands a trial by jury of all issues so triable.

COUNT IV:
BREACH OF EXPRESS WARRANTY
(N.J. Products Liability Act -N.J.S.A. 12A: 2-313, N.J.S.A 2A: 58C-1.b(3))
(Against all Defendants)

274. Plaintiffs incorporate by reference all prior allegations.

275. Merck, through its officers, directors, agents, representatives, and written literature and packaging, and written and media advertisements, expressly warranted that its ZOSTAVAX vaccine was safe and effective and fit for use by consumers, was of merchantable quality, did not create the risk of or produce dangerous side effects, including, but not limited to, viral infection, and was adequately tested and fit for its intended use. Specifically:

a. Merck, MSD, and McKesson stated that "ZOSTAVAX is a vaccine that is used for adults 60 years of age or older to prevent shingles (also known as zoster)."

b. Merck, MSD, and McKesson stated that "ZOSTAVAX works by helping your immune system protect you from getting shingles."

c. Merck, in the SPS paper, stated that "…the vaccine did not cause or induce herpes zoster."

d. MSD, in the SPS paper, stated that "…the vaccine did not cause or induce herpes zoster."

276. Plaintiffs were influenced by, affected by, or otherwise caused to use and consent to being inoculated with the ZOSTAVAX vaccine as a result of virtually uniform and/or identical information provided, as well as representations and material omissions made by Defendants Merck, MSD, and McKesson, each of them, as set forth herein. This information emanated from the same source, Merck, and was vetted by its copy review department (or equivalent) to ensure uniformity and harmony of the marketing message. The manner by which such information and representations were received by or otherwise exposed to Plaintiffs and their health care providers and pharmacies was the same and include, but are not limited to, the following:

a. The ZOSTAVAX vaccine applications submitted by Merck and/or MSD, and or their agents, affiliates, predecessors and/or successors in interest, to the United States Food and Drug Administration ("FDA") and relied by the FDA for approval to commercially market the ZOSTAVAX vaccine.

b. Product information, instructions for use and other labeling materials provided with the ZOSTAVAX vaccine by Merck, MSD, and/or McKesson;

c. Marketing and promotional materials made available and provided by Merck, MSD, and/or McKesson's marketing departments to Plaintiffs' health care providers, including, but not limited to:

i. Patient brochures designed, produced, provided, and/or otherwise disseminated by sales representatives by Merck, MSD, and/or McKesson, in person to each Plaintiff, each Plaintiff's healthcare providers, pharmacies, the medical community, and the public at large;

ii. Training seminars hosted by Merck;

iii. Training seminars hosted by MSD;

iv. Training seminars hosted by McKesson;

v. Continuing Medical Education ("CME") materials created, authored and/or provided by Merck, MSD, and/or McKesson;

vi. Information supplied at Professional Conferences at booths hosted or manned by Merck, MSD, and/or McKesson or their Key Opinion Leaders.

d. Representations and informational packets made and provided by Defendants' marketing and sales departments through their sales representatives to each implanting physician of Plaintiffs' during in-office visits or meetings with said physicians and by pharmacists at the places where they go regularly to obtain other medications.

e. Defendants' online websites that provided the same specific information on the ZOSTAVAX vaccine, including product description, indications for use, instructions for use, and ordering information.

f. The indications for use were the same or substantially similar in each Plaintiff's situation, as set forth herein. Plaintiffs were each urged by their health care providers or pharmacists to get inoculated with the ZOSTAVAX vaccine for the prevention of adult shingles, which they were informed by said providers was a dangerous condition.

g. Plaintiffs experienced injuries because of their use of ZOSTAVAX, which did not comply with the warranties made by Defendants.

277. At the time of making such express warranties, Defendants, each of them, knew and/or should have known that the ZOSTAVAX vaccine did not conform to the express warranties and representations and that, in fact, the product was not safe and had numerous serious side

effects, including the possibility of viral infection, of which Defendants had full knowledge and did not accurately or adequately warn.

278. The ZOSTAVAX vaccine manufactured, marketed, distributed, and sold by Defendants did not conform to these representations because it caused serious injury, including diseases of the nervous system and/or viral infection, to consumers such as the Plaintiff, when used in routinely administered dosages.

279. Defendants breached their express warranties because the ZOSTAVAX vaccine was and is defective for its intended purpose.

280. Plaintiffs, through their physicians and/or other healthcare providers, did rely on Defendants' express warranties regarding the safety and efficacy of their product in purchasing and injecting the product.

281. Members of the medical community, including physicians and other healthcare professionals, relied upon Defendants' representations and express warranties in connection with the use recommendation, description, and dispensing of the ZOSTAVAX vaccine.

282. As a foreseeable, direct, and proximate result of the breach of the express warranties, the Plaintiffs suffered severe and permanent personal injuries, harm, and economic loss.

WHEREFORE, Plaintiffs demand judgment against the Defendants and request compensatory damages for past, present, and future pain and suffering, medical costs and expenses, lost wages; prejudgment and post-judgment interest as allowed by law, costs of suit and attorneys' fees, as allowed by law, punitive damages, and any and all such other relief as the Court deems just and proper; and further, demands a trial by jury of all issues so triable.

COUNT V:
BREACH OF IMPLIED WARRANTY

283. Plaintiffs incorporate by reference all prior allegations.

MERCK

284. At all times relevant to this action, Merck manufactured, compounded, portrayed, distributed, recommended, merchandised, advertised, promoted, and/or sold the ZOSTAVAX vaccine for use in preventing shingles.

285. Merck knew of the intended use of the ZOSTAVAX vaccine at the time Merck marketed, sold, and distributed its product for use by the Plaintiffs physicians and healthcare providers, and impliedly warranted the product to be of merchantable quality and safe and fit for its intended use.

286. Merck impliedly represented and warranted to the medical community, the regulatory agencies, and consumers, including the Plaintiffs, their physicians, and their healthcare providers, that ZOSTAVAX vaccine was safe and of merchantable quality and fit for the ordinary purpose for which the product was intended and marketed to be used.

287. Merck's representations and implied warranties were false, misleading, and inaccurate because the ZOSTAVAX vaccine was defective, and not of merchantable quality.

288. At the time the ZOSTAVAX vaccine was promoted, marketed, distributed, and/or sold by Merck, Merck knew of the use for which it was intended and impliedly warranted its product to be of merchantable quality and safe and fit for such use.

289. Plaintiffs, their physicians and healthcare providers, and members of the medical community reasonably relied on the superior skill and judgment of Merck, as manufacturer, developer, distributor, and seller of the ZOSTAVAX vaccine, as to whether it was of merchantable quality and safe and fit for its intended use, and also relied on the implied warranty of

merchantability and fitness for the particular use and purpose for which the product was manufactured and sold.

290. Contrary to Merck's implied warranties, the ZOSTAVAX vaccine as used by the Plaintiffs, was not of merchantable quality and was not safe or fit for its intended use because the product was unreasonably dangerous as described herein.

291. Merck breached its implied warranty because the ZOSTAVAX vaccine was not safely fit for its intended use and purpose.

292. Merck placed the ZOSTAVAX vaccine into the stream of commerce in a defective, unsafe, and inherently dangerous condition, and the product was expected to and did reach the Plaintiffs without substantial change in the condition in which it was manufactured and sold.

293. As a foreseeable, direct and proximate result of Merck's acts and omissions and Plaintiffs' use of the ZOSTAVAX vaccine, Plaintiffs suffered serious physical injuries and incurred substantial medical costs and expenses to treat and care for their injuries described herein.

MSD

294. At all times relevant to this action, MSD manufactured, compounded, portrayed, distributed, recommended, merchandised, advertised, promoted, and/or sold the ZOSTAVAX vaccine for the long-term prevention of shingles.

295. MSD knew of the intended use of the ZOSTAVAX vaccine at the time MSD designed, manufactured, marketed, sold, and distributed the ZOSTAVAX vaccine for use by the Plaintiffs physicians and healthcare providers, and impliedly warranted the product to be of merchantable quality and safe and fit for its intended use.

296. MSD impliedly represented and warranted to the medical community, the regulatory agencies, and consumers, including the Plaintiffs, their physicians, and their healthcare

providers, that ZOSTAVAX vaccine was safe and of merchantable quality and fit for the ordinary purpose for which the product was intended and marketed to be used.

297. Merck's representations and implied warranties were false, misleading, and inaccurate because its product was defective, and not of merchantable quality.

298. At the time the ZOSTAVAX vaccine was promoted, marketed, distributed, and/or sold by MSD, MSD knew of the use for which it was intended and impliedly warranted its product to be of merchantable quality and safe and fit for such use.

299. Plaintiffs, their physicians and healthcare providers, and members of the medical community reasonably relied on the superior skill and judgment of MSD, as manufacturer, developer, distributor, and seller of the ZOSTAVAX vaccine, as to whether it was of merchantable quality and safe and fit for its intended use, and also relied on the implied warranty of merchantability and fitness for the particular use and purpose for which the product was manufactured and sold.

300. Contrary to MSD's implied warranties, the ZOSTAVAX vaccine as used by the Plaintiffs, was not of merchantable quality and was not safe or fit for its intended use because the product was unreasonably dangerous as described herein.

301. MSD breached its implied warranty because the ZOSTAVAX vaccine was not safely fit for its intended use and purpose.

302. MSD placed the ZOSTAVAX vaccine into the stream of commerce in a defective, unsafe, and inherently dangerous condition, and the product was expected to and did reach the Plaintiffs without substantial change in the condition in which it was manufactured and sold.

303. As a foreseeable, direct and proximate result of MSD's acts and omissions and Plaintiffs' use of the ZOSTAVAX vaccine, Plaintiffs suffered serious physical injuries and incurred substantial medical costs and expenses to treat and care for their injuries described herein.

MCKESSON

304. At all times relevant to this action, McKesson, portrayed, distributed, recommended, merchandised, advertised, promoted, and/or sold its ZOSTAVAX vaccine for use in preventing shingles.

305. McKesson knew of the intended use of the ZOSTAVAX vaccine at the time McKesson marketed, sold, and distributed the ZOSTAVAX vaccine for use by the Plaintiffs physicians and healthcare providers, and impliedly warranted the product to be of merchantable quality and safe and fit for its intended use.

306. Merck impliedly represented and warranted to the medical community, the regulatory agencies, and consumers, including the Plaintiffs, their physicians, and her healthcare providers, that ZOSTAVAX vaccine was safe and of merchantable quality and fit for the ordinary purpose for which the product was intended and marketed to be used.

307. McKesson's representations and implied warranties were false, misleading, and inaccurate because the ZOSTAVAX vaccine was defective, and not of merchantable quality.

308. At the time the ZOSTAVAX vaccine was promoted, marketed, distributed, and/or sold by McKesson, McKesson knew of the use for which it was intended and impliedly warranted its product to be of merchantable quality and safe and fit for such use.

309. Plaintiffs, their physicians and healthcare providers, and members of the medical community reasonably relied on the superior skill and judgment of McKesson, as marketer, distributor, and seller of the ZOSTAVAX vaccine, as to whether it was of merchantable quality

and safe and fit for its intended use, and also relied on the implied warranty of merchantability and fitness for the particular use and purpose for which the product was manufactured and sold.

310. Contrary to McKesson's implied warranties, the ZOSTAVAX vaccine t as used by the Plaintiffs, was not of merchantable quality and was not safe or fit for its intended use because the product was unreasonably dangerous as described herein.

311. McKesson breached its implied warranty because the ZOSTAVAX vaccine was not safely fit for its intended use and purpose.

312. McKesson placed the ZOSTAVAX vaccine into the stream of commerce in a defective, unsafe, and inherently dangerous condition, and the product was expected to and did reach the Plaintiffs without substantial change in the condition in which it was manufactured and sold.

313. As a foreseeable, direct and proximate result of McKesson's acts and omissions and Plaintiffs' use of the ZOSTAVAX vaccine, Plaintiffs suffered serious physical injuries and incurred substantial medical costs and expenses to treat and care for their injuries described herein.

WHEREFORE, Plaintiffs demand judgement against the Defendants and request compensatory damages for past, present, and future pain and suffering, medical costs and expenses, lost wages; prejudgment and post-judgment interest as allowed by law, costs of suit and attorneys' fees, as allowed by law, punitive damages, and any and all such other relief as the Court deems just and proper; and further, demands a trial by jury of all issues so triable

COUNT VI:
CONSCIOUS MISREPRESENTATION INVOLVING RISK OF PHYSICAL HARM

Merck

314. Plaintiffs incorporate by reference all prior allegations.

315. Merck, by and through its agents and employees, intentionally, willfully, and knowingly, fraudulently misrepresented to the medical community, the FDA, and consumers, including the Plaintiffs and their health care providers, that the ZOSTAVAX vaccine had been adequately tested in clinical trials and was found to be safe and effective.

316. Merck knew or believed at the time it made its fraudulent misrepresentations, that its misrepresentations were false and fraudulent regarding the dangers and risks associated with use of the ZOSTAVAX vaccine. Merck made its fraudulent misrepresentations intentionally, willfully, wantonly, and with reckless disregarded and depraved indifference for the safety and well-being of the users of the ZOSTAVAX vaccine, such as Plaintiffs.

317. Merck's fraudulent misrepresentations include the following: the efficacy of ZOSTAVAX, particularly that it was effective in preventing shingles and post-herpetic neuralgia to consumers over the age of 59; longevity of efficacy of the ZOSTAVAX vaccine, specifically the lasting preventative effect of the ZOSTAVAX vaccine against the herpes virus, even after an extended time period; and the safety of ZOSTAVAX, particularly that the ZOSTAVAX vaccine did *not* induce serious side effects (such as shingles, post-herpetic neuralgia, retinal necrosis, keratitis and acute myelitis).

318. Merck's employee Melissa Lore disseminated information available on the labeling of ZOSTAVAX, as it was administered to Plaintiffs, and each of them. The labeling contained misleading information, such as the efficacy and safety of ZOSTAVAX as a preventative measure for shingles, particularly that it was not known to cause or induce post-herpetic neuralgia, shingles, or other complications suffered by Plaintiffs. McKesson also disseminated this misleading information in its patient information materials, brochures, and marketing materials.

319. Merck's website includes information that the ZOSTAVAX vaccine prevents the reactivation of the zoster virus, to effectively prevent shingles.

320. David Gutsch, M.D., is currently the Executive Director, Vaccines Regulatory, for Merck and MSD.

321. In 2005, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

322. In 2006, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

323. In 2007, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

324. In 2008, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

325. In 2009, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

326. In 2010, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

327. In 2011, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

328. In 2012, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

329. In 2013, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

330. In 2014, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

331. In 2015, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

332. In 2016, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

333. In 2017, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

334. During his presentations from 2005 through 2017, David Gutsch, M.D., instructed the ZOSTAVAX field personnel and sales force who interacted directly with healthcare providers

to represent to physician: that ZOSTAVAX was effective indefinitely after a single administration; that ZOSTAVAX did not cause shingles; that ZOSTAVAX was safe, effective for the long-term prevention of shingles; that ZOSTAVAX was effective to treat pain associated with shingles.

335. The ZOSTAVAX sales force relayed Gutsch's misinformation directly to Plaintiffs' physicians and pharmacists though in-person office visits, over the telephone, and during lunches and dinners.

336. Ann Redfield, M.S.N., R.N. formally known as Ann R. Sweet, M.S.N., R.N., upon information and belief, worked in a key capacity on Merck's Clinical Safety and Risk Management Department as part of the "vaccine team" at Merck West Point, located in West Point, Pennsylvania. Ann Redfield acted at all times pertinent hereto within the scope of her employment as proprietor of key safety and prescribing information for the ZOSTAVAX vaccine, at issue.

337. Ann Redfield, MSN, RN, working with part of the "vaccine team" as part of Merck's Clinical Safety and Risk Management Department, wrote the comment section for Merck's WAES adverse experience reports. Ann Redfield, MSN, RN, also worked as the "process owner" of Merck's Varicella Zoster Vaccine Identification Program. In this capacity, Redfield drafted documents presented to the Merck employees who interacted directly with healthcare providers who recommend, prescribe, and dispense the ZOSTAVAX vaccine.

338. Ann Redfield, MSN, RN, gave presentations to Merck's and McKesson's field personnel, which was the sales force of Merck employees and McKesson employees who interacted directly with healthcare providers.

339. Ann Redfield, MSN, RN, gave presentations to the ZOSTAVAX sales force who interacted directly with healthcare providers and instructed the ZOSTAVAX field personnel and sales force who interacted directly with healthcare providers to represent to physician: that

ZOSTAVAX was effective indefinitely after a single administration; that ZOSTAVAX did not cause shingles; that ZOSTAVAX was safe, effective for the long-term prevention of shingles; that ZOSTAVAX was effective to treat pain associated with shingles.

