

1 Michael L. Baum, Esq., State Bar No. 119511  
[mbaum@baumhedlundlaw.com](mailto:mbaum@baumhedlundlaw.com)  
2 Bijan Esfandiari, Esq., State Bar No. 223216  
[besfandiari@baumhedlundlaw.com](mailto:besfandiari@baumhedlundlaw.com)  
3 Nicole K.H. Maldonado, Esq., State Bar No. 207715  
[nmaldonado@baumhedlundlaw.com](mailto:nmaldonado@baumhedlundlaw.com)  
4 Monique Alarcon, Esq., State Bar No. 311650  
5 [malarcon@baumhedlundlaw.com](mailto:malarcon@baumhedlundlaw.com)  
**BAUM, HEDLUND, ARISTEI & GOLDMAN, P.C.**  
6 10940 Wilshire Blvd., 17th Floor  
7 Los Angeles, CA 90024  
8 Tel: (310) 207-3233  
9 Fax: (310) 820-7444

9 *Attorneys for Plaintiff*

10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF ORANGE COUNTY**

13 KAYLA CARRILLO,

14 Plaintiff,

15 v.

16 MERCK & CO., INC., a New Jersey Corporation;  
17 MERCK SHARP & DOHME CORP., a New Jersey  
18 Corporation; MEMORIALCARE MEDICAL  
19 GROUP, a California Corporation; GINA  
20 POSNER, M.D., JULIE FALLON, M.D., and  
21 DOES 1 through 50, inclusive,

22 Defendants.

Assigned for all purposes  
Case No. Judge Stephanie George  
30-2021-01182274-CU-PL-CJC

23 **COMPLAINT FOR**

- 24 (1) Negligence
- 25 (2) Strict Liability (Failure to Warn)
- 26 (3) Strict Liability (Manufacturing Defect)
- 27 (4) Breach of Warranty
- 28 (5) Common Law Fraud
- (6) Violation of California’s Unfair Competition Law
- (7) Medical Malpractice
- (8) Battery
- (9) Breach of Fiduciary Duty

**DEMAND FOR JURY TRIAL**

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Page

TABLE OF CONTENTS ..... 2

COMPLAINT..... 5

INTRODUCTION..... 5

PARTIES AND VENUE ..... 5

GENERAL ALLEGATIONS ..... 8

    I. “History Doesn’t Repeat Itself, But It Often Rhymes” – Mark Twain ..... 8

    II. In Bringing Its “Holy Grail,” Gardasil, to Market, Merck Engaged in the Same Fraudulent Research and Marketing It Had Engaged in Vis-à-vis Vioxx, Resulting In Patients Being Exposed to a Vaccine That is Of Questionable Efficacy and Which Can Cause Serious and Debilitating Adverse Events..... 10

        A. Overview of the Human Papillomavirus ..... 11

        B. Overview of the Gardasil Vaccine and Its Fast-Tracked Approval ..... 12

        C. Merck Engaged in Disease Mongering and False Advertising to Enhance Gardasil Sales..... 16

        D. Merck Used Scare Tactics and Provided Financial Incentives to Legislatures to Attempt to make the Gardasil Vaccine Mandatory for All School Children ..... 18

        E. Merck Pushed Gardasil Using Trusted Doctors and Third-Party Front Groups ..... 20

        F. Merck Has Systematically Misrepresented the Efficacy of Gardasil By Advertising that Gardasil Prevents Cervical Cancer When There Are No Clinical Studies to Support This False Claim ..... 21

        G. The Gardasil Vaccines Contain Numerous Hazardous Ingredients, Including At Least One Ingredient Merck Failed to Disclose to Regulators and the Public..... 24

            i. Gardasil Contains A Toxic Aluminum Adjuvant..... 24

            ii. Merck Lied About a Secret DNA Adjuvant Contained in The Gardasil Vaccines ..... 24

            iii. Gardasil Contains Borax..... 26

            iv. Gardasil Contains Polysorbate 80 ..... 26

            v. Gardasil Contains Genetically Modified Yeast ..... 27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

H. As it Did in Vioxx, In Designing and Conducting Its Clinical Trials for Gardasil, Merck Concealed Risks to Falsely Enhance the Safety Profile of Gardasil..... 27

i. Small Clinical Trials..... 29

ii. Merck Used a Highly Toxic “Placebo” to Mask Gardasil Injuries ..... 29

iii. Merck Used Exclusionary Criteria to Further Conceal Gardasil Risks..... 31

iv. Merck Deceived Regulators and The Public by Classifying Many Serious Adverse Events, Which Afflicted Nearly Half of All Study Participants, As Coincidences..... 32

v. Merck Manipulated the Study Protocols to Block Participants and Researchers from Reporting Injuries and Designed the Studies to Mask Any Long-Term Adverse Events ..... 33

vi. Merck Deceived Regulators and the Public About Its Pivotal Gardasil Clinical Trial (Protocol 018) ..... 34

I. Contrary to Merck’s Representations, Gardasil May Actually Cause and Increase the Risk of Cervical and Other Cancers ..... 36

J. Merck has Concealed the Fact that Gardasil Induces and Increases the Risk of Autoimmune Diseases and Other Injuries, Including But Not Limited to, Postural Orthostatic Tachycardia Syndrome, Chronic Fatigue Syndrome, Neuropathy, Fibromyalgia and Dysautonomia ..... 38

K. Merck has Concealed the Fact that Gardasil Increases the Risk of Fertility Problems ..... 44

L. There were an Increased Number of Deaths in the Gardasil Studies ..... 45

M. Post-Marketing Injuries—The Raft of Injuries Seen in Merck’s Clinical Trials Has Now Become A Population-Wide Chronic Disease Epidemic ..... 46

