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MASS TORT CIVIL DIV
MIDDLESEX VICINAGE

IN RE ZOSTAVAX LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX COUNTY

MCL NO.: 629

DOCKET NO.: _____

**INDIVIDUAL FIRST AMENDED SHORT
FORM COMPLAINT**

JURY TRIAL DEMAND

**INDIVIDUAL FIRST AMENDED SHORT FORM COMPLAINT FOR ZOSTAVAX
LITIGATION AND ADOPTION BY REFERENCE**

1. Plaintiff(s) state(s) her/his/their claims against Defendants, and incorporate(s) by reference the relevant portions of the Third Amended Master Long Form Complaint and Jury Demand for the Law Firm of Marc J. Bern & Partners LLP, filed on February 4, 2020, and now pending for adoption in *In Re ZOSTAVAX litigation*, Case Code No. 629, in the Superior Court of New Jersey, Law Division, Middlesex County before the Honorable James F. Hyland, J.S.C., by filing the following *Individual Amended Short Form Complaint* for the above-captioned action.

2. Plaintiff names the following Defendants in this action [Check all that apply]:

- MERCK & CO., INC
- MERCK SHARP & DOHME CORP.
- McKESSON CORP
- _____
- _____
- _____

ALLEGATIONS AS TO INJURIES

3. Plaintiff alleges, and indicates by selecting the appropriate boxes below, those claims that are specific to this case. When certain claims require specific pleading or case-specific facts and individual information, Plaintiff shall include them herein.

(a) Plaintiff _____ (herein referred to as "Plaintiff"), who was born on _____, is an individual who is a citizen of the State of _____, and resides at _____.

(b) Plaintiff is married: yes / no .

a. If "yes" is selected: Plaintiff is married to _____ ("Spouse Plaintiff"), who resides at _____.

(c) Plaintiff was administered the ZOSTAVAX vaccine for the long-term prevention of shingles and zoster-related conditions.

(d) On or about _____, Plaintiff was administered the ZOSTAVAX vaccine by _____ at _____.

(e) Subsequently, Plaintiff was treated by _____ at _____ for the following injuries resulting from Plaintiff's ZOSTAVAX use: _____.

(f) Plaintiff brings this action:

- On behalf of herself/himself;
- As a representative of _____;
- As *guardian ad litem* of _____;
- As administrator of the estate of Plaintiff _____ (hereinafter "Decedent") (see letter of administration and/or next of kin affidavit attached hereto as Exhibit A), who died on _____ in the state of _____.

(g) Plaintiff claims damages as a result of:

- Injury to themselves;

- Injury to the person represented;
- Wrongful death;
- Survivorship action;
- Loss of consortium;
- Loss of services;
- Economic losses.

SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

4. The following claims asserted in the Third Amended Master Long Form Complaint and the allegations with regard thereto in the Third Amended Master Long Form Complaint are herein adopted by reference:

- COUNT I: VIOLATION OF THE NEW JERSEY PRODUCT LIABILITY ACT
- COUNT II: BREACH OF EXPRESS WARRANTY
- COUNT III: SURVIVAL ACTION
- COUNT IV: WRONGFUL DEATH
- COUNT V: OTHER – LOSS OF CONSORTIUM.

Plaintiff(s) may assert claims for loss of consortium against Defendant(s) by selecting this option and setting forth the allegations in support of this Count in paragraph five below.

- COUNT: OTHER – SPECIFY: _____

Plaintiff(s) may assert additional theories and/or state additional Count(s) against Defendant(s) by selecting this option, identifying the additional theories of recovery and/or Count(s) in the space provided here, and setting forth such claims in additional detail, if necessary, in paragraph six below. Further, if Plaintiff(s) claims and includes additional theories of recovery, the specific facts and allegations supporting the additional theories will be set forth by Plaintiff in paragraph seven below.

5. If Plaintiff asserts a claim for Loss of Consortium, in support of this Count, Plaintiff alleges the following additional allegations.

At all relevant times hereto, Plaintiff was married to Spouse Plaintiff, who has suffered severe physical injuries, emotional distress, economic losses, and other damages as a result of the Plaintiff's injuries from ZOSTAVAX use. As a direct and proximate result of Plaintiff's ZOSTAVAX use:

- Spouse Plaintiff paid for and has become liable to pay for Plaintiff's medical aid, treatment, monitoring, medications, and other expenditures;
- the marital relationship between Plaintiff and Spouse Plaintiff was impaired and depreciated, resulting in the disintegration and deterioration of the family unit and the relationships existing therein;
- Spouse Plaintiff has been and will continue to be deprived of the support, companionship, care, services, society, love, and affection of Plaintiff; and
- Spouse Plaintiff has sustained and will continue to sustain severe physical injuries, emotional distress, mental anguish, economic losses, and other damages for which Spouse Plaintiff is entitled to recovery of damages.

Additionally, Spouse Plaintiff has suffered damages as follows: _____

_____.

6. Plaintiff asserts the following additional theories of recovery against Defendant(s):

7. Plaintiff hereby alleges the following additional allegations in support of the additional theories of recovery, identified herein, against Defendant(s):

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant(s), and each of them, individually, jointly, and severally, and requests compensatory damages, together with interest, cost of suit, attorneys' fees, and all such other relief as the Court deems just and proper; demands a trial by jury of all issues so triable; as well as:

- (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 pre-judgment and post-judgment interest on the above general and special damages;
- (e) For costs of this suit and attorneys' fees; and
- (f) All other relief that this Court deems necessary, proper, and just.

Dated: _____, 2020

Respectfully submitted,
MARC J. BERN & PARTNERS LLP
Attorneys for Plaintiff(s)

MARGARET E. CORDNER

DEMAND FOR JURY TRIAL

Demand is hereby made for trial by jury.

Dated: _____, 2020

MARC J. BERN & PARTNERS LLP
Attorneys for Plaintiff(s)

MARGARET E. CORDNER
For the Firm

CERTIFICATION PURSUANT TO R.4:5-1

Plaintiff upon information and belief is not aware of any pending or completed action in any other court or of a pending arbitration proceeding nor is any other action or arbitration contemplated. Further, upon information and belief, she is not aware of any other party who should be joined in this action.

Dated: _____, 2020

MARC J. BERN & PARTNERS LLP
Attorneys for Plaintiff(s)

MARGARET E. CORDNER
For the Firm

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Margaret E. Corder is hereby designated as trial counsel in this matter.

Dated: _____, 2020

MARC J. BERN & PARTNERS LLP
Attorneys for Plaintiff(s)

MARGARET E. CORDER
For the Firm