340. The ZOSTAVAX sales force relayed Redfield's misinformation directly to Plaintiffs' physicians and pharmacists though in-person office visits, over the telephone, and during lunches and dinners.

341. Upon information and belief, Ann Redfield, MSN, RN, acted within the scope of her employment when she excluded or otherwise purposely ignored reports of meningitis caused by vaccine-strain herpes zoster and assisted Merck and McKesson in communicating this false information to ZOSTAVAX sales representatives, and then to healthcare providers.

342. In May 2006, Mark Feinberg, M.D., Ph.D., was the vice president of policy, public health and medical affairs of Merck Vaccines.

343. In May 2006, Mark Feinberg, M.D., Ph.D., stated that shingles is an "often painful disease in older adults."

344. Since May 2006, on the date that ZOSTAVAX was approved by the FDA for commercial marketing in the United States, Merck represented the following material information to the public:

- That adult shingles causes pain in almost every instance;
- That the ZOSTAVAX vaccine would effectively prevent shingles and specifically the pain that accompanied it;
- That the ZOSTAVAX vaccine was approved to treat the pain associated with shingles;
- That serious adverse effects were experienced by less than 1% of individuals in the ZOSTAVAX vaccine's clinical trials and studies;
- That the ZOSTAVAX vaccine was evaluated for safety in more than 20,000 adults – and found to be safe, effective for the long-

term prevention of shingles, and without any adverse effects in more than 20,000 adults;

- That "[t]here is no way to predict when the varicella-zoster virus (VZV) will reactivate or who will develop zoster."
- That ZOSTAVAX was a "well-studied vaccine."
- That ZOSTAVAX "significantly reduced" the risk of developing shingles compared with placebo."
- That ZOSTAVAX would benefit its users "in the ***prevention of long-term nerve pain from shingles*** (postherpetic neuralgia) ***can be primarily attributed to the vaccine's effect on the prevention of shingles***." (emphasis addied).
- That the efficacy of ZOSTAVAX is 51% for everyone.
- That the efficacy of ZOSTAVAX did not diminish over time after vaccination.
- That the immunity provided by ZOSTAVAX was unlimited.
- That the immunity provided by ZOSTAVAX was the same regardless of the age of the patient vaccinated.
- That ZOSTAVAX had been tested and was found to be safe and effective for preventing shingles.
- That ZOSTAVAX was safe.
- That ZOSTAVAX was effective.

345. Merck made the aforesaid statements through the ZOSTAVAX vaccine's labeling, advertising, marketing material, advertisements, and/or packaging.

346. Merck made the aforesaid statements to physicians and the medical community in ZOSTAVAX "Physician Journal Ad[s]" published in medical journals that physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work, subscribed, received, and read in 2006.

347. Merck made the aforesaid statements to physicians and the medical community in ZOSTAVAX "Physician Journal Ad[s]" published in the American Journal of Health-System

Pharmacy in 2006. Physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work, subscribed, received, and read these ZOSTAVAX journal ads.

348. Merck made the aforesaid statements to physicians and the medical community in ZOSTAVAX "Physician Journal Ad[s]" published in the Journal of the American Geriatrics Association in 2007. Physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work, subscribed, received, and read these ZOSTAVAX journal ads.

349. Merck made the aforesaid statements to physicians and the medical community in ZOSTAVAX "Physician Journal Ad[s]" published in the medical journal American Family Physician in 2007. Physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work, subscribed, received, and read these ZOSTAVAX journal ads.

350. Merck made the aforesaid statements to physicians and the medical community in ZOSTAVAX "Physician Journal Ad[s]" published in medical journals that physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work, subscribed, received, and read from 2006 until 2017.

351. Merck made the aforesaid statements to the public, including directly to consumers, and the medical community through the May 26, 2006 video news release for the ZOSTAVAX vaccine.

352. The May 26, 2006 video news release for the ZOSTAVAX vaccine was disseminated through broadcast television, cable television, national newspapers such as the New York Times, Washington Post, USA Today, and other national media outlets.

353. Merck provided the May 26, 2006 video news release for the ZOSTAVAX vaccine electronically via email and fax to broadcast television; cable television; national newspapers including the New York Times; Washington Post; USA Today; to BusinessWire, a press release distributor, which distributed these representations to national media outlets; and other national media outlets.

354. In May 2006, Merck made its ZOSTAVAX video news release available to broadcast media (including broadcast television, cable television, and other national media outlines) via satellite feed, electronic feed, and videocassette. The broadcast media then disseminated Merck's ZOSTAVAX video news release to the public, including directly to consumers, and to the medical community.

355. In June 2006, Merck made its ZOSTAVAX video news release available to broadcast media (including broadcast television, cable television, and other national media outlines) via satellite feed, electronic feed, and videocassette. The broadcast media then disseminated Merck's ZOSTAVAX video news release to the public, including directly to consumers, and to the medical community.

356. On June 13, 2006, Jill Bradley was Merck's Director of Marketing Communications.

357. Merck's representations intentionally concealed the following material information:

a. From 2006 until present date, Merck intentionally concealed the effect of time since vaccination on ZOSTAVAX's efficacy.

b. From 2006 until present date, Merck intentionally concealed that the effect of time since vaccination significantly decreases the efficacy rate of ZOSTAVAX.
c. From 2006 until present date, Merck intentionally concealed the fact that four years after vaccination, the efficacy rate of ZOSTAVAX is zero.
d. From 2006, when the ZOSTAVAX vaccine was first marketed, until 2014, Merck knowingly omitted in the packaging for ZOSTAVAX that the ZOSTAVAX vaccine can actually cause a viral infection, leading to an array of other infections and/or diseases including post herpetic neuralgia;
e. On June 13, 2006, Nancy Chamberlin, Pharm. D., Regulatory Review Officer, APLB, submitted a memorandum to Jill Bradley, Merck's Director of Marketing Communications, regarding the APLB's label review of ZOSTAVAX and stating APLB's position regarding Merck's ZOSTAVAX label:

> "We disagree with your proposal to omit the warning for vaccination with a live attenuated virus and precautionary statement regarding the theoretical risk of transmitting the vaccine virus to varicella-susceptible individuals. Omission of these would make your promotional pieces lacking in appropriate fair balance risk information that needs to be conveyed with every promotional material."

f. On June 13, 2006, Jill Bradley decided, on behalf of Merck and in the scope of her employment with Merck, to intentionally omit the aforesaid warnings associated with the vaccination of a live attenuated virus for the 2006 ZOSTAVAX label.
g. On June 13, 2006, when Merck decided to omit information on the 2006 ZOSTAVAX vaccine's label, Jill Bradley knew and/or had reason to know the risks associated with the vaccination of a live attenuated virus was material information that would be relied upon by the medical community, including each Plaintiffs' healthcare providers, and by each Plaintiffs.
h. On or about June 13, 2006, Merck knew or had reason to know that the ZOSTAVAX vaccine's label omitted statements about the cardiac events; the warnings and precautions of using a live virus vaccine; and the need to avoid close contact (including household contacts) with someone who may be pregnant and has not had chickenpox or been vaccinated against chickenpox, or someone who has problems with their immune system.
i. On or about June 13, 2006, Merck knew or had reason to know that the ZOSTAVAX vaccine's label omitted a warning regarding vaccination with a live attenuated virus and also lacked a precautionary statement

regarding the theoretical risk of transmitting the vaccine virus to varicella-susceptible individuals.

j. From June 13, 2006, Merck intentionally omitted material facts from the ZOSTAVAX label and while marketing and selling the ZOSTAVAX vaccine.

k. Merck knowingly omitted in the packaging for the ZOSTAVAX vaccine that the ZOSTAVAX vaccine can actually cause a viral infection, leading to an array of other infections and/or diseases;

358. From 2006 until 2014, Merck represented to the public, including directly to consumers, that ZOSTAVAX did not cause or induce shingles through the ZOSTAVAX vaccine's labeling, advertising, marketing material, advertisements, and/or packaging.

359. Since 2006, Merck represented to the medical community, to the public, and directly to consumers that known adverse effects associated with ZOSTAVAX use were no more serious that a "rash" through the ZOSTAVAX vaccine's labeling, advertising, marketing material, advertisements, and/or packaging.

360. On November 3, 2009, Dr. Rose Tiernan from the OVRR DVRPA called Merck employee Dr. David Gutsch to notify Merck that the term "rash" was too general to be useful. Merck failed to remedy this inadequate warning.

361. From 2006 until 2017, Merck's professional representatives met physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work. Merck's professional representatives represented to said physicians that ZOSTAVAX was effective for the long-term prevention of shingles; that ZOSTAVAX's efficacy rate did not decrease over time after vaccination; and that ZOSTAVAX created no risk of causing shingles or other injuries or complications associated with herpes zoster.

362. From 2006 through at least 2011, Merck and MSD represented to the medical community, including to Plaintiffs' physicians, through seminars that the effect of time since vaccination on ZOSTAVAX's vaccine efficacy is not statistically significant.

363. On October 2008, Dr. M. Levin, acting on behalf of Merck, presented at the Annual ICAAC/IDSA Annual Meeting in Washington, DC, and represented that "protection [from shingles] persists for up to 7 years." Medical professionals in academia, government, and private practice attended this meeting. This information reached Plaintiffs' healthcare providers directly or through word of mouth from their peers.

364. On October 23, 2010, Dr. M. Levin, acting on behalf of Merck, presented at the 48th Annual ICAAC/IDSA 46th Annual Meeting in Washington, DC, and represented that "protection [from shingles] persists for up to 7 years." Medical professionals in academia, government, and private practice attended this meeting. This information reached Plaintiffs' healthcare providers directly or through word of mouth from their peers.

365. Plaintiffs' healthcare providers, physicians, and received these representations made by Dr. M. Levin on October 23, 2010 regarding the ZOSTAVAX vaccine's efficacy and the effect of time on it, and relied upon these representations.

366. On May 18, 2011, Merck represented that "The effect of time since vaccination on VE [vaccine efficacy] (waning effect) is not statistically significant" in a presentation regarding the "Persistence of Zoster Vaccine Efficacy" at the Society of Clinical Trials ("SCT") Annual Meeting in Vancouver, BC Canada. Medical professionals in academia, government, and private practice attended this SCT Annual Meetings, including medical care providers in the United States. This information reached Plaintiffs' healthcare providers directly or through word of mouth from their peers

367. Plaintiffs' healthcare providers, physicians, and received these representations made by Merck in the May 18, 2011 SCT Annual Meeting regarding the ZOSTAVAX vaccine's efficacy and the effect of time on it, and relied upon these representations.

368. Merck's representations that "the effect of time since vaccination on [ZOSTAVAX's] vaccine efficacy is not statistically significant are false.

369. Merck's representations that ZOSTAVAX's protection from shingles persists for up to seven years are false.

370. ZOSTAVAX's efficacy four years after vaccination is zero.

371. ZOSTAVAX's efficacy four years after vaccination is statistically the same as zero.

372. ZOSTAVAX's efficacy rate wanes to near zero after four years after vaccination.

373. Merck knew that ZOSTAVAX's efficacy rate wanes to near zero after four years after vaccination.

374. The ZOSTAVAX vaccine can cause the chickenpox virus to reactivate and cause shingles upon its administration.

375. From 2006 until 2017, Merck's professional representatives met physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work.

376. Merck's professional representatives represented to said physicians that ZOSTAVAX was effective for the long-term prevention of shingles; that ZOSTAVAX's efficacy rate did not decrease over time after vaccination; and that ZOSTAVAX created no risk of causing shingles or other injuries or complications associated with herpes zoster.

377. Between 2006 and 2017, Merck, through its sales representatives and through its agents' word-of-mouth recommendations, specifically made oral representations to Plaintiffs' healthcare providers, physicians, and pharmacists that ZOSTAVAX's efficacy rate was "between 50% and 60% regardless of the age of the patient at the time that ZOSTAVAX was administered."

378. Between 2006 and 2017, Plaintiffs' healthcare providers, physicians, and pharmacists relied upon Merck's representations that ZOSTAVAX's efficacy rate was between 50% and 60% regardless of the age of the patient at the time that ZOSTAVAX was administered and were induced to prescribe, administer, and/or recommend ZOSTAVAX to Plaintiffs as a result regardless of each Plaintiffs' age at the time of administration of ZOSTAVAX.

379. Merck's representations were false: the maximum efficacy rate of ZOSTAVAX is 51% at the time of administration only if the patient is 60 years of age on the date of its administration. ZOSTAVAX's efficacy rate continually declines after age 60.

380. Between 2006 and 2017, Merck, through its sales representatives and through its agents' word-of-mouth recommendations, specifically made oral representations to Plaintiffs' healthcare providers, physicians, and pharmacists that "ZOSTAVAX's efficacy rate remained constant, and above 50%, post-inoculation."

381. Between 2006 and 2017, Plaintiffs' healthcare providers, physicians, and pharmacists relied upon Merck's representations that "ZOSTAVAX's efficacy rate remained constant, and above 50%, post-inoculation" and were induced to prescribe, administer, and/or recommend ZOSTAVAX to Plaintiffs as a result regardless of each Plaintiffs' age at the time of administration of ZOSTAVAX.

382. Merck's representations were false: ZOSTAVAX efficacy rate declines to almost zero four years post-inoculation.

383. From 2006 until 2017, Merck held convention panels that were attended by physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work.

384. During these convention panels, Merck represented that ZOSTAVAX was effective for the long-term prevention of shingles; that ZOSTAVAX's efficacy rate did not decrease over time after vaccination; and that ZOSTAVAX created no risk of causing shingles or other injuries or complications associated with herpes zoster.

385. Plaintiffs' healthcare providers, physicians, and pharmacists attended Merck's convention panels regarding ZOSTAVAX and heard and received Merck's representations made during these convention panels regarding the ZOSTAVAX vaccine's efficacy and the effect of time on it and ZOSTAVAX's risks or lack thereof and relied upon these representations.

386. Plaintiffs' healthcare providers, physicians, and pharmacists heard and received Merck's representations made during these convention panels regarding the ZOSTAVAX vaccine's efficacy and the effect of time on it and ZOSTAVAX's risks or lack thereof through word-of-mouth from their peers, and relied upon these representations.

387. Plaintiffs' healthcare providers, physicians, and pharmacists relied upon Merck's representations made during these convention panels regarding the ZOSTAVAX vaccine's efficacy and the effect of time on it and ZOSTAVAX's risks or lack thereof and were induced to prescribe, administer, and/or recommend ZOSTAVAX to Plaintiffs as a result.

388. Since May 2006 and during all relevant times, ZOSTAVAX vaccine's television commercials, radio commercials, and print advertisements were published and run in magazines

targeting 50-year-old-and-older adults, and in broadcast television, cable television, mainstream radio, and other broadcast media outlets.

389. From 2006 until 2017, Merck broadcasted numerous television commercials on public television and cable television promoting ZOSTAVAX, wherein actors and/or celebrities spoke in detail about how painful shingles is.

390. In 2014, Merck ran numerous television commercials broadcasted on public television promoting ZOSTAVAX featuring former football quarterback Terry Bradshaw ("Bradshaw Ad"), wherein Bradshaw spoke in detail about how painful shingles is.

391. The Bradshaw Ad represented to the viewing public and consumers, including Plaintiffs, that ZOSTAVAX was highly effective in preventing shingles and shingles pain, and that ZOSTAVAX was effective after a single shot.

392. The Bradshaw Ad represented to the viewing public and consumers, including Plaintiffs, that ZOSTAVAX was intended for long-term prevention of pain caused by shingles.

393. The Bradshaw Ad represented to the viewing public and consumers, including Plaintiffs and Plaintiffs' healthcare providers, physicians, and pharmacists, that ZOSTAVAX was highly effective in preventing shingles and shingles pain, and that ZOSTAVAX was effective after a single shot.

394. The Bradshaw Ad represented to the viewing public and consumers, including Plaintiffs and Plaintiffs' healthcare providers, physicians, and pharmacists, that ZOSTAVAX was intended for long-term prevention of pain caused by shingles.

395. Plaintiffs saw the Bradshaw Ad.

396. Plaintiffs were influenced by and relied upon the Bradshaw Ad and were induced to use ZOSTAVAX for long-term prevention of shingles as a result.