N. The Gardasil Vaccines’ Harms Are Not Limited to the United States, Rather the Vaccines Have Injured Patients All Over the World..... 48

i. In Light of Gardasil’s Serious and Debilitating Adverse Events, the Japanese Government Rescinded Its Recommendation that Girls Receive Gardasil..... 48

ii. Denmark Has Opened Specialized Clinics Specifically Focused on Treating Gardasil-Induced Injuries, Including Gardasil-Induced Autoimmune Diseases ..... 50

iii. Gardasil-Induced Adverse Events Caused the Government in Colombia to Conclude that Gardasil Would No Longer Be Mandatory ..... 50

iv. India Halted Gardasil Trials and Accused Merck of Corruption After the Death of Several Young Girls Who were Participants in the Trial ..... 50

1	O.	Merck’s Fraud Has Paid Off Handsomely, Resulting in Over \$3 Billion in Gardasil Sales Annually .....	51
2			
3	III.	Carrillo Sustained Autoimmune Disease and Other Serious Injuries, Including but Not Limited to, Postural Orthostatic Tachycardia Syndrome (“POTS”), Orthostatic Intolerance (“OI”), and Dysautonomia, as a Result of Her Gardasil Injections.....	52
4			
5	A.	Gardasil and Its Ingredients Caused Carrillo’s Autoimmune Disease and Other Related Injuries and Has Resulted in Her Suffering from Severe, Debilitating, Disabling and Painful Chronic Injuries.....	52
6			
7	B.	“It is Not Revolutions and Upheavals That Clear the Road to New and Better Days, But Revelations, Lavishness and Torments of Someone’s Soul, Inspired and Ablaze.” – Boris Pasternak, <i>After the Storm</i> .....	56
8			
9		CAUSES OF ACTION .....	57
10		COUNT ONE - NEGLIGENCE AGAINST MERCK.....	57
11		COUNT TWO - STRICT LIABILITY FAILURE TO WARN .....	64
12		COUNT THREE - STRICT LIABILITY MANUFACTURING DEFECT .....	68
13		COUNT FOUR - BREACH OF EXPRESS WARRANTY .....	70
14		COUNT FIVE - COMMON LAW FRAUD .....	74
15		COUNT SIX - VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW.....	80
16		COUNT SEVEN - MEDICAL MALPRACTICE.....	82
17		COUNT EIGHT - BATTERY.....	84
18		COUNT NINE - BREACH OF FIDUCIARY DUTY .....	85
19		PRAYER FOR RELIEF.....	87
20		DEMAND FOR JURY TRIAL.....	87
21			
22			
23			
24			
25			
26			
27			
28			

1 **COMPLAINT**

2 COMES NOW Plaintiff, KAYLA CARRILLO, who by and through counsel Baum Hedlund  
3 Aristei & Goldman, PC, and Robert F. Kennedy, Jr., alleges against defendants MERCK & CO.,  
4 INC., MERCK, SHARP AND DOHME CORPORATION, MEMORIALCARE MEDICAL GROUP,  
5 GINA POSNER, M.D., JULIE FALLON, M.D., and each of them, as follows:

6 **INTRODUCTION**

7 1. This common-law products liability, negligence, strict liability, breach of warranty,  
8 fraud, malpractice, and battery action arises out of serious and debilitating injuries, including  
9 autoimmune injuries and resulting sequelae that plaintiff, Kayla Carrillo, sustained as a result of  
10 receiving multiple injections of the Gardasil vaccine, which was designed, manufactured, labeled, and  
11 promoted by defendants Merck & Co., Inc., and Merck, Sharp and Dohme Corporation (collectively  
12 “Merck”), and prescribed and administered by medical providers defendants, Gina Posner, M.D., and  
13 Julie Fallon, M.D. at MemorialCare Medical Group (all physician and entity medical providers  
14 defendants will be collectively referred to as “MemorialCare Defendants”).

15 **PARTIES AND VENUE**

16 2. Plaintiff, Kayla Carrillo (“Carrillo” or “Plaintiff”), is an adult.

17 3. Defendant Merck & Co., Inc., is a New Jersey corporation with its principal place of  
18 business at One Merck Drive, Whitehouse Station, New Jersey.

19 4. Defendant Merck, Sharp and Dohme Corporation, is a New Jersey corporation with its  
20 principal place of business at One Merck Drive, Whitehouse Station, New Jersey.

21 5. Defendants Merck & Co., Inc., and Merck, Sharp and Dohme Corporation shall  
22 hereinafter collectively be referred to as “Merck.”

23 6. Merck is the designer, manufacturer, labeler, and promoter of the Gardasil and  
24 Gardasil-9 vaccines, which are purported to be “cervical cancer vaccines” in that they attempt to  
25 prevent a handful of the hundreds of strains of the Human Papillomavirus (“HPV”). Merck regularly  
26 conducts and transacts business in California and has promoted Gardasil to consumers, patients,  
27 parents, hospitals, physicians, nurses, and medical professionals, including but not limited to  
28 Plaintiff’s family and the medical facility and medical professionals who prescribed and/or injected

1 Plaintiff with Gardasil. This Court has personal jurisdiction over Merck because defendants have  
2 sufficient minimum contacts with California to render the exercise of jurisdiction by this Court proper.

3 7. Defendant, MemorialCare Medical Group, is a California corporation who upon  
4 information and belief, owns and operates “MemorialCare” hospitals and medical centers throughout  
5 Southern California.

6 8. Defendant, Gina Loren Posner, M.D. (“Dr. Posner”), is a California citizen and is  
7 licensed by the Medical Board of California, and upon information and belief, resides in and provides  
8 medical services in this County. Dr. Posner provided medical services to the Plaintiff at a  
9 MemorialCare medical center in this County, which included, *inter alia*, ordering and prescribing a  
10 Gardasil shot for the Plaintiff, which was administered on August 17, 2012.

11 9. Defendant, Julie Segal Fallon, M.D. (“Dr. Fallon”), is a California citizen and resident  
12 and is licensed by the Medical Board of California, and upon information and belief, resides in and  
13 provides medical services in this County. Dr. Fallon provided medical services to the Plaintiff at a  
14 MemorialCare medical center in this County, which included, *inter alia*, ordering and prescribing a  
15 Gardasil shot for the Plaintiff which was administered on October 21, 2014.

16 10. Defendants MemorialCare Medical Group, Gina Posner, M.D., and Julie Fallon, M.D.,  
17 shall be collectively referred to as the “MemorialCare Defendants.”

18 11. The true names and capacities, whether individual, corporate, associate or otherwise of  
19 Defendants DOES 1 through 50, inclusive, are unknown to Plaintiff who herein and hereafter sues  
20 said Defendants by such fictitious names, and Plaintiff will seek leave of Court to amend this  
21 Complaint to set forth their true names and capacities when ascertained. Plaintiff is informed and  
22 believes and based thereon alleges that each of the defendants designated herein as a DOE is legally  
23 responsible in some manner for the events and happenings herein alleged, and that Plaintiff’s damages  
24 were proximately caused by such defendants.

25 12. At all times herein mentioned, each defendant was the agent, servant, partner, aider and  
26 abettor, co-conspirator and/or joint venturer of the other defendants named herein, and was at all times  
27 operating and acting within the purpose and scope of said agency, service, employment, partnership,  
28 conspiracy and/or joint venture, and rendered substantial assistance and encouragement to the other

1 defendants, knowing that their collective conduct constituted a breach of duty owed to the Plaintiff.

2 13. At all times herein mentioned, defendants were fully informed of the actions of their  
3 agents and employees, and thereafter no officer, director or managing agent of defendants repudiated  
4 those actions, which failure to repudiate constituted adoption and approval of said actions, and all  
5 defendants and each of them thereby ratified those actions.

6 14. There exists—and, at all times herein mentioned, there existed—a unity of interest in  
7 ownership between the named defendants, such that any individuality and separateness between the  
8 defendants has ceased and these defendants are the alter-ego of each other and exerted control over  
9 each other. Adherence to the fiction of the separate existence of these named defendants as entities  
10 distinct from each other will permit an abuse of the corporate privilege and would sanction a fraud  
11 and/or would promote injustice.

12 15. The harm caused to Plaintiff resulted from the conduct of one or various combinations  
13 of the defendants, and through no fault of Plaintiff. There may be uncertainty as to which one or  
14 which combination of the defendants caused the harm. The defendants have superior knowledge and  
15 information on the subject of which one or which combination of the defendants caused Plaintiff's  
16 injuries. Thus, the burden of proof should be upon each of the defendants to prove that the defendant  
17 has not caused the harms Plaintiff has suffered.

18 16. At all times herein mentioned, the two Merck defendants were engaged in the business  
19 of, or were successors in interest to, entities engaged in the business of researching, designing,  
20 formulating, compounding, testing, manufacturing, producing, processing, assembling, inspecting,  
21 distributing, marketing, labeling, promoting, packaging, prescribing and/or advertising for sale, and  
22 selling products for use by patients such as Plaintiff, her family, and her medical providers. As such,  
23 the two Merck defendants are each individually, as well as jointly and severally, liable to Plaintiff for  
24 her damages.

25 17. Venue is proper in this County because this is the County wherein Plaintiff was  
26 prescribed and was injected with the injury-causing Gardasil vaccines, and it is also the County where  
27 at least one of the defendants reside and conduct business.

28 //

## GENERAL ALLEGATIONS

### **I. “History Doesn’t Repeat Itself, But It Often Rhymes” – Mark Twain**

18. Merck traces its history back to 1668, when the original founder of the company, Friedrich Jacob Merck, bought an apothecary in Darmstadt, Germany. The company operated as a pharmacy for approximately the next 150 years when, in 1827, Friedrich’s descendant, Heinrich Emmanuel Merck, converted the company into a drug manufacturing enterprise. Merck’s first products included morphine and cocaine.

19. Merck later manufactured a number of controversial products including Fosamax (a purported bone density drug that caused bone fractures), Nuvaring (a birth control device associated with life-threatening blood clots and death), and probably its most infamous drug, Vioxx (a pain medication Merck was forced to pull from the market due to its cardiovascular risks), all of which landed Merck in litigation hot water.

20. With regard to Vioxx, Merck was sued by tens of thousands of patients who alleged they suffered heart attacks and other cardiovascular injuries as a result of ingesting the blockbuster pain medication.

21. Documents unsealed during the Vioxx litigation in the early 2000s revealed a culture wherein Merck knew early on that Vioxx was linked to fatal cardiovascular adverse events, but nonetheless intentionally chose to conceal these risks from the public and medical community, and instead orchestrated a scheme to downplay the severity of the risks. Merck misrepresented the results of its clinical trials, failed to undertake the clinical trials that would reveal risks, and blacklisted medical professionals who dared to publicly criticize the safety of Vioxx. *See e.g.*, Eric J. Topol, *Failing the Public Health – Rofecoxib, Merck, and the FDA*, 351 NEW ENGLAND JOURNAL OF MEDICINE 1707 (2004); Gregory D. Curfman et al., *Expression of Concern Reaffirmed*, 354 NEW ENGLAND JOURNAL OF MEDICINE 1193 (2006); Aaron S. Kesselheim et al., *Role of Litigation in Defining Drug Risks*, 17 JAMA 308 (2007); Harlan M. Krumholz et al., *What We Have Learnt From Vioxx*, 334 BRITISH MED. J. 120 (2007).