397. Plaintiffs' healthcare providers, physicians, and pharmacists saw the Bradshaw Ad.

398. Plaintiffs' healthcare providers, physicians, and pharmacists were influenced by and relied upon the Bradshaw Ad and were induced to prescribe, administer, and/or recommend ZOSTAVAX to Plaintiffs for long-term prevention of shingles as a result.

399. The Bradshaw Ad represented to the viewing public and consumers, including Plaintiffs, that ZOSTAVAX was highly effective in preventing shingles and shingles pain, and that ZOSTAVAX was effective after a single shot.

400. The Bradshaw Ad represented to the viewing public and consumers, including Plaintiffs, that ZOSTAVAX was intended for long-term prevention of pain caused by shingles.

401. Merck's representations that ZOSTAVAX was highly effective in preventing shingles and shingles pain was false and misleading.

402. From 2015 through 2017, Merck ran television commercials broadcasted on public television and cable television promoting ZOSTAVAX that depicted a person struggling through a day at an office job because of shingles pain ("Day #7 with Shingles Ad").

403. The Day #7 with Shingles Ad showed graphic depictions of blistering skin and described the pain associated with shingles, representing to their viewers that shingles always causes pain in every patient.

404. The Day #7 with Shingles Ad represented to the viewing public and consumers that ZOSTAVAX was highly effective in preventing shingles and shingles pain, and that ZOSTAVAX was effective after a single shot.

405. Plaintiffs saw the Day #7 with Shingles Ad.

406. Plaintiffs were influenced by and relied upon the Day #7 with Shingles Ad and were induced to use ZOSTAVAX for long-term prevention of shingles as a result.

407. Plaintiffs' healthcare providers, physicians, and pharmacists saw the Day #7 with Shingles Ad.

408. Plaintiffs' healthcare providers, physicians, and pharmacists were influenced by and relied upon the Day #7 with Shingles Ad and were induced to prescribe, administer, and/or recommend ZOSTAVAX to Plaintiffs for long-term prevention of shingles as a result.

409. Shingles is not always accompanied by pain.

410. ZOSTAVAX was not approved to treat pain.

411. The Day #7 with Shingles Ad's representations regarding pain occurrence with shingles were false and misleading.

412. Viewers and consumers who saw the Day #7 with Shingles Ad do not equate a vaccine with the ***highest*** efficacy rate of 51% if vaccinated at age 60 with "highly effective."

413. Viewers and consumers who saw the Day #7 with Shingles Ad relied upon the ad's representation that ZOSTAVAX was effective to prevent shingles and understood that representation to indicate that ZOSTAVAX would prevent shingles indefinitely.

414. The Day #7 with Shingles Ad concealed from its viewers that ZOSTAVAX vaccine can cause the reactivation of the chicken pox virus and cause shingles.

415. Merck knew that the Day #7 with Shingles Ad's representations were false and misleading.

416. From 2015 through 2017, Merck ran television commercials broadcasted on public television promoting ZOSTAVAX that showing a person who gives up on a game of golf because of shingles pain. ("Day #18 with Shingles Ad").

417. The Day #18 with Shingles Ad showed graphic depictions of blistering skin and depicted the person suffering from shingles failing to bend down without experiencing strong pain.

418. The Day #18 with Shingles Ad showed graphic depictions of blistering skin and described the pain associated with shingles, representing to their viewers that shingles always causes pain in every patient.

419. The Day #18 with Shingles Ad depicted the actor posing as a shingles sufferer, who states: "After almost three weeks, I just really wanted to give it a shot."

420. The Day #18 with Shingles Ad represented to their viewers that the blisters caused by shingles lasts at least three weeks.

421. The Day #18 with Shingles Ad represented to their viewers that the pain caused by shingles lasts at least three weeks.

422. The Day #18 with Shingles Ad informed its viewers: "If you had chicken pox, the shingles virus is already inside you."

423. Plaintiffs saw the Day #18 with Shingles Ad.

424. Plaintiffs were influenced by and relied upon the Day #18 with Shingles Ad and were induced to use ZOSTAVAX for long-term prevention of shingles as a result.

425. Plaintiffs' healthcare providers, physicians, and pharmacists saw the Day #18 with Shingles Ad.

426. Plaintiffs' healthcare providers, physicians, and pharmacists were influenced by and relied upon the Day #18 with Shingles Ad and were induced to prescribe, administer, and/or recommend ZOSTAVAX to Plaintiffs for long-term prevention of shingles as a result.

427. Shingles is not always accompanied by pain.

428. ZOSTAVAX was not approved to treat pain.

429. Shingles is not always accompanied by painful blisters or blistering rash.

430. The painful, fluid-filled blisters depicted in the Day #18 Shingles Ad that sometimes accompany shingles do not typically last three weeks.

431. The Day #18 with Shingles Ad's representations regarding pain occurrence with shingles were false and misleading.

432. Viewers and consumers who saw the Day #18 with Shingles Ad do not equate a vaccine with the ***highest*** efficacy rate of 51% if vaccinated at age 60 with "highly effective."

433. Viewers and consumers who saw the Day #18 with Shingles Ad relied upon the ad's representation that ZOSTAVAX was effective to prevent shingles and understood that representation to indicate that ZOSTAVAX would prevent shingles indefinitely.

434. The Day #18 with Shingles Ad concealed from its viewers that ZOSTAVAX vaccine can cause the reactivation of the chickenpox virus and cause shingles.

435. Merck knew that the Day #18 with Shingles Ad's representations were false and misleading.

436. Beginning in September 2016 through 2017, Merck ran television commercials broadcasted on public television promoting ZOSTAVAX, featuring a woman swimming alone in a pool while a voice-over represents to its viewers that "shingles virus [has] been lurking inside you since you had the chicken pox . . . [and] can surface anytime as a painful, blistering rash. One in three people will get me in their lifetime . . .will it be you?" ("Linda Ad").

437. The Linda Ad represented to the viewing public and consumers that ZOSTAVAX was highly effective in preventing shingles and shingles pain, and that ZOSTAVAX was effective after a single shot.

438. Plaintiffs saw the Linda Ad.

439. Plaintiffs were influenced by and relied upon the Linda Ad and were induced to use ZOSTAVAX for long-term prevention of shingles as a result.

440. Plaintiffs' healthcare providers, physicians, and pharmacists saw the Linda Ad with Shingles Ad.

441. Plaintiffs' healthcare providers, physicians, and pharmacists were influenced by and relied upon the Linda Ad and were induced to prescribe, administer, and/or recommend ZOSTAVAX to Plaintiffs for long-term prevention of shingles as a result.

442. Merck's representations that ZOSTAVAX was highly effective in preventing shingles and shingles pain was false and misleading.

443. Viewers and consumers who saw the Linda Ad do not equate a vaccine with the ***highest*** efficacy rate of 51% if vaccinated at age 60 with "highly effective."

444. Viewers and consumers who saw the Linda Ad relied upon the representation that ZOSTAVAX was effective to prevent shingles after a single shot and understood that representation to indicate that a single shot would prevent shingles indefinitely.

445. The Linda Ad concealed from its viewers that ZOSTAVAX vaccine can cause the reactivation of the chicken pox virus and cause shingles.

446. Beginning in September 2016 to present date, Merck published the ZOSTAVAX vaccine's print advertisements, which ran in magazines targeting 50-year-olds, showing graphic photos of a rash associated with shingles.

447. ZOSTAVAX vaccine's print advertisements showing graphic photos of a rash associated with shingles represented to their viewers and/or readers that shingles always causes pain in every patient.

448. Plaintiffs saw the ZOSTAVAX vaccine's print advertisements in magazines.

449. Plaintiffs were influenced by and relied upon the ZOSTAVAX vaccine's print advertisements in magazines and were induced to use ZOSTAVAX for long-term prevention of shingles as a result.

450. Plaintiffs' healthcare providers, physicians, and pharmacists saw the ZOSTAVAX vaccine's print advertisements in magazines with Shingles Ad.

451. Plaintiffs' healthcare providers, physicians, and pharmacists were influenced by and relied upon the ZOSTAVAX vaccine's print advertisements in magazines and were induced to prescribe, administer, and/or recommend ZOSTAVAX to Plaintiffs for long-term prevention of shingles as a result.

452. Shingles is not always accompanied by pain.

453. ZOSTAVAX was not approved to treat pain.

454. Shingles is not always accompanied by painful blisters or blistering rash.

455. ZOSTAVAX vaccine's print advertisements' representations regarding pain occurrence with shingles were false and misleading.

456. Viewers and consumers who saw or read the ZOSTAVAX vaccine's print advertisements do not believe that the highest efficacy rate of 51% if vaccinated at age 60 is highly effective.

457. Viewers and consumers who saw or read ZOSTAVAX vaccine's print advertisements relied upon the advertisements' representation that ZOSTAVAX was effective to prevent shingles and understood that representation to indicate that ZOSTAVAX would prevent shingles indefinitely.

458. The ZOSTAVAX vaccine's print advertisements concealed from their viewers and readers that ZOSTAVAX vaccine can cause the reactivation of the chickenpox virus and cause shingles.

459. Merck knew that the ZOSTAVAX vaccine's print advertisements' representations were false and misleading.

460. Merck had the duty to disclose to the Plaintiffs and their physicians and healthcare providers of the defective design and formulation of the ZOSTAVAX vaccine, which heightened the risk of suffering the injuries, diseases, and maladies that Plaintiffs suffered as a result as alleged.

461. Merck was also under a duty to disclose to Plaintiffs and their healthcare providers of the defective or ineffective nature of the ZOSTAVAX vaccine that it manufactured, marketed, distributed, and sold to them.

462. Merck had sole access to material facts concerning the defective nature of the product and its propensity to cause serious and dangerous injuries and damages to persons who used the product.

463. Merck knew and had reason to know that the ZOSTAVAX vaccine created great risk of causing serious personal injury to the users of the ZOSTAVAX vaccine.

464. Merck knew and had reason to know that the ZOSTAVAX vaccine was inherently dangerous in a manner that exceeded the inaccurate and inadequate warnings that accompanied it.

465. Merck's research and testing of the ZOSTAVAX vaccine revealed the true safety of the ZOSTAVAX vaccine.

466. Merck's research and testing of the ZOSTAVAX vaccine revealed the true risks of serious harm associated with the use of the ZOSTAVAX vaccine.

467. Merck's research and testing of the ZOSTAVAX vaccine revealed the true risks of it causing shingles and other injuries and conditions associated with the herpes zoster virus.

468. Merck's research and testing of the ZOSTAVAX vaccine revealed the true efficacy of the ZOSTAVAX vaccine.

469. Merck intentionally misrepresented facts concerning the safety of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public.

470. Merck intentionally misrepresented facts concerning the efficacy of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public.

471. Merck omitted material facts concerning the safety of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public

472. Merck omitted material facts concerning the efficacy of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public.

473. Merck concealed material facts concerning the safety of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public

474. Merck concealed material facts concerning the efficacy of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public.

475. Merck intentionally misrepresented facts concerning the safety of the ZOSTAVAX vaccine to induce Plaintiffs to rely upon Merck's misrepresentations and use the ZOSTAVAX vaccine as a safe vaccine for the long-term prevention of shingles.

476. Merck intentionally misrepresented facts concerning the safety of the ZOSTAVAX vaccine to induce consumers to rely upon Merck's misrepresentations and use the ZOSTAVAX vaccine as a safe vaccine for the long-term prevention of shingles.

477. Merck intentionally misrepresented facts concerning the safety of the ZOSTAVAX vaccine to induce Plaintiffs' physicians and healthcare providers to rely upon Merck's representations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles so that Plaintiffs' physicians and healthcare providers would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

478. Merck intentionally misrepresented facts concerning the safety of the ZOSTAVAX vaccine to induce the medical community to rely upon Merck's representations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles so that the medical community would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

479. Merck intentionally misrepresented facts concerning the efficacy of the ZOSTAVAX vaccine to induce Plaintiffs to rely upon Merck's misrepresentations to use the ZOSTAVAX vaccine as an effective vaccine for the long-term prevention of shingles, and to purchase and use the ZOSTAVAX vaccine as a result.

480. Merck intentionally misrepresented facts concerning the efficacy of the ZOSTAVAX vaccine to induce Plaintiffs' physicians and healthcare providers to rely upon Merck's representations that the ZOSTAVAX vaccine was an effective vaccine for the long-term prevention of shingles so that Plaintiffs' physicians and healthcare providers would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

481. Merck intentionally misrepresented facts concerning the efficacy of the ZOSTAVAX vaccine to induce the medical community to rely upon Merck's representations that the ZOSTAVAX vaccine was an effective vaccine for the long-term prevention of shingles so that

the medical community would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

482. Merck intentionally omitted and/or concealed facts concerning the safety of the ZOSTAVAX vaccine to induce Plaintiffs to rely upon Merck's misrepresentations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles, and to purchase and use the ZOSTAVAX vaccine as a result.

483. Merck intentionally omitted and/or concealed facts concerning the safety of the ZOSTAVAX vaccine to induce consumers to rely upon Merck's misrepresentations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles, and to purchase and use the ZOSTAVAX vaccine as a result.

484. Merck intentionally omitted and/or concealed facts concerning the safety of the ZOSTAVAX vaccine to induce Plaintiffs' physicians and healthcare providers to rely upon Merck's representations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles so that Plaintiffs' physicians and healthcare providers would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

485. Merck intentionally omitted and/or concealed facts concerning the safety of the ZOSTAVAX vaccine to induce the medical community to rely upon Merck's representations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles so that the medical community would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

486. At the time Merck made these misrepresentations, and at the times that the Plaintiffs were administered the ZOSTAVAX vaccine, Plaintiffs were unaware of the representations' falsehoods, and reasonably believed them to be true.

487. At the time Merck intentionally omitted material facts, and at the times that the Plaintiffs were administered the ZOSTAVAX vaccine, Plaintiffs were unaware of the material facts regarding the true safety and efficacy of ZOSTAVAX, and reasonably believed that ZOSTAVAX was safe and effective for the long-term prevention of shingles.

488. At the time Merck made these misrepresentations, and at the times that the Plaintiffs were administered the ZOSTAVAX vaccine, Plaintiffs' physicians and/or pharmacists were unaware of the representations' falsehoods, and reasonably believed them to be true.

489. At the time Merck intentionally omitted material facts, and at the times that the Plaintiffs were administered the ZOSTAVAX vaccine, Plaintiffs' physicians and/or pharmacists were unaware of the material facts regarding the true safety and efficacy of ZOSTAVAX, and reasonably believed that ZOSTAVAX was safe and effective for the long-term prevention of shingles.

490. Merck knew or believed at the time it made representations about the ZOSTAVAX vaccine that the representations were false.

491. Merck knew or believed at the time it made false representations about the ZOSTAVAX vaccine that the false representations were material.

492. Merck knew or believed at the time it intentionally omitted material facts about the ZOSTAVAX vaccine that the facts omitted were material.

493. Merck knew or believed at the time it concealed material facts about the ZOSTAVAX vaccine that the facts concealed were material.

494. Merck's fraudulent misrepresentations were made with the intent of defrauding and deceiving the public, consumers, the medical community, the Plaintiffs, and also inducing the

medical community, Plaintiffs, and the public, to recommend, prescribe, dispense, and purchase the ZOSTAVAX vaccine.

495. In 2017, Patrick Bergstedt, head of global marketing for Merck, admitted that Merck decided to promote ZOSTAVAX using "scare tactics" to increase the rate of ZOSTAVAX vaccination in adults and consumers.

496. Merck knew and had reason to know that Plaintiffs, their physicians and healthcare providers, in recommending, prescribing, purchasing, administering, and/or using the ZOSTAVAX vaccine, did not have the ability to determine the true facts regarding the ZOSTAVAX vaccine's safety and efficacy that it intentionally concealed.

497. Plaintiffs would not have purchased and used the ZOSTAVAX vaccine if they knew the true facts regarding its safety and efficacy.

498. Plaintiffs' physicians would not have recommended, prescribed, purchased, and/or administered the ZOSTAVAX vaccine if they knew the true facts regarding its safety and efficacy.

499. Plaintiffs reasonably relied on Merck's misrepresentations regarding the safety and efficacy of the ZOSTAVAX vaccine and were induced to purchase and use the ZOSTAVAX vaccine for the long-term prevention of shingles and pain.

500. Because Plaintiffs reasonably relied on Merck's misrepresentations regarding the safety and efficacy of the ZOSTAVAX vaccine and were induced to purchase and use the ZOSTAVAX vaccine for the long-term prevention of shingles and pain, each Plaintiff sustained severe and permanent personal injuries and damages.