22. The British Medical Journal reported that internal documents and communications obtained from Merck during litigation revealed that Merck scientists internally acknowledged the

1 existence of Vioxx’s risks very early on: “Since the early development of [Vioxx], some scientists at  
2 Merck were concerned that the drug might adversely affect the cardiovascular system ... In internal  
3 emails made public through litigation, Merck officials sought to soften the academic authors’  
4 interpretation [of the data]. The academic authors changed the manuscript at Merck’s request [to  
5 make less of the apparent risk] ...” Harlan M. Krumholz et al., *What We Have Learnt From Vioxx*,  
6 334 BRITISH MED. J. 120 (2007). And, despite Merck’s knowledge of the risk, Merck never  
7 conducted the necessary studies designed to evaluate cardiovascular risk. *Id.*

8         23. In an article published in the Journal of the American Medical Association, it was  
9 reported that Merck worked to “diminish the impact of reported cardiovascular adverse effects by not  
10 publishing adverse events and failing to include complete data on myocardial infarctions that occurred  
11 during a key clinical trial. The information came to the public attention through a subpoena 5 years  
12 after the article’s publication, when [Vioxx] was already off the market.” Aaron S. Kesselheim et al.,  
13 *Role of Litigation in Defining Drug Risks*, 17 JAMA 308 (2007). The article concludes: “These case  
14 studies indicate that clinical trials and routine regulatory oversight as currently practiced often fail to  
15 uncover important adverse effects for widely marketed products. In each instance, the litigation  
16 process revealed new data on the incidence of adverse events, enabled reassessment of drug risks  
17 through better evaluation of data, and influenced corporate and regulatory behavior.” *Id.*

18         24. It was also revealed and reported that, in order to control the public narrative that Vioxx  
19 was safe and risk free, “Merck issued a relentless series of publications...complemented by numerous  
20 papers in peer-reviewed medical literature by Merck employees and their consultants. The company  
21 sponsored countless continuing medical ‘education’ symposiums at national meetings in an effort to  
22 debunk the concern about adverse cardiovascular effects.” Eric J. Topol, *Failing the Public Health –*  
23 *Rofecoxib, Merck, and the FDA*, 351 NEW ENGLAND JOURNAL OF MEDICINE 1707 (2004). In addition,  
24 Merck “selectively targeted doctors who raised questions about [Vioxx], going so far as pressuring  
25 some of them through department chairs.” Harlan M. Krumholz et al., *What We Have Learnt From*  
26 *Vioxx*, 334 BRITISH MED. J. 120 (2007). Dr. Topol, Chairman of the Department of Cardiovascular  
27 Medicine at the Cleveland Clinic, commented: “Sadly, it is clear to me that Merck’s commercial  
28 interest in [Vioxx] sales exceeded its concern about the drug’s potential cardiovascular toxicity.” Eric

1 J. Topol, *Failing the Public Health – Rofecoxib, Merck, and the FDA*, 351 NEW ENGLAND JOURNAL  
2 OF MEDICINE 1707 (2004).

3 25. Once Merck’s misdeeds vis-à-vis Vioxx were revealed in various jury trials, Merck paid  
4 nearly \$5 billion to settle the tens of thousands of personal injury actions that had been brought  
5 against it as a result of its concealment of Vioxx’s cardiovascular risks. Merck paid an additional \$1  
6 billion to settle a securities class action brought by investors who had lost money when Merck’s stock  
7 tanked following revelations of the drug’s risks and subsequent lost sales. Merck was also forced to  
8 pay \$950 million in civil and criminal fines to the Department of Justice and other governmental  
9 entities as a result of various criminal activities Merck had engaged in with respect to Vioxx.

10 26. In 2005, Merck pulled Vioxx from the market and was desperate to find a replacement  
11 for its previous multi-billion-dollar blockbuster.

12 27. Merck viewed Gardasil as the answer to the financial woes it had suffered from Vioxx.  
13 Within Merck, executives joked that HPV stood for “Help Pay for Vioxx.”

14 28. In the aftermath of the Vioxx scandal, and seeking a replacement product, Merck’s  
15 senior director of clinical research, Eliav Barr, M.D., proclaimed of Gardasil: “This is it. *This is the*  
16 *Holy Grail!*”

17 **II. In Bringing Its “Holy Grail,” Gardasil, to Market, Merck Engaged in the Same**  
18 **Fraudulent Research and Marketing It Had Engaged in Vis-à-vis Vioxx, Resulting**  
19 **In Patients Being Exposed to a Vaccine That is Of Questionable Efficacy and**  
20 **Which Can Cause Serious and Debilitating Adverse Events**

21 29. As outlined herein, in researching, developing, and marketing its new “Holy Grail,”  
22 Gardasil, Merck engaged in the same unscrupulous tactics it had so infamously engaged in with  
23 Vioxx.

24 30. Certain Merck employees, scientists, and executives involved in the Vioxx scandal were  
25 also involved with Gardasil, and it appears they employed the very same methods of manipulating  
26 science and obscuring risks as they did with Vioxx.

27 31. According to Merck’s marketing claims, Gardasil (and, later, next-generation Gardasil  
28 9) provided lifetime immunity to cervical and other HPV-associated cancers.

32. As discussed more fully below, whether Gardasil prevents cancer (not to mention

1 lifetime immunity), is unproven. In fact, it may be more likely to cause cancer in those previously  
2 exposed to HPV than to prevent it.

3 33. Moreover, Merck knows and actively conceals the fact that Gardasil can cause a  
4 constellation of serious adverse reactions and gruesome diseases, including autoimmune diseases, and  
5 death in some recipients.

6 34. As a result of Merck's fraud, Gardasil today is wreaking havoc on a substantial swath of  
7 an entire generation of children and young adults on a worldwide scale.

### 8 **A. Overview of the Human Papillomavirus**

9 35. Human Papillomavirus ("HPV") is a viral infection that is passed between people  
10 through skin-to-skin contact. There are more than 200 strains of HPV, and of those, more than 40  
11 strains can be passed through sexual contact.

12 36. HPV is the most common sexually transmitted disease. It is so common that the  
13 majority of sexually active people will get it at some point in their lives, even if they have few sexual  
14 partners.

15 37. HPV, for the most part, is benign. More than 90 percent of HPV infections cause no  
16 clinical symptoms, are self-limited, and are removed from the human body by its own immunological  
17 mechanisms and disappear naturally from the body following an infection. *See, e.g.,* Antonio C. de  
18 Freitas et al., *Susceptibility to cervical cancer: An Overview*, 126 GYNECOLOGIC ONCOLOGY 306  
19 (August 2012).

20 38. Approximately 12 to 18 of the over 200 strains of HPV are believed to be associated  
21 with cervical cancer.

22 39. Not every HPV infection puts one at risk for cervical cancer. Only persistent HPV  
23 infections—not short-term or transient infections or sequential infections with different HPV types—  
24 in a limited number of cases with certain strains of the virus may cause the development of  
25 precancerous lesions. With respect to cervical cancer, these precancerous lesions are typically  
26 diagnosed through Pap smears and then removed through medical procedures. However, when  
27 undiagnosed, they may in some cases progress to cervical cancer in some women. Other risk factors,  
28 such as smoking, are also associated with cervical cancer. *See* Antonio C. de Freitas et al.,

1 *Susceptibility to cervical cancer: An Overview*, 126 GYNECOLOGIC ONCOLOGY 305 (August 2012).

2 Infection with certain types of HPV are also associated with other diseases, such as genital warts.

3 40. Public health officials have long recommended the Pap test (also known as Pap Smear),  
4 which detects abnormalities in cervical tissue, as the most effective frontline public health response to  
5 the disease.

6 41. Since its introduction, cervical cancer screening through the Pap test has reduced the  
7 rates of cervical cancer in developed countries by up to 80 percent. *Id.*

8 42. Incidences of cervical cancer have been declining dramatically worldwide as countries  
9 have implemented Pap screening programs.

10 New cases of cervical cancer in the U.S. affect approximately 0.8 percent of women in their lifetime.

11 *See Cancer Stat Facts: Cervical Cancer*, NIH, at <https://seer.cancer.gov/statfacts/html/cervix.html>.

12 For those who are diagnosed, cervical cancer is largely treatable, with a five-year survival rate of over  
13 90 percent when the cancer is caught early. *See* Antonio C. de Freitas et al., *Susceptibility to cervical*  
14 *cancer: An Overview*, 126 GYNECOLOGIC ONCOLOGY 305 (August 2012).

15 43. Although the incidence of cervical cancer was in rapid decline as a result of the  
16 implementation of routine testing and screening, including the Pap test and various DNA testing  
17 measures, Merck sought to fast-track a vaccine onto the market to prevent infection from four types of  
18 HPV (only two of which are associated with cancer).

19 **B. Overview of the Gardasil Vaccine and Its Fast-Tracked Approval**

20 44. While there are over 200 types of the HPV virus, only 12 to 18 types currently are  
21 considered potentially associated with cervical cancer. Merck's original Gardasil vaccine claimed to  
22 prevent infections from four strains (HPV Strain Types 6, 11, 16 and 18) and only two of those (Types  
23 16 and 18) were associated with cervical cancer.

24 45. Under Food and Drug Administration ("FDA") requirements, to obtain approval for  
25 marketing a vaccine, the manufacturer must conduct studies to test the effectiveness and safety of the  
26 vaccine. Once FDA approval is obtained, the manufacturer has a duty to perform any further  
27 scientific and medical investigation as a reasonably prudent manufacturer would perform, and to  
28 engage in any necessary post-marketing pharmacovigilance related to the product.

1           46.    The FDA approved Gardasil on June 8, 2006, after granting Merck fast-track status and  
2 speeding the approval process to a six-month period, leaving unanswered material questions relating  
3 to its effectiveness and safety, as well as when and to whom the Gardasil vaccine ought to be  
4 administered.

5           47.    Merck failed, during the preapproval processing period and thereafter, to disclose (to  
6 the FDA and/or the public) material facts and information relating to the effectiveness and safety of  
7 Gardasil, as well as to whom the vaccine should or should not be administered.

8           48.    Merck failed to perform in the preapproval processing period and thereafter, scientific  
9 and medical investigations and studies relating to the safety, effectiveness, and need for the Gardasil  
10 vaccine as either required by and under FDA directives and regulations, and/or those which a prudent  
11 manufacturer should have conducted unilaterally.

12           49.    In June 2006, after the FDA's fast-tracked review, Gardasil was approved for use in  
13 females ages nine through 26 for the purported prevention of cervical cancer, and almost immediately  
14 thereafter, the Advisory Committee on Immunization Practices ("ACIP"), a committee within the  
15 Centers for Disease Control ("CDC"), recommended Gardasil for routine vaccination of adolescent  
16 girls ages eleven and twelve, but also allowed it to be administered to girls as young as nine years old.

17           50.    On October 16, 2009, the FDA approved Gardasil for use in boys ages nine through 26  
18 for the prevention of genital warts caused by HPV types 6 and 11.

19           51.    Subsequently, Merck sought approval for Gardasil 9 (containing the same ingredients as  
20 Gardasil, but in higher quantities), which purportedly guarded against five additional HPV strains  
21 currently associated with cervical cancer (HPV Types 31, 33, 45, 52, and 58) than the original  
22 Gardasil, for a total of nine strains.

23           52.    The FDA approved Gardasil 9 in December 2014, for use in girls ages nine through 26  
24 and boys ages nine through 15 for the purported prevention of cervical cancer. Presently, Gardasil 9  
25 has been approved for and is being promoted by Merck to males and females who are between nine  
26 and 45 years of age, with an emphasis by Merck on marketing to pre-teen children and their parents.  
27 With little evidence of efficacy, the FDA also recently approved, on an accelerated basis, Gardasil 9  
28 for prevention of oropharyngeal and other head and neck cancers.

1           53. After the approval of the Gardasil 9 vaccine, the original Gardasil vaccine was phased  
2 out of the U.S. Market; the original Gardasil vaccine is no longer available for sale in the United  
3 States.