501. Plaintiffs' physicians reasonably relied on Merck's misrepresentations regarding the safety and efficacy of the ZOSTAVAX vaccine and were induced to recommend, prescribe,

purchase, and/or administer the ZOSTAVAX vaccine to Plaintiffs for the long-term prevention of shingles and pain.

502. Because Plaintiffs' physicians reasonably relied on Merck's misrepresentations regarding the safety and efficacy of the ZOSTAVAX vaccine and were induced to purchase and use the ZOSTAVAX vaccine for the long-term prevention of shingles and pain, each Plaintiff sustained severe and permanent personal injuries and damages.

503. Merck's false representations regarding the safety and efficacy of ZOSTAVAX constitute wrongful conduct, fraud, and deceit.

504. Merck's false representations regarding the safety and efficacy of ZOSTAVAX were made and perpetrated willfully, wantonly, purposefully, and with reckless disregard for the health and safety of the public, its consumers, and the Plaintiffs.

505. Merck's intentional omissions of material facts regarding the safety and efficacy of ZOSTAVAX constitute wrongful conduct, fraud, and deceit.

506. Merck's intentional omissions of material facts regarding the safety and efficacy of ZOSTAVAX were made and perpetrated willfully, wantonly, purposefully, and with reckless disregard and depraved indifference for the health and safety of the public, its consumers, and the Plaintiffs.

507. Merck's intentional concealment of material facts regarding the safety and efficacy of ZOSTAVAX constitute wrongful conduct, fraud, and deceit.

508. Merck's intentional concealment of material facts regarding the safety and efficacy of ZOSTAVAX were made and perpetrated willfully, wantonly, purposefully, and with reckless disregard and depraved indifference for the health and safety of the public, its consumers, and the Plaintiffs.

509. Merck's intentional misrepresentations concerning the safety of the ZOSTAVAX vaccine were purposeful, willful, wanton, and fraudulent.

510. Merck's intentional misrepresentations concerning the efficacy of the ZOSTAVAX vaccine were purposeful, willful, wanton, and fraudulent.

511. Merck's intentional concealment and omissions of material facts concerning the safety of the ZOSTAVAX vaccine were purposeful, willful, wanton, and fraudulent.

512. Merck's intentional concealment and omissions of material facts concerning the efficacy of the ZOSTAVAX vaccine were purposeful, willful, wanton, and fraudulent.

513. As a foreseeable, direct, and proximate result of Merck's intentional false representations and omissions, Plaintiffs suffered the serious injuries alleged herein.

514. As a direct and proximate consequence of Merck's fraudulent misrepresentations and concealment, Plaintiffs sustained serious personal injuries and related losses including mental anguish, physical pain and suffering, diminished capacity for the enjoyment of life, a diminished quality of life, diminished ability to work, medical and related expenses, and other losses and damages.

MSD

515. MSD, by and through its agents and employees and/or its predecessors(s)-in-interest, intentionally, willfully, and knowingly, fraudulently misrepresented to the medical community, the FDA, and consumers, including the Plaintiffs and their health care providers, that the ZOSTAVAX vaccine had been adequately tested in clinical trials and was found to be safe and effective.

516. MSD knew or believed at the time it made its fraudulent misrepresentations, that its misrepresentations were false and fraudulent regarding the dangers and risks associated with

use of the ZOSTAVAX vaccine. MSD made its fraudulent misrepresentations intentionally, willfully, wantonly, and with reckless disregarded and depraved indifference for the safety and well-being of the users of the ZOSTAVAX vaccine, such as Plaintiffs.

517. MSD's fraudulent misrepresentations include the following: the efficacy of ZOSTAVAX, particularly that it was effective in preventing shingles and post-herpetic neuralgia to consumers over the age of 59; longevity of efficacy of the ZOSTAVAX vaccine, specifically the lasting preventative effect of the ZOSTAVAX vaccine against the herpes virus, even after an extended time period; and the safety of ZOSTAVAX, particularly that the ZOSTAVAX vaccine did *not* induce serious side effects (such as shingles, post-herpetic neuralgia, retinal necrosis, keratitis and acute myelitis).

518. MSD disseminated information available on the labeling of ZOSTAVAX, as it was administered to Plaintiffs, and each of them. The ZOSTAVAX labeling contained misleading information, such as the efficacy and safety of ZOSTAVAX as a preventative measure for shingles, particularly that it was not known to cause or induce post-herpetic neuralgia, shingles, or other complications suffered by Plaintiffs. McKesson also disseminated this misleading information in its patient information materials, brochures, and marketing materials.

519. David Gutsch, M.D., is currently the Executive Director, Vaccines Regulatory, for Merck and MSD.

520. In 2005, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

521. In 2006, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

522. In 2007, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

523. In 2008, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

524. In 2009, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

525. In 2010, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

526. In 2011, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

527. In 2012, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

528. In 2013, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

529. In 2014, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

530. In 2015, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

531. In 2016, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

532. In 2017, David Gutsch, M.D., gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

533. During his presentations between 2006 and 2017, David Gutsch, M.D., in his presentations, instructed the ZOSTAVAX field personnel and sales force who interacted directly with healthcare providers to represent to physician: that ZOSTAVAX was effective indefinitely after a single administration; that ZOSTAVAX did not cause shingles; that ZOSTAVAX was safe, effective for the long-term prevention of shingles; that ZOSTAVAX was effective to treat pain associated with shingles.

534. The ZOSTAVAX sales force relayed Gutsch's misinformation directly to Plaintiffs' physicians and pharmacists though in-person office visits, over the telephone, and during lunches and dinners.

535. Ann Redfield, M.S.N., R.N. formally known as Ann R. Sweet, M.S.N., R.N., upon information and belief, worked in a key capacity on MSD's Clinical Safety and Risk Management Department as part of the "vaccine team" at Merck West Point, located in West Point, Pennsylvania. Ann Redfield acted at all times pertinent hereto within the scope of her employment as proprietor of key safety and prescribing information for the ZOSTAVAX vaccine, at issue.

536. Ann Redfield, MSN, RN, working with part of the "vaccine team" as part of MSD's Clinical Safety and Risk Management Department, wrote the comment section for Merck's WAES adverse experience reports. Ann Redfield, MSN, RN, also worked as the "process owner" of MSD's Varicella Zoster Vaccine Identification Program. In this capacity, Redfield drafted documents presented to the MSD employees who interacted directly with healthcare providers who recommend, prescribe, and dispense the ZOSTAVAX vaccine.

537. Ann Redfield, MSN, RN, gave presentations to Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers.

538. Ann Redfield, MSN, RN, gave presentations to the ZOSTAVAX sales force who interacted directly with healthcare providers and instructed the ZOSTAVAX field personnel and sales force who interacted directly with healthcare providers to represent to physician: that ZOSTAVAX was effective indefinitely after a single administration; that ZOSTAVAX did not cause shingles; that ZOSTAVAX was safe, effective for the long-term prevention of shingles; that ZOSTAVAX was effective to treat pain associated with shingles.

539. Upon information and belief, Ann Redfield, MSN, RN, acted within the scope of her employment when she excluded or otherwise purposely ignored reports of meningitis caused by vaccine-strain herpes zoster and assisted MSD in communicating this false information to ZOSTAVAX sales representatives, and then to healthcare providers.

540. The ZOSTAVAX sales force relayed Redfield's misinformation directly to Plaintiffs' physicians and pharmacists though in-person office visits, over the telephone, and during lunches and dinners.

541. From 2006 until 2017, MSD's professional representatives met physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work. MSD's professional representatives represented to said physicians that ZOSTAVAX was effective for the long-term prevention of shingles; that ZOSTAVAX's efficacy rate did not decrease over time after vaccination; and that ZOSTAVAX created no risk of causing shingles or other injuries or complications associated with herpes zoster.

542. In 2006 through 2011, Merck and MSD represented to the medical community, including to Plaintiffs' physicians, through seminars that the effect of time since vaccination on ZOSTAVAX's vaccine efficacy is not statistically significant.

543. In May 2006, Mark Feinberg, M.D., Ph.D., was the vice president of policy, public health and medical affairs of Merck Vaccines which is an affiliate of MSD.

544. In May 2006, Mark Feinberg, M.D., Ph.D., stated that shingles is an "often painful disease in older adults."

545. Since May 2006, on the date that ZOSTAVAX was approved by the FDA for commercial marketing in the United States, MSD represented the following material information to the public:

- That adult shingles causes pain in almost every instance;
- That the ZOSTAVAX vaccine would effectively prevent shingles and specifically the pain that accompanied it;
- That the ZOSTAVAX vaccine was approved to treat the pain associated with shingles;
- That serious adverse effects were experienced by less than 1% of individuals in the ZOSTAVAX vaccine's clinical trials and studies;
- That the ZOSTAVAX vaccine was evaluated for safety in more than 20,000 adults – and found to be safe, effective for the long-term prevention of shingles, and without any adverse effects in more than 20,000 adults;
- That "[t]here is no way to predict when the varicella-zoster virus (VZV) will reactivate or who will develop zoster."
- That ZOSTAVAX was a "well-studied vaccine."
- That ZOSTAVAX "significantly reduced" the risk of developing shingles compared with placebo."
- That ZOSTAVAX would benefit its users "in the ***prevention of long-term nerve pain from shingles*** (postherpetic neuralgia) ***can be primarily attributed to the vaccine's effect on the prevention of shingles***." (emphasis added).
- That the efficacy of ZOSTAVAX is 51% for everyone.
- That the efficacy of ZOSTAVAX did not diminish over time after vaccination.
- That the immunity provided by ZOSTAVAX was unlimited.
- That the immunity provided by ZOSTAVAX was the same regardless of the age of the patient vaccinated.
- That ZOSTAVAX had been tested and was found to be safe and effective for preventing shingles.
- That ZOSTAVAX was safe.
- That ZOSTAVAX was effective.

546. MSD made the aforesaid statements through the ZOSTAVAX vaccine's labeling, advertising, marketing material, advertisements, and/or packaging.

547. MSD made the aforesaid statements to physicians and the medical community in ZOSTAVAX "Physician Journal Ad[s]" published in medical journals that physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work, subscribed, received, and read in 2006.

548. MSD made the aforesaid statements to physicians and the medical community in ZOSTAVAX "Physician Journal Ad[s]" published in the American Journal of Health-System Pharmacy in 2006. Physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work, subscribed, received, and read these ZOSTAVAX journal ads.

549. MSD made the aforesaid statements to physicians and the medical community in ZOSTAVAX "Physician Journal Ad[s]" published in the Journal of the American Geriatrics Association in 2007. Physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work, subscribed, received, and read these ZOSTAVAX journal ads.

550. MSD made the aforesaid statements to physicians and the medical community in ZOSTAVAX "Physician Journal Ad[s]" published in the medical journal American Family Physician in 2007. Physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work, subscribed, received, and read these ZOSTAVAX journal ads.

551. MSD made the aforesaid statements to physicians and the medical community in ZOSTAVAX "Physician Journal Ad[s]" published in medical journals that physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and

senior level physicians at the medical facilities where Plaintiffs' physicians work, subscribed, received, and read from 2006 until 2017.

552. MSD made the aforesaid statements to the public, including directly to consumers, and the medical community through the May 26, 2006 video news release for the ZOSTAVAX vaccine.

553. The May 26, 2006 video news release for the ZOSTAVAX vaccine was disseminated through broadcast television, cable television, national newspapers such as the New York Times, Washington Post, USA Today, and other national media outlets.

554. MSD provided the May 26, 2006 video news release for the ZOSTAVAX vaccine electronically via email and fax to broadcast television; cable television; national newspapers including the New York Times; Washington Post; USA Today; to BusinessWire, a press release distributor, which distributed these representations to national media outlets; and other national media outlets.

555. In May 2006, MSD made its ZOSTAVAX video news release available to broadcast media (including broadcast television, cable television, and other national media outlines) via satellite feed, electronic feed, and videocassette. The broadcast media then disseminated MSD's ZOSTAVAX video news release to the public, including directly to consumers, and to the medical community.

556. In June 2006, MSD made its ZOSTAVAX video news release available to broadcast media (including broadcast television, cable television, and other national media outlines) via satellite feed, electronic feed, and videocassette. The broadcast media then disseminated MSD's ZOSTAVAX video news release to the public, including directly to consumers, and to the medical community.

557. On June 13, 2006, Jill Bradley was Merck's Director of Marketing Communications.

558. MSD's representations intentionally concealed the following material information:

a. From 2006 until present date, MSD intentionally concealed the effect of time since vaccination on ZOSTAVAX's efficacy.
b. From 2006 until present date, Merck intentionally concealed that the effect of time since vaccination significantly decreases the efficacy rate of ZOSTAVAX.
c. From 2006 until present date, MSD intentionally concealed the fact that four years after vaccination, the efficacy rate of ZOSTAVAX is zero.
d. From 2006, when the ZOSTAVAX vaccine was first marketed, until 2014, MSD knowingly omitted in the packaging for ZOSTAVAX that the ZOSTAVAX vaccine can actually cause a viral infection, leading to an array of other infections and/or diseases including post herpetic neuralgia;
e. On June 13, 2006, Nancy Chamberlin, Pharm. D., Regulatory Review Officer, APLB, submitted a memorandum to Jill Bradley, Merck's Director of Marketing Communications, regarding the APLB's label review of ZOSTAVAX and stating APLB's position regarding Merck's ZOSTAVAX label:

> "We disagree with your proposal to omit the warning for vaccination with a live attenuated virus and precautionary statement regarding the theoretical risk of transmitting the vaccine virus to varicella-susceptible individuals. Omission of these would make your promotional pieces lacking in appropriate fair balance risk information that needs to be conveyed with every promotional material."

f. MSD knew about Nancy Chamberlin's memorandum and the contents therein.
g. On June 13, 2006, Jill Bradley decided, on behalf of Merck and MSD and in the scope of her employment with Merck, to intentionally omit the aforesaid warnings associated with the vaccination of a live attenuated virus for the 2006 ZOSTAVAX label.
h. On June 13, 2006, MSD decided to omit information on the 2006 ZOSTAVAX vaccine's label, MSD knew and/or had reason to know the risks associated with the vaccination of a live attenuated virus was material information that would be relied upon by the medical community, including each Plaintiffs' healthcare providers, and by each Plaintiffs.

i. On or about June 13, 2006, MSD knew or had reason to know that the ZOSTAVAX vaccine's label omitted statements about the cardiac events; the warnings and precautions of using a live virus vaccine; and the need to avoid close contact (including household contacts) with someone who may be pregnant and has not had chickenpox or been vaccinated against chickenpox, or someone who has problems with their immune system.
j. On or about June 13, 2006, MSD knew or had reason to know that the ZOSTAVAX vaccine's label omitted a warning regarding vaccination with a live attenuated virus and also lacked a precautionary statement regarding the theoretical risk of transmitting the vaccine virus to varicella-susceptible individuals.
k. From June 13, 2006, MSD intentionally omitted material facts from the ZOSTAVAX label and while marketing and selling the ZOSTAVAX vaccine.
l. MSD knowingly omitted in the packaging for the ZOSTAVAX vaccine that the ZOSTAVAX vaccine can actually cause a viral infection, leading to an array of other infections and/or diseases;

559. From 2006 until 2014, MSD represented to the public, including directly to consumers, that ZOSTAVAX did not cause or induce shingles through the ZOSTAVAX vaccine's labeling, advertising, marketing material, advertisements, and/or packaging.

560. Since 2006, MSD represented to the medical community, to the public, and directly to consumers that known adverse effects associated with ZOSTAVAX use were no more serious that a "rash" through the ZOSTAVAX vaccine's labeling, advertising, marketing material, advertisements, and/or packaging.

561. On November 3, 2009, Dr. Rose Tiernan from the OVRR DVRPA called Merck employee Dr. David Gutsch to notify Merck and MSD that the term "rash" was too general to be useful. MSD failed to remedy this inadequate warning.

562. On October 2008, Dr. M. Levin, acting on behalf of MSD, presented at the Annual ICAAC/IDSA Annual Meeting in Washington, DC, and represented that "protection [from shingles] persists for up to 7 years." Medical professionals in academia, government, and private

practice attended this meeting. This information reached Plaintiffs' healthcare providers directly or through word of mouth from their peers.

563. Plaintiffs' healthcare providers, physicians, and received these representations made by Dr. M. Levin in October 2008 regarding the ZOSTAVAX vaccine's efficacy and the effect of time on it, and relied upon these representations.

564. On October 23, 2010, Dr. M. Levin, acting on behalf of MSD, presented at the 48th Annual ICAAC/IDSA 46th Annual Meeting in Washington, DC, and represented that "protection [from shingles] persists for up to 7 years." Medical professionals in academia, government, and private practice attended this meeting. This information reached Plaintiffs' healthcare providers directly or through word of mouth from their peers.

565. Plaintiffs' healthcare providers, physicians, and received these representations made by Dr. M. Levin on October 23, 2010 regarding the ZOSTAVAX vaccine's efficacy and the effect of time on it, and relied upon these representations.

566. On May 18, 2011, MSD represented that "The effect of time since vaccination on VE [vaccine efficacy] (waning effect) is not statistically significant" in a presentation regarding the "Persistence of Zoster Vaccine Efficacy" at the Society of Clinical Trials ("SCT") Annual Meeting in Vancouver, BC Canada. Medical professionals in academia, government, and private practice attended this SCT Annual Meetings, including medical care providers in the United States. This information reached Plaintiffs' healthcare providers directly or through word of mouth from their peers.

567. Plaintiffs' healthcare providers, physicians, and received these representations made by Merck in the May 18, 2011 SCT Annual Meeting regarding the ZOSTAVAX vaccine's efficacy and the effect of time on it, and relied upon these representations.

568. MSD's representations that "the effect of time since vaccination on [ZOSTAVAX's] vaccine efficacy is not statistically significant are false.

569. MSD's representations that ZOSTAVAX's protection from shingles persists for up to seven years are false.

570. ZOSTAVAX's efficacy four years after vaccination is zero.

571. ZOSTAVAX's efficacy four years after vaccination is statistically the same as zero.

572. ZOSTAVAX's efficacy rate wanes to near zero after four years after vaccination.

573. MSD knew that ZOSTAVAX's efficacy rate wanes to near zero after four years after vaccination.

574. The ZOSTAVAX vaccine can cause the chickenpox virus to reactivate and cause shingles upon its administration.

575. From 2006 until 2017, MSD's professional representatives met physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work.

576. MSD's professional representatives represented to said physicians that ZOSTAVAX was effective for the long-term prevention of shingles; that ZOSTAVAX's efficacy rate did not decrease over time after vaccination; and that ZOSTAVAX created no risk of causing shingles or other injuries or complications associated with herpes zoster.

577. Between 2006 and 2017, MSD, through its sales representatives and through its agents' word-of-mouth recommendations, specifically made oral representations to Plaintiffs' healthcare providers, physicians, and pharmacists that ZOSTAVAX's efficacy rate was "between 50% and 60% regardless of the age of the patient at the time that ZOSTAVAX was administered."

578. Between 2006 and 2017, Plaintiffs' healthcare providers, physicians, and pharmacists relied upon MSD's representations that ZOSTAVAX's efficacy rate was between 50% and 60% regardless of the age of the patient at the time that ZOSTAVAX was administered and were induced to prescribe, administer, and/or recommend ZOSTAVAX to Plaintiffs as a result regardless of each Plaintiffs' age at the time of administration of ZOSTAVAX.

579. MSD's representations were false: the maximum efficacy rate of ZOSTAVAX is 51% at the time of administration only if the patient is 60 years of age on the date of its administration. ZOSTAVAX's efficacy rate continually declines after age 60.

580. Between 2006 and 2017, MSD, through its sales representatives and through its agents' word-of-mouth recommendations, specifically made oral representations to Plaintiffs' healthcare providers, physicians, and pharmacists that "ZOSTAVAX's efficacy rate remained constant, and above 50%, post-inoculation."

581. Between 2006 and 2017, Plaintiffs' healthcare providers, physicians, and pharmacists relied upon Merck's representations that "ZOSTAVAX's efficacy rate remained constant, and above 50%, post-inoculation" and were induced to prescribe, administer, and/or recommend ZOSTAVAX to Plaintiffs as a result regardless of each Plaintiffs' age at the time of administration of ZOSTAVAX.

582. MSD's representations were false: ZOSTAVAX efficacy rate declines to almost zero four years post-inoculation.

583. From 2006 until 2017, MSD's professional representatives met physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work.

584. MSD's professional representatives represented to said physicians that ZOSTAVAX was effective for the long-term prevention of shingles; that ZOSTAVAX's efficacy rate did not decrease over time after vaccination; and that ZOSTAVAX created no risk of causing shingles or other injuries or complications associated with herpes zoster.

585. From 2006 until 2017, MSD held convention panels that were attended by physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work.

586. During these convention panels, MSD represented that ZOSTAVAX was effective for the long-term prevention of shingles; that ZOSTAVAX's efficacy rate did not decrease over time after vaccination; and that ZOSTAVAX created no risk of causing shingles or other injuries or complications associated with herpes zoster.

587. Plaintiffs' healthcare providers, physicians, and pharmacists attended Merck's convention panels regarding ZOSTAVAX and heard and received Merck's representations made during these convention panels regarding the ZOSTAVAX vaccine's efficacy and the effect of time on it and ZOSTAVAX's risks or lack thereof and relied upon these representations.

588. Plaintiffs' healthcare providers, physicians, and pharmacists heard and received Merck's representations made during these convention panels regarding the ZOSTAVAX vaccine's efficacy and the effect of time on it and ZOSTAVAX's risks or lack thereof through word-of-mouth from their peers, and relied upon these representations.

589. Plaintiffs' healthcare providers, physicians, and pharmacists relied upon Merck's representations made during these convention panels regarding the ZOSTAVAX vaccine's

efficacy and the effect of time on it and ZOSTAVAX's risks or lack thereof and were induced to prescribe, administer, and/or recommend ZOSTAVAX to Plaintiffs as a result.

590. Since May 2006 and during all relevant times, ZOSTAVAX vaccine's television commercials, radio commercials, and print advertisements were published and run in magazines targeting 50-year-old-and-older adults, and in broadcast television, cable television, mainstream radio, and other broadcast media outlets.

591. From 2006 until 2017, Merck broadcasted numerous television commercials on public television and cable television promoting ZOSTAVAX, wherein actors and/or celebrities spoke in detail about how painful shingles is.

592. In 2014, numerous television commercials were broadcasted on public television promoting ZOSTAVAX featuring former football quarterback Terry Bradshaw ("Bradshaw Ad"), wherein Bradshaw spoke in detail about how painful shingles is.

593. MSD knew about the Bradshaw Ad.

594. The Bradshaw Ad represented to the viewing public and consumers, including Plaintiffs, that ZOSTAVAX was highly effective in preventing shingles and shingles pain, and that ZOSTAVAX was effective after a single shot.

595. The Bradshaw Ad represented to the viewing public and consumers, including Plaintiffs, that ZOSTAVAX was intended for long-term prevention of pain caused by shingles.

596. Plaintiffs saw the Bradshaw Ad.

597. Plaintiffs were influenced by and relied upon the Bradshaw Ad and were induced to use ZOSTAVAX for long-term prevention of shingles as a result.

598. Plaintiffs' healthcare providers, physicians, and pharmacists saw the Bradshaw Ad.

599. Plaintiffs' healthcare providers, physicians, and pharmacists were influenced by and relied upon the Bradshaw Ad and were induced to prescribe, administer, and/or recommend ZOSTAVAX to Plaintiffs for long-term prevention of shingles as a result.

600. MSD knew about that the Bradshaw Ad's representations were misleading and false.

601. From 2015 through 2017, MSD ran television commercials broadcasted on public television and cable television promoting ZOSTAVAX that depicted a person struggling through a day at an office job because of shingles pain ("Day #7 with Shingles Ad").

602. The Day #7 with Shingles Ad showed graphic depictions of blistering skin and described the pain associated with shingles, representing to their viewers that shingles always causes pain in every patient.

603. The Day #7 with Shingles Ad represented to the viewing public and consumers that ZOSTAVAX was highly effective in preventing shingles and shingles pain, and that ZOSTAVAX was effective after a single shot.

604. Plaintiffs saw the Day #7 with Shingles Ad.

605. Plaintiffs were influenced by and relied upon the Day #7 with Shingles Ad and were induced to use ZOSTAVAX for long-term prevention of shingles as a result.

606. Plaintiffs' healthcare providers, physicians, and pharmacists saw the Day #7 with Shingles Ad.

607. Plaintiffs' healthcare providers, physicians, and pharmacists were influenced by and relied upon the Day #7 with Shingles Ad and were induced to prescribe, administer, and/or recommend ZOSTAVAX to Plaintiffs for long-term prevention of shingles as a result.

608. Shingles is not always accompanied by pain.

609. ZOSTAVAX was not approved to treat pain.

610. The Day #7 with Shingles Ad's representations regarding pain occurrence with shingles were false and misleading.

611. Viewers and consumers who saw the Day #7 with Shingles Ad do not equate a vaccine with the ***highest*** efficacy rate of 51% if vaccinated at age 60 with "highly effective."

612. Viewers and consumers who saw the Day #7 with Shingles Ad relied upon the ad's representation that ZOSTAVAX was effective to prevent shingles and understood that representation to indicate that ZOSTAVAX would prevent shingles indefinitely.

613. The Day #7 with Shingles Ad concealed from its viewers that ZOSTAVAX vaccine can cause the reactivation of the chicken pox virus and cause shingles.

614. MSD knew that the Day #7 with Shingles Ad's representations were false and misleading.

615. From 2015 through 2017, MSD ran television commercials broadcasted on public television promoting ZOSTAVAX that showing a person who gives up on a game of golf because of shingles pain. ("Day #18 with Shingles Ad").

616. The Day #18 with Shingles Ad showed graphic depictions of blistering skin and depicted the person suffering from shingles failing to bend down without experiencing strong pain.

617. The Day #18 with Shingles Ad showed graphic depictions of blistering skin and described the pain associated with shingles, representing to their viewers that shingles always causes pain in every patient.

618. The Day #18 with Shingles Ad depicted the actor posing as a shingles sufferer attempting to play golf but, after failing to complete his game, states: "After almost three weeks, I just really wanted to give it a shot."

619. The Day #18 with Shingles Ad represented to their viewers that the blisters caused by shingles lasts at least three weeks.

620. The Day #18 with Shingles Ad represented to their viewers that the pain caused by shingles lasts at least three weeks.

621. The Day #18 with Shingles Ad informed its viewers: "If you had chicken pox, the shingles virus is already inside you."

622. Plaintiffs saw the Day #18 with Shingles Ad.

623. Plaintiffs were influenced by and relied upon the Day #18 with Shingles Ad and were induced to use ZOSTAVAX for long-term prevention of shingles as a result.

624. Plaintiffs' healthcare providers, physicians, and pharmacists saw the Day #18 with Shingles Ad.

625. Plaintiffs' healthcare providers, physicians, and pharmacists were influenced by and relied upon the Day #18 with Shingles Ad and were induced to prescribe, administer, and/or recommend ZOSTAVAX to Plaintiffs for long-term prevention of shingles as a result.

626. MSD's representations that ZOSTAVAX was highly effective in preventing shingles and shingles pain was false and misleading.

627. Shingles is not always accompanied by pain.

628. ZOSTAVAX was not approved to treat pain.

629. Shingles is not always accompanied by painful blisters or blistering rash.

630. The painful, fluid-filled blisters depicted in the Day #18 Shingles Ad that sometimes accompany shingles do not typically last three weeks.

631. The Day #18 with Shingles Ad's representations regarding pain occurrence with shingles were false and misleading.

632. Viewers and consumers who saw the Day #18 with Shingles Ad do not equate a vaccine with the ***highest*** efficacy rate of 51% if vaccinated at age 60 with "highly effective."

633. Viewers and consumers who saw the Day #18 with Shingles Ad relied upon the ad's representation that ZOSTAVAX was effective to prevent shingles and understood that representation to indicate that ZOSTAVAX would prevent shingles indefinitely.

634. The Day #18 with Shingles Ad concealed from its viewers that ZOSTAVAX vaccine can cause the reactivation of the chickenpox virus and cause shingles.

635. MSD knew that the Day #18 with Shingles Ad's representations were false and misleading.

636. Beginning in September 2016 through 2017, MSD ran television commercials broadcasted on public television promoting ZOSTAVAX, featuring a woman swimming alone in a pool while a voice-over represents to its viewers that "shingles virus [has] been lurking inside you since you had the chicken pox . . . [and] can surface anytime as a painful, blistering rash. One in three people will get me in their lifetime . . .will it be you?" ("Linda Ad").

637. The Linda Ad represented to the viewing public and consumers that ZOSTAVAX was highly effective in preventing shingles and shingles pain, and that ZOSTAVAX was effective after a single shot.

638. Plaintiffs saw the Linda Ad.

639. Plaintiffs were influenced by and relied upon the Linda Ad and were induced to use ZOSTAVAX for long-term prevention of shingles as a result.

640. Plaintiffs' healthcare providers, physicians, and pharmacists saw the Linda Ad with Shingles Ad.

641. Plaintiffs' healthcare providers, physicians, and pharmacists were influenced by and relied upon the Linda Ad and were induced to prescribe, administer, and/or recommend ZOSTAVAX to Plaintiffs for long-term prevention of shingles as a result.

642. MSD's representations that ZOSTAVAX was highly effective in preventing shingles and shingles pain was false and misleading.

643. Viewers and consumers who saw the Linda Ad do not equate a vaccine with the ***highest*** efficacy rate of 51% if vaccinated at age 60 with "highly effective."

644. Viewers and consumers who saw the Linda Ad relied upon the representation that ZOSTAVAX was effective to prevent shingles after a single shot and understood that representation to indicate that a single shot would prevent shingles indefinitely.

645. The Linda Ad concealed from its viewers that ZOSTAVAX vaccine can cause the reactivation of the chicken pox virus and cause shingles.

646. Beginning in September 2016 to present date, MSD published the ZOSTAVAX vaccine's print advertisements, which ran in magazines targeting 50-year-olds, showing graphic photos of a rash associated with shingles.

647. ZOSTAVAX vaccine's print advertisements showing graphic photos of a rash associated with shingles represented to their viewers and/or readers that shingles always causes pain in every patient.

648. Shingles is not always accompanied by pain.

649. ZOSTAVAX was not approved to treat pain.

650. Shingles is not always accompanied by painful blisters or blistering rash.

651. ZOSTAVAX vaccine's print advertisements' representations regarding pain occurrence with shingles were false and misleading.

652. Viewers and consumers who saw or read the ZOSTAVAX vaccine's print advertisements do not believe that the highest efficacy rate of 51% if vaccinated at age 60 is highly effective.

653. Viewers and consumers who saw or read ZOSTAVAX vaccine's print advertisements relied upon the advertisements' representation that ZOSTAVAX was effective to prevent shingles and understood that representation to indicate that ZOSTAVAX would prevent shingles indefinitely.

654. The ZOSTAVAX vaccine's print advertisements concealed from their viewers and readers that ZOSTAVAX vaccine can cause the reactivation of the chickenpox virus and cause shingles.

655. MSD knew that the ZOSTAVAX vaccine's print advertisements' representations were false and misleading.

656. ZOSTAVAX vaccine's television commercials, radio commercials, and print advertisements represented to their viewers, hearers, and/or readers that shingles always causes pain in every patient.

657. Plaintiffs and their healthcare providers viewed the ZOSTAVAX television commercials, heard the ZOSTAVAX radio commercials, and read and/or saw the ZOSTAVAX print advertisements.

658. Shingles is not always accompanied by pain.

659. ZOSTAVAX was not approved to treat pain.

660. Shingles is not always accompanied by painful blisters or blistering rash.

661. ZOSTAVAX vaccine's television commercials, radio commercials, and print advertisements' representations regarding pain occurrence with shingles were false and misleading.

662. Viewers and consumers who saw or read the ZOSTAVAX vaccine's television commercials, radio commercials, and print advertisements do not believe that the highest efficacy rate of 51% if vaccinated at age 60 is highly effective.

663. Viewers and consumers who saw or read ZOSTAVAX vaccine's television commercials, radio commercials, and print advertisements relied upon the advertisements' representation that ZOSTAVAX was effective to prevent shingles and understood that representation to indicate that ZOSTAVAX would prevent shingles indefinitely.

664. The ZOSTAVAX vaccine's television commercials, radio commercials, and print advertisements concealed from their viewers and readers that ZOSTAVAX vaccine can cause the reactivation of the chickenpox virus and cause shingles.

665. MSD knew that the ZOSTAVAX vaccine's television commercials, radio commercials, and print advertisements' representations were false and misleading.

666. MSD is liable for the false representations made in the television commercials, radio commercials, and print advertisements, because it is Merck's agent and Merck is its agent.

667. MSD is liable for the false representations made in the television commercials, radio commercials, and print advertisements between no corporate distinction exists between MSD and Merck.