4           54. According to data from the National Cancer Institute’s (“NCI”) Surveillance,  
5 Epidemiology and End Results Program (“SEER”), the incidence of deaths from cervical cancer prior  
6 to Gardasil’s introduction in the United States had been steadily declining for years, and in 2006, was  
7 2.4 per 100,000 women, or approximately 1 in every 42,000 women. The currently available rate is  
8 essentially unchanged, 2.2 per 100,000 women, based on data through 2017.

9           55. The median age of death from cervical cancer is 58, , and teenagers (who are the target  
10 population of Gardasil) essentially have zero risk of dying from cervical cancer.

11           56. Merck purchased fast-track review for Gardasil and Gardasil 9 under the Prescription  
12 Drug User Fee Act (“PDUFA”). Fast-track is a process designed to facilitate the development of  
13 drugs, and to expedite their review, in order to treat serious conditions and fill an unmet medical need.

14           57. Anxious to get Gardasil onto the market as soon as possible following the Vioxx  
15 debacle, Merck sought fast-track approval even though there already existed a highly effective and  
16 side-effect free intervention, Pap smears, with no evidence that Gardasil was potentially superior to  
17 Pap smears in preventing cervical cancer.

18           58. In fact, the clinical trials Merck undertook did not even examine Gardasil’s potential to  
19 prevent cancer, rather, the trials only analyzed whether Gardasil could prevent potential precursor  
20 conditions, i.e., HPV infections and cervical interepithelial neoplasia (“CIN”) lesions graded from  
21 CIN1 (least serious) to CIN3 (most serious), the vast majority of which resolve on their own without  
22 intervention. CIN2 and CIN3 were the primary surrogate endpoints studied.

23           59. According to the FDA, whether a condition is “serious” depends on such factors as  
24 “survival, day-to-day functioning, or the likelihood that the condition, if left untreated, will progress  
25 from a less severe condition to a more serious one.”

26           60. As previously discussed, over 90 percent of HPV infections, and the majority of  
27 cervical dysplasia resolve without intervention.

28           61. However, Merck presented misleading data to the FDA suggesting that CIN2 and CIN3

1 inexorably result in cancer.

2           62. Federal law allows fast-track approval when there is no existing intervention to treat the  
3 targeted disease or where the proposed treatment is potentially superior to an existing treatment.

4           63. Merck knows (and knew) that Gardasil and Gardasil 9 are far less effective than Pap  
5 tests in preventing cervical cancer.

6           64. In order to obtain FDA approval, Merck designed and conducted a series of fraudulent  
7 Gardasil studies and then influenced the votes of the FDA’s Vaccines and Related Biological Products  
8 Advisory Committee (“VRBPAC”) and the CDC’s Advisory Committee on Immunization Practices  
9 (“ACIP”) to win both an FDA license and a CDC/ACIP approval and recommendation that all 11 and  
10 12-year-old girls should be vaccinated with Gardasil.

11           65. That ACIP “recommendation” was, effectively, a mandate to doctors to sell Merck’s  
12 very expensive vaccine, thereby compelling parents of American children as young as nine years old  
13 to buy this expensive product. With ACIP’s recommendation, Merck was emboldened to build  
14 demand through direct-to-consumer advertising and door-to-door marketing to doctors, and, with the  
15 ACIP’s blessing of the vaccine, circumvented the need to create a traditional market for the product.

16           66. Julie Gerberding, then the Director of CDC, obligingly ushered the Gardasil vaccine  
17 through CDC’s regulatory process, manifestly ignoring clear evidence that Gardasil’s efficacy was  
18 unproven and that the vaccine was potentially dangerous.

19           67. Merck, shortly thereafter, rewarded Gerberding by naming her President of Merck  
20 Vaccines in 2010.

21           68. In addition to the revolving regulatory/industry door (wherein the Director of CDC who  
22 approved the vaccine is subsequently employed by the manufacturer as a high-level executive to  
23 oversee the commercial success of the vaccine she previously approved), it is also worth noting some  
24 of the other conflicts of interest that exist within governmental agencies in relation to the facts  
25 surrounding Gardasil. Scientists from the National Institute of Health (“NIH”), which is a division of  
26 the United States Department of Health and Human Services (“HHS”), discovered a method of  
27 producing “virus-like-particles” (“VLPs”) that made creation of the Gardasil vaccine possible. The  
28 NIH scientists’ method of producing VLPs was patented by the Office of Technology Transfer

1 (“OTT”), which is part of the NIH, and the licensing rights were sold to Merck (for manufacture of  
2 Gardasil). Not only does the NIH (and, in effect, the HHS) receive royalties from sales of Gardasil,  
3 but the scientists whose names appear on the vaccine patents can receive up to \$150,000 per year (in  
4 perpetuity). Accordingly, the Gardasil patents have earned HHS, NIH, and the scientists who  
5 invented the technology millions of dollars in revenue.

6 69. Moreover, members of ACIP have been allowed to vote on vaccine recommendations  
7 even if they have financial ties to drug companies developing similar vaccines. According to a 2000  
8 U.S. House of Representatives investigation report, the majority of the CDC’s eight ACIP committee  
9 members had conflicts of interest. The Chairman of ACIP served on Merck’s Immunization Advisory  
10 Board and a number of the other ACIP members had received grants, salaries, or other forms of  
11 remuneration from Merck.

### 12 **C. Merck Engaged in Disease Mongering and False Advertising to Enhance** 13 **Gardasil Sales**

14 70. Both prior to and after the approval of Gardasil, Merck engaged in unscrupulous  
15 marketing tactics designed to overemphasize both the risks associated with HPV and the purported  
16 efficacy of Gardasil to scare the public into agreeing to mass vaccinations of the Gardasil vaccine.

17 71. Prior to Merck’s aggressive marketing campaign, there was no HPV public health  
18 emergency in high-resource countries, such as the United States.

19 72. Most women had never heard of HPV. The NCI’s 2005 Health Information National  
20 Trends Survey (“HINTS”) found that, among U.S. women 18 to 75 years old, only 40 percent had  
21 heard of HPV. Among those who had heard of HPV, less than half knew of an association between  
22 HPV and cervical cancer. Furthermore, only four percent knew that the vast majority of HPV  
23 infections resolve without treatment.

24 73. The stage was set for Merck to “educate” the public about HPV, cervical cancer, and  
25 Gardasil, all to Merck’s advantage.

26 74. Merck preceded its rollout of Gardasil with years of expensive disease awareness  
27 marketing. Merck ran “Tell Someone” commercials, designed to strike fear in people about HPV and  
28 cervical cancer—even ominously warning that you could have HPV and not know it. The

1 commercials could not mention Gardasil, which had not yet been approved by FDA, but did include  
2 Merck's logo and name. Critics of Merck's pre-approval advertising and promotion called it  
3 "deceptive and dishonest." While Merck claims the promotion was part of public health education,  
4 critics complained that this "education" was designed to sell Gardasil and build the market for the  
5 vaccine. See Angela Zimm and Justin Blum, *Merck Promotes Cervical Cancer Shot by Publicizing*  
6 *Viral Cause*, BLOOMBERG NEWS, May 26, 2006.

7 75. A year before obtaining licensing for its vaccine, Merck engaged in a major offensive  
8 "disease branding" to create a market for its vaccine out of thin air. See Beth Herskovits, *Brand of the*  
9 *Year*, PHARMEXEC.COM, February 1, 2007, at <http://www.pharmexec.com/brand-year-0>.

10 76. Merck also engaged in a relentless propaganda campaign aimed at frightening and  
11 guiltig parents who failed to inoculate their children with Gardasil.

12 77. In addition to paid advertising, Merck worked with third parties to "seed" an obliging  
13 media with terrifying stories about cervical cancer in preparation for Merck's Gardasil launch.

14 78. Prior to the FDA's 2006 approval of Gardasil, the mainstream media—under direction  
15 of Merck and its agents—dutifully reported alarming cervical cancer stories, accompanied by the  
16 promotion of an auspicious vaccine.

17 79. Merck intended its campaign to create fear and panic and a public consensus that "good  
18 mothers vaccinate" their children with Gardasil. According to Merck propagandists, the only choice  
19 was to "get the vaccine immediately" or "risk cervical cancer."

20 80. Merck aggressively and fraudulently concealed the risks of the vaccine in broadcast  
21 materials and in propaganda that it disseminated in the United States.

22 81. Merck sold and falsely promoted Gardasil knowing that, if consumers were fully  
23 informed about Gardasil's risks and dubious benefits, almost no one would have chosen to vaccinate.

24 82. Merck negligently and fraudulently deprived parents and children of their right to  
25 informed consent.

26 83. One of Merck's television campaigns, conducted in 2016, shamelessly used child actors  
27 and actresses, implicitly dying of cancer, looking straight into the camera and asking their parents  
28 whether or not they knew that the HPV vaccine could have protected them against the HPV virus that



1 88. With Gardasil costing \$360 for the original three-dose series (exclusive of the necessary  
2 doctor's visits) and Gardasil 9 now priced at \$450 for two doses (again, not including the cost of  
3 doctor's visits), Merck stood to earn billions of dollars per year, in the U.S. alone, with little  
4 marketing costs.

5 89. Prior to Gardasil's approval in 2006, Merck was already targeting political figures to aid  
6 in the passage of mandatory vaccination laws.

7 90. As early as 2004, a group called Women in Government ("WIG") started receiving  
8 funding from Merck and other drug manufacturers who had a financial interest in the vaccine.

9 91. With the help of WIG, Merck aggressively lobbied legislators to mandate Gardasil to all  
10 sixth-grade girls. See Michelle Mello *et al.*, *Pharmaceutical Companies' Role in State Vaccination*  
11 *Policymaking: The Case of Human Papillomavirus Vaccination*, 102 AMERICAN J PUBLIC HEALTH  
12 893 (May 2012).

13 92. In 2006, Democratic Assembly leader Sally Lieber of California introduced a bill that  
14 would require all girls entering sixth grade to receive the Gardasil vaccination. Lieber later dropped  
15 the bill after it was revealed there was a possible financial conflict of interest.

16 93. Prior to the introduction of the bill, Lieber met with WIG representatives. In an  
17 interview, the President of WIG, Susan Crosby, confirmed that WIG funders have direct access to  
18 state legislators, in part through the organization's Legislative Business Roundtable, of which WIG  
19 funders are a part. See Judith Siers-Poisson, *The Gardasil Sell Job*, in CENSORED 2009: THE TOP 25  
20 CENSORED STORIES OF 2007-08, 246 (Peter Philips ed. 2011).

21 94. Dr. Diane Harper, a medical doctor and scientist who was hired as a principal  
22 investigator on clinical trials for Gardasil, gave an interview for an article on the HPV vaccines and  
23 WIG in 2007. Harper, who had been a major presenter at a WIG meeting in 2005, stated that "the  
24 Merck representative to WIG was strongly supporting the concept of mandates later in the WIG  
25 meetings and providing verbiage on which the legislators could base their proposals."

26 95. WIG was one of dozens of "pay to play" lobby groups that Merck mobilized to push  
27 HPV vaccine mandates.

28 96. Another group, the National Association of County and City Health Officials

1 (NACCHO), was also pushing HPV vaccine mandates in all 50 states.

2 97. To that end, Merck made large contributions to political campaigns and legislative  
3 organizations. By February 2007, 24 states and the District of Columbia had introduced mandate  
4 legislation.

5 98. Several states passed laws allowing preteen children as young as age 12 to “consent” to  
6 vaccination with an HPV vaccine without parental consent or knowledge.