668. MSD had the duty to disclose to the Plaintiffs and their physicians and healthcare providers of the defective design and formulation of the ZOSTAVAX vaccine, which heightened

the risk of suffering the injuries, diseases, and maladies that Plaintiffs suffered as a result as alleged.

669. MSD was also under a duty to disclose to Plaintiffs and their healthcare providers of the defective or ineffective nature of the ZOSTAVAX vaccine that it manufactured, marketed, distributed, and sold to them.

670. MSD had sole access to material facts concerning the defective nature of the product and its propensity to cause serious and dangerous injuries and damages to persons who used the product.

671. MSD knew and had reason to know that the ZOSTAVAX vaccine created great risk of causing serious personal injury to the users of the ZOSTAVAX vaccine.

672. MSD knew and had reason to know that the ZOSTAVAX vaccine was inherently dangerous in a manner that exceeded the inaccurate and inadequate warnings that accompanied it.

673. MSD's research and testing of the ZOSTAVAX vaccine revealed the true safety of the ZOSTAVAX vaccine.

674. MSD's research and testing of the ZOSTAVAX vaccine revealed the true risks of serious harm associated with the use of the ZOSTAVAX vaccine.

675. MSD's research and testing of the ZOSTAVAX vaccine revealed the true risks of it causing shingles and other injuries and conditions associated with the herpes zoster virus.

676. MSD's research and testing of the ZOSTAVAX vaccine revealed the true efficacy of the ZOSTAVAX vaccine.

677. MSD intentionally misrepresented facts concerning the safety of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public.

678. MSD intentionally misrepresented facts concerning the efficacy of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public.

679. MSD omitted material facts concerning the safety of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public

680. MSD omitted material facts concerning the efficacy of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public.

681. MSD concealed material facts concerning the safety of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public

682. MSD concealed material facts concerning the efficacy of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public.

683. MSD intentionally misrepresented facts concerning the safety of the ZOSTAVAX vaccine to induce Plaintiffs to rely upon MSD's misrepresentations and use the ZOSTAVAX vaccine as a safe vaccine for the long-term prevention of shingles.

684. MSD intentionally misrepresented facts concerning the safety of the ZOSTAVAX vaccine to induce consumers to rely upon MSD's misrepresentations and use the ZOSTAVAX vaccine as a safe vaccine for the long-term prevention of shingles.

685. MSD intentionally misrepresented facts concerning the safety of the ZOSTAVAX vaccine to induce Plaintiffs' physicians and healthcare providers to rely upon MSD's representations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles so that Plaintiffs' physicians and healthcare providers would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

686. MSD intentionally misrepresented facts concerning the safety of the ZOSTAVAX vaccine to induce the medical community to rely upon MSD's representations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles so that the medical community would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

687. MSD intentionally misrepresented facts concerning the efficacy of the ZOSTAVAX vaccine to induce Plaintiffs to rely upon MSD's misrepresentations to use the ZOSTAVAX vaccine as an effective vaccine for the long-term prevention of shingles, and to purchase and use the ZOSTAVAX vaccine as a result.

688. MSD intentionally misrepresented facts concerning the efficacy of the ZOSTAVAX vaccine to induce Plaintiffs' physicians and healthcare providers to rely upon MSD's representations that the ZOSTAVAX vaccine was an effective vaccine for the long-term prevention of shingles so that Plaintiffs' physicians and healthcare providers would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

689. MSD intentionally misrepresented facts concerning the efficacy of the ZOSTAVAX vaccine to induce the medical community to rely upon MSD's representations that the ZOSTAVAX vaccine was an effective vaccine for the long-term prevention of shingles so that the medical community would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

690. MSD intentionally omitted and/or concealed facts concerning the safety of the ZOSTAVAX vaccine to induce Plaintiffs to rely upon MSD's misrepresentations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles, and to purchase and use the ZOSTAVAX vaccine as a result.

691. MSD intentionally omitted and/or concealed facts concerning the safety of the ZOSTAVAX vaccine to induce consumers to rely upon MSD's misrepresentations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles, and to purchase and use the ZOSTAVAX vaccine as a result.

692. MSD intentionally omitted and/or concealed facts concerning the safety of the ZOSTAVAX vaccine to induce Plaintiffs' physicians and healthcare providers to rely upon MSD's representations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles so that Plaintiffs' physicians and healthcare providers would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

693. MSD intentionally omitted and/or concealed facts concerning the safety of the ZOSTAVAX vaccine to induce the medical community to rely upon MSD's representations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles so that the medical community would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

694. At the time MSD made these misrepresentations, and at the times that the Plaintiffs were administered the ZOSTAVAX vaccine, Plaintiffs were unaware of the representations' falsehoods, and reasonably believed them to be true.

695. At the time MSD intentionally omitted material facts, and at the times that the Plaintiffs were administered the ZOSTAVAX vaccine, Plaintiffs were unaware of the material facts regarding the true safety and efficacy of ZOSTAVAX, and reasonably believed that ZOSTAVAX was safe and effective for the long-term prevention of shingles.

696. At the time MSD made these misrepresentations, and at the times that the Plaintiffs were administered the ZOSTAVAX vaccine, Plaintiffs' physicians and/or pharmacists were unaware of the representations' falsehoods, and reasonably believed them to be true.

697. At the time MSD intentionally omitted material facts, and at the times that the Plaintiffs were administered the ZOSTAVAX vaccine, Plaintiffs' physicians and/or pharmacists were unaware of the material facts regarding the true safety and efficacy of ZOSTAVAX, and reasonably believed that ZOSTAVAX was safe and effective for the long-term prevention of shingles.

698. MSD knew or believed at the time it made representations about the ZOSTAVAX vaccine that the representations were false.

699. MSD knew or believed at the time it made false representations about the ZOSTAVAX vaccine that the false representations were material.

700. MSD knew or believed at the time it intentionally omitted material facts about the ZOSTAVAX vaccine that the facts omitted were material.

701. MSD knew or believed at the time it concealed material facts about the ZOSTAVAX vaccine that the facts concealed were material.

702. MSD's fraudulent misrepresentations were made with the intent of defrauding and deceiving the public, consumers, the medical community, the Plaintiffs, and also inducing the medical community, Plaintiffs, and the public, to recommend, prescribe, dispense, and purchase the ZOSTAVAX vaccine.

703. MSD knew and had reason to know that Plaintiffs, their physicians and healthcare providers, in recommending, prescribing, purchasing, administering, and/or using the

ZOSTAVAX vaccine, did not have the ability to determine the true facts regarding the ZOSTAVAX vaccine's safety and efficacy that it intentionally concealed.

704. Plaintiffs would not have purchased and used the ZOSTAVAX vaccine if they knew the true facts regarding its safety and efficacy.

705. Plaintiffs' physicians would not have recommended, prescribed, purchased, and/or administered the ZOSTAVAX vaccine if they knew the true facts regarding its safety and efficacy.

706. Plaintiffs reasonably relied on MSD's misrepresentations regarding the safety and efficacy of the ZOSTAVAX vaccine and were induced to purchase and use the ZOSTAVAX vaccine for the long-term prevention of shingles and pain.

707. Because Plaintiffs reasonably relied on MSD's misrepresentations regarding the safety and efficacy of the ZOSTAVAX vaccine and were induced to purchase and use the ZOSTAVAX vaccine for the long-term prevention of shingles and pain, each Plaintiff sustained severe and permanent personal injuries and damages.

708. Plaintiffs' physicians reasonably relied on MSD's misrepresentations regarding the safety and efficacy of the ZOSTAVAX vaccine and were induced to recommend, prescribe, purchase, and/or administer the ZOSTAVAX vaccine to Plaintiffs for the long-term prevention of shingles and pain.

709. Because Plaintiffs' physicians reasonably relied on MSD's misrepresentations regarding the safety and efficacy of the ZOSTAVAX vaccine and were induced to purchase and use the ZOSTAVAX vaccine for the long-term prevention of shingles and pain, each Plaintiff sustained severe and permanent personal injuries and damages.

710. MSD's false representations regarding the safety and efficacy of ZOSTAVAX constitute wrongful conduct, fraud, and deceit.

711. MSD's false representations regarding the safety and efficacy of ZOSTAVAX were made and perpetrated willfully, wantonly, purposefully, and with reckless disregard for the health and safety of the public, its consumers, and the Plaintiffs.

712. MSD's intentional omissions of material facts regarding the safety and efficacy of ZOSTAVAX constitute wrongful conduct, fraud, and deceit.

713. MSD's intentional omissions of material facts regarding the safety and efficacy of ZOSTAVAX were made and perpetrated willfully, wantonly, purposefully, and with reckless disregard and depraved indifference for the health and safety of the public, its consumers, and the Plaintiffs.

714. MSD's intentional concealment of material facts regarding the safety and efficacy of ZOSTAVAX constitute wrongful conduct, fraud, and deceit.

715. MSD's intentional concealment of material facts regarding the safety and efficacy of ZOSTAVAX were made and perpetrated willfully, wantonly, purposefully, and with reckless disregard and depraved indifference for the health and safety of the public, its consumers, and the Plaintiffs.

716. MSD's intentional misrepresentations concerning the safety of the ZOSTAVAX vaccine were purposeful, willful, wanton, and fraudulent.

717. MSD's intentional misrepresentations concerning the efficacy of the ZOSTAVAX vaccine were purposeful, willful, wanton, and fraudulent.

718. MSD's intentional concealment and omissions of material facts concerning the safety of the ZOSTAVAX vaccine were purposeful, willful, wanton, and fraudulent.

719. MSD's intentional concealment and omissions of material facts concerning the efficacy of the ZOSTAVAX vaccine were purposeful, willful, wanton, and fraudulent.

720. As a foreseeable, direct, and proximate result of MSD's intentional false representations and omissions, Plaintiffs suffered the serious injuries alleged herein.

721. As a direct and proximate consequence of MSD's fraudulent misrepresentations and concealment, Plaintiffs sustained serious personal injuries and related losses including mental anguish, physical pain and suffering, diminished capacity for the enjoyment of life, a diminished quality of life, diminished ability to work, medical and related expenses, and other losses and damages.

McKesson

722. McKesson, by and through its agents and employees, intentionally, willfully, and knowingly, fraudulently misrepresented to the medical community, the FDA, and consumers, including the Plaintiffs and their health care providers, that the ZOSTAVAX vaccine had been adequately tested in clinical trials and was found to be safe and effective.

723. McKesson knew or believed at the time it made its fraudulent misrepresentations, that its misrepresentations were false and fraudulent regarding the dangers and risks associated with use of the ZOSTAVAX vaccine.

724. McKesson made its fraudulent misrepresentations intentionally, willfully, wantonly, and with reckless disregarded and depraved indifference for the safety and well-being of the users of the ZOSTAVAX vaccine, such as Plaintiffs.

725. McKesson's fraudulent misrepresentations include the following: the efficacy of ZOSTAVAX, particularly that it was effective in preventing shingles and post-herpetic neuralgia to consumers over the age of 59; longevity of efficacy of the ZOSTAVAX vaccine, specifically the lasting preventative effect of the ZOSTAVAX vaccine against the herpes virus, even after an extended time period; and the safety of ZOSTAVAX, particularly that the ZOSTAVAX vaccine

did *not* induce serious side effects (such as shingles, post-herpetic neuralgia, retinal necrosis, keratitis and acute myelitis).

726. McKesson designed, created, and disseminated information available on the labeling of ZOSTAVAX vaccine as it was administered to Plaintiffs.

727. The ZOSTAVAX labeling contained misleading information, such as the efficacy and safety of ZOSTAVAX as a preventative measure for shingles, particularly that it was not known to cause or induce post-herpetic neuralgia, shingles, or other complications suffered by Plaintiffs.

728. McKesson also disseminated this misleading information in its patient information materials, brochures, and marketing materials.

729. McKesson's website includes information that the ZOSTAVAX vaccine prevents the reactivation of the zoster virus, to effectively prevent shingles.

730. McKesson created, developed, designed, and implemented the marketing and sales strategy for ZOSTAVAX.

731. McKesson gave presentations to persons that were directly involved with in-person marketing and sales of ZOSTAVAX to physicians and/or hospitals.

732. McKesson instructed Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers, to represent to physicians that ZOSTAVAX was effective indefinitely after a single administration during these presentations.

733. McKesson instructed Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted

directly with healthcare providers, to represent to physicians that ZOSTAVAX did not cause shingles during these presentations.

734. McKesson instructed Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers, to represent to physicians that ZOSTAVAX was safe, effective for the long-term prevention of shingles.

735. McKesson instructed Merck's, MSD's, and McKesson's field personnel, which was the sales force of Merck employees, MSD employees, and McKesson employees who interacted directly with healthcare providers, to represent to physicians that ZOSTAVAX was effective to treat pain associated with shingles.

736. Since May 2006, when ZOSTAVAX was approved by the FDA for commercial marketing in the United States, McKesson represented the following material information to the public:

- That adult shingles causes pain in almost every instance;
- That the ZOSTAVAX vaccine would effectively prevent shingles and specifically the pain that accompanied it;
- That the ZOSTAVAX vaccine was approved to treat the pain associated with shingles;
- That serious adverse effects were experienced by less than 1% of individuals in the ZOSTAVAX vaccine's clinical trials and studies;
- That the ZOSTAVAX vaccine was evaluated for safety in more than 20,000 adults – and found to be safe, effective for the long-term prevention of shingles, and without any adverse effects in more than 20,000 adults;
- That "[t]here is no way to predict when the varicella-zoster virus (VZV) will reactivate or who will develop zoster."
- That ZOSTAVAX was a "well-studied vaccine."
- That ZOSTAVAX "significantly reduced" the risk of developing shingles compared with placebo."

- That ZOSTAVAX would benefit its users "in the ***prevention of long-term nerve pain from shingles*** (postherpetic neuralgia) ***can be primarily attributed to the vaccine's effect on the prevention of shingles***." (emphasis addied).
- That the efficacy of ZOSTAVAX is 51% for everyone.
- That the efficacy of ZOSTAVAX did not diminish over time after vaccination.
- That the immunity provided by ZOSTAVAX was unlimited.
- That the immunity provided by ZOSTAVAX was the same regardless of the age of the patient vaccinated.
- That ZOSTAVAX had been tested and was found to be safe and effective for preventing shingles.
- That ZOSTAVAX was safe.
- That ZOSTAVAX was effective.

737. McKesson made the aforesaid statements through the ZOSTAVAX vaccine's labeling, advertising, marketing material, advertisements, and/or packaging.

738. McKesson made the aforesaid statements to physicians and the medical community in ZOSTAVAX "Physician Journal Ad[s]" published in medical journals that physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work, subscribed, received, and read in 2006.

739. McKesson made the aforesaid statements to physicians and the medical community in ZOSTAVAX "Physician Journal Ad[s]" published in medical journals that physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work, subscribed, received, and read from 2006 until 2017.

740. McKesson made he aforesaid statements in Community Health Care brochures that it designed, created, published, and disseminated to the public and specifically targeted for the care of adults over the age of 60.

741. McKesson made he aforesaid statements in each State's Department of Health's Immunization Policies and Procedures that it designed, created, published, and disseminated to the public by and through each state government's health department.

742. McKesson's representations intentionally concealed the following material information:

a. From 2006 until present date, McKesson intentionally concealed the effect of time since vaccination on ZOSTAVAX's efficacy.
b. From 2006 until present date, McKesson intentionally concealed that the effect of time since vaccination significantly decreases the efficacy rate of ZOSTAVAX.
c. From 2006 until present date, McKesson intentionally concealed the fact that four years after vaccination, the efficacy rate of ZOSTAVAX is zero.
d. From 2006, when the ZOSTAVAX vaccine was first marketed, until 2014, McKesson knowingly omitted in the packaging for ZOSTAVAX that the ZOSTAVAX vaccine can actually cause a viral infection, leading to an array of other infections and/or diseases including post herpetic neuralgia;
e. On June 13, 2006, when McKesson decided to omit information on the 2006 ZOSTAVAX vaccine's label, McKesson knew and/or had reason to know the risks associated with the vaccination of a live attenuated virus was material information that would be relied upon by the medical community, including each Plaintiffs' healthcare providers, and by each Plaintiffs.
f. On or about June 13, 2006, McKesson knew or had reason to know that the ZOSTAVAX vaccine's label omitted statements about the cardiac events; the warnings and precautions of using a live virus vaccine; and the need to avoid close contact (including household contacts) with someone who may be pregnant and has not had chickenpox or been vaccinated against chickenpox, or someone who has problems with their immune system.
g. On or about June 13, 2006, McKesson knew or had reason to know that the ZOSTAVAX vaccine's label omitted a warning regarding vaccination with a live attenuated virus and also lacked a precautionary

statement regarding the theoretical risk of transmitting the vaccine virus to varicella-susceptible individuals.

h. From June 13, 2006, McKesson intentionally omitted material facts from the ZOSTAVAX label and while marketing and selling the ZOSTAVAX vaccine.

i. McKesson knowingly omitted in the packaging for the ZOSTAVAX vaccine that the ZOSTAVAX vaccine can actually cause a viral infection, leading to an array of other infections and/or diseases;

743. From 2006 until 2014, McKesson represented to the public, including directly to consumers, that ZOSTAVAX did not cause or induce shingles through the ZOSTAVAX vaccine's labeling, advertising, marketing material, advertisements, and/or packaging.

744. Since 2006, McKesson represented to the medical community, to the public, and directly to consumers that known adverse effects associated with ZOSTAVAX use were no more serious that a "rash" through the ZOSTAVAX vaccine's labeling, advertising, marketing material, advertisements, and/or packaging.

745. McKesson represented that the effect of time since vaccination on ZOSTAVAX's vaccine efficacy is not statistically significant.

746. McKesson represented that ZOSTAVAX protected its users for shingles indefinitely.

747. McKesson's representation that the effect of time since vaccination on ZOSTAVAX's vaccine efficacy is not statistically significant is false.

748. McKesson's representations that ZOSTAVAX protected its users for shingles indefinitely were false.

749. ZOSTAVAX's efficacy four years after vaccination is zero.

750. ZOSTAVAX's efficacy four years after vaccination is statistically the same as zero.

751. ZOSTAVAX's efficacy rate wanes to near zero after four years after vaccination.

752. McKesson knew that ZOSTAVAX's efficacy rate wanes to near zero after four years after vaccination.

753. The ZOSTAVAX vaccine can cause the chickenpox virus to reactivate and cause shingles upon its administration.

754. From 2006 until 2017, McKesson's professional representatives met physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work.

755. McKesson's professional representatives represented to said physicians that ZOSTAVAX was effective for the long-term prevention of shingles; that ZOSTAVAX's efficacy rate did not decrease over time after vaccination; and that ZOSTAVAX created no risk of causing shingles or other injuries or complications associated with herpes zoster.

756. From 2006 until 2017, McKesson held convention panels that were attended by physicians throughout the United States in person, including Plaintiffs' healthcare providers and the administrators and senior level physicians at the medical facilities where Plaintiffs' physicians work.

757. During these convention panels, McKesson represented that ZOSTAVAX was effective for the long-term prevention of shingles; that ZOSTAVAX's efficacy rate did not decrease over time after vaccination; and that ZOSTAVAX created no risk of causing shingles or other injuries or complications associated with herpes zoster.

758. McKesson had the duty to disclose to the Plaintiffs and their physicians and healthcare providers of the defective design and formulation of the ZOSTAVAX vaccine, which

heightened the risk of suffering the injuries, diseases, and maladies that Plaintiffs suffered as a result as alleged.

759. McKesson was also under a duty to disclose to Plaintiffs and their healthcare providers of the defective or ineffective nature of the ZOSTAVAX vaccine that it marketed, distributed, and sold to them.

760. McKesson had sole access to material facts concerning the defective nature of the product and its propensity to cause serious and dangerous injuries and damages to persons who used the product.

761. McKesson, with Merck and MSD, had sole access to material facts concerning the defective nature of the product and its propensity to cause serious and dangerous injuries and damages to persons who used the product.

762. McKesson knew and had reason to know that the ZOSTAVAX vaccine created great risk of causing serious personal injury to the users of the ZOSTAVAX vaccine.

763. McKesson knew and had reason to know that the ZOSTAVAX vaccine was inherently dangerous in a manner that exceeded the inaccurate and inadequate warnings that accompanied it.

764. Merck's and/or MSD's research and testing of the ZOSTAVAX vaccine revealed the true safety of the ZOSTAVAX vaccine.

765. McKesson knew of the results of Merck's research and testing of the ZOSTAVAX vaccine showing the true safety of the ZOSTAVAX vaccine.

766. Merck's and/or MSD's research and testing of the ZOSTAVAX vaccine revealed the true risks of serious harm associated with the use of the ZOSTAVAX vaccine.

767. McKesson knew of the results of Merck's research and testing of the ZOSTAVAX vaccine showing the true risks of the ZOSTAVAX vaccine.

768. Merck's and/or MSD's research and testing of the ZOSTAVAX vaccine revealed the true risks of it causing shingles and other injuries and conditions associated with the herpes zoster virus.

769. McKesson knew of the results of Merck's research and testing of the ZOSTAVAX vaccine showing that it carried a real and serious risk of causing shingles and other injuries and conditions associated with the herpes zoster virus.

770. Merck's and/or MSD's research and testing of the ZOSTAVAX vaccine revealed the true efficacy of the ZOSTAVAX vaccine.

771. McKesson knew of the results of Merck's research and testing of the ZOSTAVAX vaccine showing the true efficacy of the ZOSTAVAX vaccine.

772. McKesson intentionally misrepresented facts concerning the safety of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public.

773. McKesson intentionally misrepresented facts concerning the efficacy of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public.

774. McKesson omitted material facts concerning the safety of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public

775. McKesson omitted material facts concerning the efficacy of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public.

776. McKesson concealed material facts concerning the safety of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public

777. McKesson concealed material facts concerning the efficacy of the ZOSTAVAX vaccine with the intent to mislead Plaintiffs, Plaintiffs' physicians, consumers, and the public.

778. McKesson intentionally misrepresented facts concerning the safety of the ZOSTAVAX vaccine to induce Plaintiffs to rely upon McKesson's misrepresentations and use the ZOSTAVAX vaccine as a safe vaccine for the long-term prevention of shingles.

779. McKesson intentionally misrepresented facts concerning the safety of the ZOSTAVAX vaccine to induce consumers to rely upon McKesson's misrepresentations and use the ZOSTAVAX vaccine as a safe vaccine for the long-term prevention of shingles.

780. McKesson intentionally misrepresented facts concerning the safety of the ZOSTAVAX vaccine to induce Plaintiffs' physicians and healthcare providers to rely upon McKesson's representations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles so that Plaintiffs' physicians and healthcare providers would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

781. McKesson intentionally misrepresented facts concerning the safety of the ZOSTAVAX vaccine to induce the medical community to rely upon McKesson's representations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles so that the medical community would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

782. McKesson intentionally misrepresented facts concerning the efficacy of the ZOSTAVAX vaccine to induce Plaintiffs to rely upon McKesson's misrepresentations to use the

ZOSTAVAX vaccine as an effective vaccine for the long-term prevention of shingles, and to purchase and use the ZOSTAVAX vaccine as a result.

783. McKesson intentionally misrepresented facts concerning the efficacy of the ZOSTAVAX vaccine to induce Plaintiffs' physicians and healthcare providers to rely upon McKesson's representations that the ZOSTAVAX vaccine was an effective vaccine for the long-term prevention of shingles so that Plaintiffs' physicians and healthcare providers would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

784. McKesson intentionally misrepresented facts concerning the efficacy of the ZOSTAVAX vaccine to induce the medical community to rely upon McKesson's representations that the ZOSTAVAX vaccine was an effective vaccine for the long-term prevention of shingles so that the medical community would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

785. McKesson intentionally omitted and/or concealed facts concerning the safety of the ZOSTAVAX vaccine to induce Plaintiffs to rely upon McKesson's misrepresentations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles, and to purchase and use the ZOSTAVAX vaccine as a result.

786. McKesson intentionally omitted and/or concealed facts concerning the safety of the ZOSTAVAX vaccine to induce consumers to rely upon McKesson's misrepresentations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles, and to purchase and use the ZOSTAVAX vaccine as a result.

787. McKesson intentionally omitted and/or concealed facts concerning the safety of the ZOSTAVAX vaccine to induce Plaintiffs' physicians and healthcare providers to rely upon McKesson's representations that the ZOSTAVAX vaccine was a safe vaccine for the long-term

prevention of shingles so that Plaintiffs' physicians and healthcare providers would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

788. McKesson intentionally omitted and/or concealed facts concerning the safety of the ZOSTAVAX vaccine to induce the medical community to rely upon McKesson's representations that the ZOSTAVAX vaccine was a safe vaccine for the long-term prevention of shingles so that the medical community would purchase, prescribe, administer and/or dispense the ZOSTAVAX vaccine.

789. At the time McKesson made these misrepresentations, and at the times that the Plaintiffs were administered the ZOSTAVAX vaccine, Plaintiffs were unaware of the representations' falsehoods, and reasonably believed them to be true.

790. At the time McKesson intentionally omitted material facts, and at the times that the Plaintiffs were administered the ZOSTAVAX vaccine, Plaintiffs were unaware of the material facts regarding the true safety and efficacy of ZOSTAVAX, and reasonably believed that ZOSTAVAX was safe and effective for the long-term prevention of shingles.

791. At the time McKesson made these misrepresentations, and at the times that the Plaintiffs were administered the ZOSTAVAX vaccine, Plaintiffs' physicians and/or pharmacists were unaware of the representations' falsehoods, and reasonably believed them to be true.

792. At the time McKesson intentionally omitted material facts, and at the times that the Plaintiffs were administered the ZOSTAVAX vaccine, Plaintiffs' physicians and/or pharmacists were unaware of the material facts regarding the true safety and efficacy of ZOSTAVAX, and reasonably believed that ZOSTAVAX was safe and effective for the long-term prevention of shingles.

793. McKesson knew or believed at the time it made representations about the ZOSTAVAX vaccine that the representations were false.

794. McKesson knew or believed at the time it made false representations about the ZOSTAVAX vaccine that the false representations were material.

795. McKesson knew or believed at the time it intentionally omitted material facts about the ZOSTAVAX vaccine that the facts omitted were material.

796. McKesson knew or believed at the time it concealed material facts about the ZOSTAVAX vaccine that the facts concealed were material.

797. McKesson's fraudulent misrepresentations were made with the intent of defrauding and deceiving the public, consumers, the medical community, the Plaintiffs, and also inducing the medical community, Plaintiffs, and the public, to recommend, prescribe, dispense, and purchase the ZOSTAVAX vaccine.

798. McKesson knew and had reason to know that Plaintiffs, their physicians and healthcare providers, in recommending, prescribing, purchasing, administering, and/or using the ZOSTAVAX vaccine, did not have the ability to determine the true facts regarding the ZOSTAVAX vaccine's safety and efficacy that it intentionally concealed.

799. Plaintiffs would not have purchased and used the ZOSTAVAX vaccine if they knew the true facts regarding its safety and efficacy.

800. Plaintiffs' physicians would not have recommended, prescribed, purchased, and/or administered the ZOSTAVAX vaccine if they knew the true facts regarding its safety and efficacy.

801. Plaintiffs reasonably relied on McKesson's misrepresentations regarding the safety and efficacy of the ZOSTAVAX vaccine and were induced to purchase and use the ZOSTAVAX vaccine for the long-term prevention of shingles and pain.

802. Because Plaintiffs reasonably relied on McKesson's misrepresentations regarding the safety and efficacy of the ZOSTAVAX vaccine and were induced to purchase and use the ZOSTAVAX vaccine for the long-term prevention of shingles and pain, each Plaintiff sustained severe and permanent personal injuries and damages.

803. Plaintiffs' physicians reasonably relied on McKesson's misrepresentations regarding the safety and efficacy of the ZOSTAVAX vaccine and were induced to recommend, prescribe, purchase, and/or administer the ZOSTAVAX vaccine to Plaintiffs for the long-term prevention of shingles and pain.

804. Because Plaintiffs' physicians reasonably relied on McKesson's misrepresentations regarding the safety and efficacy of the ZOSTAVAX vaccine and were induced to purchase and use the ZOSTAVAX vaccine for the long-term prevention of shingles and pain, each Plaintiff sustained severe and permanent personal injuries and damages.

805. McKesson's false representations regarding the safety and efficacy of ZOSTAVAX constitute wrongful conduct, fraud, and deceit.

806. McKesson's false representations regarding the safety and efficacy of ZOSTAVAX were made and perpetrated willfully, wantonly, purposefully, and with reckless disregard for the health and safety of the public, its consumers, and the Plaintiffs.

807. McKesson's intentional omissions of material facts regarding the safety and efficacy of ZOSTAVAX constitute wrongful conduct, fraud, and deceit.

808. McKesson's intentional omissions of material facts regarding the safety and efficacy of ZOSTAVAX were made and perpetrated willfully, wantonly, purposefully, and with reckless disregard and depraved indifference for the health and safety of the public, its consumers, and the Plaintiffs.

809. McKesson's intentional concealment of material facts regarding the safety and efficacy of ZOSTAVAX constitute wrongful conduct, fraud, and deceit.

810. McKesson's intentional concealment of material facts regarding the safety and efficacy of ZOSTAVAX were made and perpetrated willfully, wantonly, purposefully, and with reckless disregard and depraved indifference for the health and safety of the public, its consumers, and the Plaintiffs.

811. McKesson's intentional misrepresentations concerning the safety of the ZOSTAVAX vaccine were purposeful, willful, wanton, and fraudulent.

812. McKesson's intentional misrepresentations concerning the efficacy of the ZOSTAVAX vaccine were purposeful, willful, wanton, and fraudulent.

813. McKesson's intentional concealment and omissions of material facts concerning the safety of the ZOSTAVAX vaccine were purposeful, willful, wanton, and fraudulent.

814. McKesson's intentional concealment and omissions of material facts concerning the efficacy of the ZOSTAVAX vaccine were purposeful, willful, wanton, and fraudulent.

815. As a foreseeable, direct, and proximate result of McKesson's intentional false representations and omissions, Plaintiffs suffered the serious injuries alleged herein.

816. As a direct and proximate consequence of McKesson's fraudulent misrepresentations and concealment, Plaintiffs sustained serious personal injuries and related losses including mental anguish, physical pain and suffering, diminished capacity for the enjoyment of life, a diminished quality of life, diminished ability to work, medical and related expenses, and other losses and damages.

WHEREFORE, Plaintiffs demand judgment against the Defendants, each of them, and request compensatory damages for past, present, and future pain and suffering, medical costs and

expenses, lost wages; prejudgment and post-judgment interest as allowed by law, costs of suit and attorneys' fees, as allowed by law, punitive damages, and any and all such other relief as the Court deems just and proper; and further, demands a trial by jury of all issues so triable.

COUNT VII:
NEGLIGENT MISREPRESENTATION INVOLVING RISK OF PHYSICAL HARM

817. Plaintiffs incorporate by reference all prior allegations.

Merck

818. Merck had a duty to accurately and truthfully represent to the medical community, the FDA, and U.S. consumers, including Plaintiffs, the truth regarding its claims that Merck's product had been tested, and found to be safe and effective for the long-term prevention of shingles and injuries and conditions associated with the herpes zoster virus.

819. Merck represented and marketed ZOSTAVAX as being safe and effective.

820. Merck was aware of the risks of ZOSTAVAX. However, Merck failed to communicate to the Plaintiffs and other members of the general public, that the administration of this vaccine increased the risk of viral infection.

821. Merck failed to exercise ordinary care in making representations concerning its product and its manufacture, sale, testing, quality assurance, quality control, and distribution in interstate commerce. Merck negligently and/or carelessly misrepresented and intentionally concealed the truth regarding the high risk of the product's unreasonable, dangerous and adverse side effects associated with the administration, use, and injection of the product.

822. Merck breached its duty in representing to the Plaintiffs, their physicians and healthcare providers, and the medical community that Merck's product did not carry the risk of serious side effects such as those suffered by Plaintiffs and other similarly situated patients.

823. Merck failed to warn the Plaintiffs and other consumers, of the defective condition of ZOSTAVAX, as manufactured and/or supplied by Merck.

824. The misrepresentations made by Merck, in fact, were false.

825. Merck was careless or negligent by failing to ascertain the truth of its representations at the time it made them.

826. Merck negligently misrepresented material facts about ZOSTAVAX: it in that it made such misrepresentations when it knew or reasonably should have known of the falsity of such misrepresentations.

827. Alternatively, Merck made such misrepresentations without exercising reasonable care to ascertain the accuracy of these representations.

828. The above misrepresentations were made to Plaintiffs, Plaintiffs' physicians and/or pharmacists, the medical community, as well as the general public.

829. Plaintiffs and their healthcare providers, pharmacists and physicians, justifiably relied on Merck's misrepresentations.

830. Consequently, Plaintiffs' use of ZOSTAVAX was to their own detriment as Merck's negligent misrepresentations proximately caused plaintiff's injuries and monetary losses.

831. As a foreseeable, direct, and proximate result of Merck's negligent and/or willful, intentional, and knowing misrepresentations as set forth herein, Merck knew, or had reason to know, that Merck's product had not been sufficiently tested, that the product lacked adequate, accurate, and prominent warnings, and that injection with the product created a high risk of adverse health effects, and higher than acceptable risks of harm to users, and higher than reported and represented risks of adverse side effects such as those specifically described herein.

832. As a direct and proximate consequence of Merck's negligent misrepresentations, the Plaintiffs sustained serious personal injuries and related losses including mental anguish, physical pain and suffering, diminished capacity for the enjoyment of life, a diminished quality of life, diminished ability to work, medical and related expenses, and other losses and damages.

MSD

833. MSD had a duty to accurately and truthfully represent to the medical community, the FDA, and U.S. consumers, including Plaintiffs, the truth regarding its claims that MSD's product had been tested, and found to be safe and effective for the long-term prevention of shingles and injuries and conditions associated with the herpes zoster virus.

834. MSD represented and marketed ZOSTAVAX as being safe and effectiveMSD was aware of the risks of ZOSTAVAX. However, MSD failed to communicate to the Plaintiffs and other members of the general public, that the administration of this vaccine increased the risk of viral infection.

835. MSD failed to communicate to the Plaintiffs and other members of the general public, that the administration of the ZOSTAVAX vaccine would not remain effective past four years.

836. MSD failed to exercise ordinary care in making representations concerning its product and its manufacture, sale, testing, quality assurance, quality control, and distribution in interstate commerce.

837. MSD negligently and/or carelessly misrepresented and intentionally concealed the truth regarding the high risk of the product's unreasonable, dangerous and adverse side effects associated with the administration, use, and injection of the product.

838. MSD breached its duty in representing to the Plaintiffs, their physicians and healthcare providers, and the medical community that the ZOSTAVAX vaccine did not carry the risk of serious side effects such as those suffered by Plaintiffs and other similarly situated patients.

839. MSD failed to warn the Plaintiffs and other consumers, of the defective condition of ZOSTAVAX, as manufactured and/or supplied by MSD.

840. The misrepresentations made by MSD, in fact, were false.

841. MSD was careless or negligent by failing to ascertain the truth of its representations at the time it made them.

842. MSD negligently misrepresented material facts about ZOSTAVAX: it in that it made such misrepresentations when it knew or reasonably should have known of the falsity of such misrepresentations.

843. Alternatively, MSD made such misrepresentations without exercising reasonable care to ascertain the accuracy of these representations.

844. The above misrepresentations were made to Plaintiffs, Plaintiffs' physicians and/or pharmacists, the medical community, as well as the general public.

845. Plaintiffs and their healthcare providers, pharmacists and physicians, justifiably relied on MSD's misrepresentations.

846. Consequently, Plaintiffs' use of ZOSTAVAX was to their own detriment as MSD's negligent misrepresentations proximately caused plaintiff's injuries and monetary losses.

847. As a foreseeable, direct, and proximate result of MSD's negligent and/or willful, intentional, and knowing misrepresentations as set forth herein, MSD knew, or had reason to know, that the ZOSTAVAX vaccine had not been sufficiently tested, that the product lacked adequate, accurate, and prominent warnings, and that injection with the product created a high risk of adverse

health effects, and higher than acceptable risks of harm to users, and higher than reported and represented risks of adverse side effects such as those specifically described herein.

848. As a direct and proximate consequence of MSD's negligent misrepresentations, the Plaintiffs sustained serious personal injuries and related losses including mental anguish, physical pain and suffering, diminished capacity for the enjoyment of life, a diminished quality of life, diminished ability to work, medical and related expenses, and other losses and damages.

McKesson

849. McKesson had a duty to accurately and truthfully represent to the medical community, state governments, and U.S. consumers, including Plaintiffs, the truth regarding its claims that the ZOSTAVAX vaccine had been tested and found to be safe and effective for the long-term prevention of shingles and injuries and conditions associated with the herpes zoster virus.

850. McKesson represented and marketed ZOSTAVAX as being safe and effective for the long-term prevention of shingles and injuries and conditions associated with the herpes zoster virus.

851. McKesson was aware of the risks of ZOSTAVAX.

852. McKesson failed to communicate to the Plaintiffs and other members of the general public, that the administration of this vaccine increased the risk of viral infection.

853. McKesson failed to communicate to the Plaintiffs and other members of the general public, that the administration of the ZOSTAVAX vaccine would not remain effective past four years.

854. McKesson failed to exercise ordinary care in making representations concerning its product and its design, marketing, promotion, distribution, and sale in interstate commerce.

855. McKesson negligently and/or carelessly misrepresented and intentionally concealed the truth regarding the high risk of the product's unreasonable, dangerous and adverse side effects associated with the administration, use, and injection of the product.

856. McKesson breached its duty in representing to the Plaintiffs, their physicians and healthcare providers, and the medical community that the ZOSTAVAX vaccine did not carry the risk of serious side effects such as those suffered by Plaintiffs and other similarly situated patients.

857. McKesson failed to warn the Plaintiffs and other consumers, of the defective condition of ZOSTAVAX, as packaged, labeled, promoted, marketed, distributed, and sold by McKesson.

858. The misrepresentations made by McKesson, in fact, were false.

859. McKesson was careless or negligent by failing to ascertain the truth of its representations at the time it made them.

860. McKesson negligently misrepresented material facts about ZOSTAVAX: it in that it made such misrepresentations when it knew or reasonably should have known of the falsity of such misrepresentations.

861. Alternatively, McKesson made such misrepresentations without exercising reasonable care to ascertain the accuracy of these representations.

862. The above misrepresentations were made to Plaintiffs, Plaintiffs' physicians and/or pharmacists, the medical community, as well as the general public.

863. Plaintiffs and their healthcare providers, pharmacists and physicians, justifiably relied on McKesson's misrepresentations.

864. Consequently, Plaintiffs' use of ZOSTAVAX was to their own detriment.

865. McKesson's negligent misrepresentations proximately caused plaintiff's injuries and monetary losses.

866. As a foreseeable, direct, and proximate result of McKesson's negligent and/or willful, intentional, and knowing misrepresentations as set forth herein, McKesson knew, or had reason to know, that the ZOSTAVAX vaccine had not been sufficiently tested, that the product lacked adequate, accurate, and prominent warnings, and that injection with the product created a high risk of adverse health effects, and higher than acceptable risks of harm to users, and higher than reported and represented risks of adverse side effects such as those specifically described herein.

867. As a direct and proximate consequence of McKesson's negligent misrepresentations, the Plaintiffs sustained serious personal injuries and related losses including mental anguish, physical pain and suffering, diminished capacity for the enjoyment of life, a diminished quality of life, diminished ability to work, medical and related expenses, and other losses and damages

WHEREFORE, Plaintiffs demand judgment against Defendants, each of them, and request compensatory damages for past, present, and future pain and suffering, medical costs and expenses, lost wages; prejudgment and post-judgment interest as allowed by law, costs of suit and attorneys' fees, as allowed by law, punitive damages, and any and all such other relief as the Court deems just and proper; and further, demands a trial by jury of all issues so triable.

COUNT VIII:
UNJUST ENRICHMENT

868. Plaintiffs incorporate by reference all prior allegations.

Merck

869. Merck is and at all times was the manufacturer, seller, and/or supplier of the shingles vaccine, ZOSTAVAX.

870. Plaintiffs paid for the ZOSTAVAX vaccine for the long-term prevention of shingles.

871. Merck has accepted payment by Plaintiffs for the purchase of their product.

872. Plaintiffs have not received the safe and effective vaccine for which they paid.

873. It would be inequitable for Merck to keep this money if Plaintiffs did not in fact receive safe and effective treatment for the prevention of shingles.

MSD

874. MSD is and at all times was the manufacturer, seller, and/or supplier of the shingles vaccine, ZOSTAVAX.

875. Plaintiffs paid for the ZOSTAVAX vaccine for the long-term prevention of shingles.

876. MSD has accepted payment by Plaintiffs for the purchase of their product.

877. Plaintiffs have not received the safe and effective vaccine for which they paid.

878. It would be inequitable for MSD to keep this money if Plaintiffs did not in fact receive safe and effective treatment for the prevention of shingles.

McKesson

879. McKesson is and at all times was the marketer, promoter, packager, labeler, distributor, and seller of the ZOSTAVAX vaccine.

880. Plaintiffs paid for the ZOSTAVAX vaccine for long-term prevention of shingles.

881. McKesson has accepted payment by Plaintiffs for the purchase of their product.

882. Plaintiffs have not received the safe and effective vaccine for which they paid.

883. It would be inequitable for McKesson to keep this money if Plaintiffs did not in fact receive safe and effective treatment for the prevention of shingles

WHEREFORE, Plaintiffs demand judgment against Defendants, each of them, and request compensatory damages for past, present, and future pain and suffering, medical costs and expenses, lost wages; prejudgment and post-judgment interest as allowed by law, costs of suit and attorneys' fees, as allowed by law, punitive damages, and any and all such other relief as the Court deems just and proper; and further, demands a trial by jury of all issues so triable.

COUNT IX:
STRICT LIABILITY
(Against all Defendants)

884. Plaintiffs repeat, reiterate, and re-allege each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

885. Defendants manufactured, sold, distributed, marketed, and/or supplied ZOSTAVAX in a defective and unreasonably dangerous condition to consumers, including Plaintiffs, each of them.

886. Defendants designed, manufactured, sold, distributed, supplied, marketed, and/or promoted ZOSTAVAX, which was expected to reach and did in fact reach consumers, including Plaintiffs, without substantial change in the condition in which it was manufactured and sold by Defendants.

887. Plaintiffs used ZOSTAVAX as prescribed and in a manner normally intended, recommended, promoted, and marketed by Defendants.

888. ZOSTAVAX failed to perform safely when used by ordinary consumers, including Plaintiff, including when it was used as intended and in a reasonably foreseeable manner.

889. ZOSTAVAX was defective in its design and was unreasonably dangerous in that its unforeseeable risks exceeded the benefits associated with its design or formulation.

890. ZOSTAVAX was defective in design or formulation in that it posed a greater likelihood of injury than other similar medications and was more dangerous than an ordinary consumer could reasonably foresee or anticipate.

891. ZOSTAVAX was defective in its design and was unreasonably dangerous in that it neither bore nor was packaged with nor accompanied by warnings adequate to alert consumers, including Plaintiffs, of the risks described herein, including, but not limited to, the propensity to induce herpes zoster or shingles, post herpetic neuralgia, herpes zoster keratis, vision loss, residual chronic pain, and scarring.

892. Although Defendants knew or should have known of the defective nature of ZOSTAVAX, it continued to design, manufacture, market, and sell ZOSTAVAX vaccines to maximize sales and profits at the expense of the public health and safety.

893. By so acting, Defendant acted with conscious and deliberate disregard of the foreseeable harm caused by ZOSTAVAX.

894. Neither Plaintiffs nor their prescribing physicians could have, through the exercise of reasonable care, discovered ZOSTAVAX's defects or perceived the extent of the dangers posed by the vaccine.

895. As a direct and proximate consequence of Defendants' actions, omissions, and misrepresentations, Plaintiffs suffered severe shingles outbreaks, post herpetic neuralgia, herpes zoster keratis, vision loss and other painful impediments. In addition, Plaintiffs required and will continue to require healthcare and services and Plaintiffs have incurred and will continue to incur medical and related expenses as a result of their injuries. Plaintiffs also have suffered and will

continue to suffer diminished capacity for the enjoyment of life, a diminished quality of life, increased risk of premature death, aggravation of preexisting conditions and activation of latent conditions, and other losses and damages. Plaintiffs' direct medical losses and costs include care for hospitalization, physician care, monitoring, treatment, medications, and supplies. Plaintiffs have incurred and will continue to incur mental and physical pain and suffering.

896. Defendants' conduct as described above was committed with knowing, conscious, wanton, willful, and deliberate disregard for the value of human life and the rights and safety of consumers such as Plaintiffs, thereby entitling Plaintiffs to punitive damages under common law and in accordance with N.J.S.A 2A: 58C-1, so as to punish Defendants and deter them from similar conduct in the future.

WHEREFORE, Plaintiffs demand judgment against Defendants, each of them, and request compensatory damages for past, present, and future pain and suffering, medical costs and expenses, lost wages; prejudgment and post-judgment interest as allowed by law, costs of suit and attorneys' fees, as allowed by law, punitive damages, and any and all such other relief as the Court deems just and proper; and further, demands a trial by jury of all issues so triable.

COUNT X:
PUNITIVE DAMAGES
(Against all Defendants)

897. Plaintiffs repeat, reiterate, and re-allege each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

898. Defendants Merck and MSD have been repeatedly admonished by the FDA about the manner in which it has marketed ZOSTAVAX to consumers and physicians.

899. Defendants, each of them, have repeatedly engaged in a pattern of conduct of deliberately avoiding FDA recommendations as to which warnings relating to public hazards should be included in materials.

900. Defendants have engaged in other similar incidents with other drugs it designs, markets, and sells; this evidence tends to show that overstating the benefits of a drug while minimizing the risk of the drug is a pattern and practice of Defendants, each of them, which continues even to the present time.

901. Defendants' acts were willful and malicious in that each Defendant's conduct was carried on with a conscious disregard for the safety and rights of Plaintiffs. Defendants' unconscionable conduct thereby warrants an assessment of exemplary and punitive damages against Defendants in an amount appropriate to punish Defendants, and deter similar conduct in the future.

902. Punitive damages are appropriate under New Jersey law.

WHEREFORE, Plaintiffs pray for judgment against Defendants, as follows:

a. For general damages in an amount to be proven at the time of trial;
b. For special damages in an amount to be proven at the time of trial;
c. For statutory damages as set forth above, in an amount to be proven at the time of trial;
d. For exemplary and punitive damages in an amount to be proven at the time of trial, and sufficient to punish Defendant or to deter Defendant and others from repeating the injurious conduct alleged herein;
e. For pre-judgment and post-judgment interest on the above general and special damages;
f. For costs of this suit and attorneys' fees; and
g. All other relief that this Court deems necessary, proper, and just.

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly, severally or in the alternative, for compensatory damages, punitive damages and costs of suit as provided by law.

MARC J. BERN & PARTNERS LLP
Attorneys for Plaintiffs

By:/s/: Margaret E. Cordner
MARGARET E. CORDNER
For the Firm

Dated: June 22, 2018

DEMAND FOR JURY TRIAL

Demand is hereby made for a trial by jury.

MARC J. BERN & PARTNERS LLP
Attorneys for Plaintiffs

By:/s/: Margaret E. Cordner
MARGARET E. CORDNER
For the Firm

Dated: June 22, 2018

Pursuant to N.J. R. 4:25-4, Margaret E. Cordner, Esq. is hereby designated as trial counsel in this matter.

MARC J. BERN & PARTNERS LLP
Attorneys for Plaintiffs

By:/s/: Margaret E. Cordner
MARGARET E. CORDNER
For the Firm

Dated: June 22, 2018

Plaintiffs upon information and belief are not aware of any pending or contemplated action. Further, upon information and belief, Plaintiffs are not aware of any other party who should be joined in this action.

MARC J. BERN & PARTNERS LLP
Attorneys for Plaintiffs

By:/s/: Margaret E. Cordner
MARGARET E. CORDNER
For the Firm

Dated: June 22, 2018

Civil Case Information Statement

Case Details: MIDDLESEX | Civil Part Docket# L-004023-18

Case Caption: BOLTON-CARON BARBARA VS MERCK & CO., INC.
Case Initiation Date: 07/03/2018
Attorney Name: MARGARET ELIZABETH CORDNER
Firm Name: MARC J. BERN & PARTNERS LLC
Address: 60 EAST 42ND ST STE 950
NEW YORK NY 10165
Phone:
Name of Party: PLAINTIFF : Bolton-Caron, Barbara
Name of Defendant's Primary Insurance Company (if known): None

Case Type: PRODUCT LIABILITY
Document Type: NJ eCourts Case Initiation Confirmation
Jury Demand: YES - 12 JURORS
Hurricane Sandy related? NO
Is this a professional malpractice case? NO
Related cases pending: YES
If yes, list docket numbers:
Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO
If yes, please identify the requested accommodation:

Will an interpreter be needed? NO
If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

07/03/2018
Dated

/s/ MARGARET ELIZABETH CORDNER
Signed