7 99. One New York state county offered children free headphones and speakers to encourage  
8 them to consent to the Gardasil vaccine. *See* Mary Holland *et al.*, THE HPV VACCINE ON TRIAL:  
9 SEEKING JUSTICE FOR A GENERATION BETRAYED 131 (2018).

10 100. Merck funneled almost \$92 million to Maryland’s Department of Health between 2012  
11 and 2018 to promote Gardasil in Maryland schools, in a fraudulent campaign that paid school officials  
12 to deliberately deceive children and parents into believing Gardasil was mandatory for school  
13 attendance. Josh Mazer, *Maryland should be upfront about HPV vaccinations for children*, CAPITAL  
14 GAZETTE, August 14, 2018, at [https://www.capitalgazette.com/opinion/columns/ac-ce-column-mazer-](https://www.capitalgazette.com/opinion/columns/ac-ce-column-mazer-20180814-story.html)  
15 [20180814-story.html](https://www.capitalgazette.com/opinion/columns/ac-ce-column-mazer-20180814-story.html).

16 **E. Merck Pushed Gardasil Using Trusted Doctors and Third-Party Front Groups**

17 101. In order to mobilize “third-party credibility” to push Gardasil, Merck gave massive  
18 donations to dozens of nonprofit groups to “educate” the public via “education grants.” For example,  
19 a disclaimer on American College of Obstetricians and Gynecologists’ Immunization for Women  
20 website stated that “[t]his website is supported by an independent educational grant from Merck and  
21 Sanofi Pasteur US.”

22 102. Merck offered influential doctors (also known as “key opinion leaders”) \$4,500 for  
23 every Gardasil lecture they gave.

24 103. Among the allegedly independent organizations Merck recruited to push Gardasil were  
25 the Immunization Coalition, the Allegheny County Board of Health, the Eye and Ear Foundation, the  
26 Jewish Healthcare Foundation, the American Dental Association, the American College of  
27 Obstetricians and Gynecologists, and the American Cancer Society.

28 //

1                   **F. Merck Has Systematically Misrepresented the Efficacy of Gardasil By**  
2                   **Advertising that Gardasil Prevents Cervical Cancer When There Are No**  
3                   **Clinical Studies to Support This False Claim**

4           104. Merck faced a daunting problem in convincing regulators, doctors, and the public to  
5 accept the Gardasil vaccine.

6           105. Merck recommends the vaccine for children aged 11 to 12 to provide protection against  
7 a disease that, in the United States, is not generally diagnosed until a median age of 50. Moreover, in  
8 those rare instances of death, the median age is 58.

9           106. There are no studies proving that Gardasil prevents cancer.

10          107. Because it can take decades for a persistent HPV infection to proceed to development of  
11 cervical cancer, and because cervical cancer is so rare, a true efficacy study would require decades and  
12 likely hundreds of thousand—if not millions—of trial participants to demonstrate that eliminating  
13 certain HPV infections would actually prevent the development of cervical cancer.

14          108. Merck did not want to invest the time or money necessary to perform testing that would  
15 prove that its vaccine actually worked to prevent cervical cancer.

16          109. Instead, Merck persuaded regulators to allow it to use “surrogate endpoints” to support  
17 its theory that the HPV vaccines would be effective in preventing cervical cancer.

18          110. The clinical trials therefore did not test whether HPV vaccines prevent cervical or other  
19 cancers. Instead, Merck tested the vaccines against development of certain cervical lesions, which  
20 some researchers suspect are precursors to cancer, although the majority of these lesions, even the  
21 most serious, regress on their own. *See, e.g., Jin Yingji et al., Use of Autoantibodies Against Tumor-*  
22 *Associated Antigens as Serum Biomarkers for Primary Screening of Cervical Cancer*, 8 *ONCOTARGET*  
23 *105425* (Dec. 1, 2017); Philip Castle et al., *Impact of Improved Classification on the Association of*  
24 *Human Papillomavirus With Cervical Precancer*, 171 *AMERICAN JOURNAL OF EPIDEMIOLOGY* 161  
25 (Dec. 10, 2009); Karoliina Tainio et al., *Clinical Course of Untreated Cervical Intraepithelial*  
26 *Neoplasia Grade 2 Under Active Surveillance: Systematic Review and Meta-Analysis*, 360 *BRIT. MED.*  
27 *J.* k499 (Jan. 16, 2018).

28          111. The Department of Health and Human Services (HHS), which oversees the FDA and  
which also stood to make millions of dollars on the vaccine from patent royalties, allowed the use of

1 Merck’s proposed surrogate endpoints.

2 112. The surrogate endpoints chosen by Merck to test the efficacy of its HPV vaccine were  
3 cervical intraepithelial neoplasia (CIN) grades 2 and 3 and adenocarcinoma in situ.

4 113. Merck used these surrogate endpoints even though it knew that these precursor lesions  
5 are common in young women under 25 and rarely progress to cancer.

6 114. At the time FDA approved the vaccine, Merck’s research showed only that Gardasil  
7 prevented certain lesions (the vast majority of which would have resolved on their own without  
8 intervention) and genital warts—not cancer itself—and only for a few years at that.

9 115. The use of these surrogate endpoints allowed Merck to shorten the clinical trials to a  
10 few years and gain regulatory approvals of the vaccines without any evidence the vaccines would  
11 prevent cancer in the long run.

12 116. Merck’s own lawyers told its marketing department that it was illegal for the company  
13 to market the vaccine as preventing cervical cancer, and that the company could only claim that  
14 Gardasil suppressed colonization by certain HPV types.

15 117. Merck’s marketers ignored this advice.

16 118. Merck’s advertisements assert that the HPV vaccine prevents cervical cancer. For  
17 example, in a presentation to medical doctors, Merck proclaimed: “Every year that increases in  
18 coverage [of the vaccine] are delayed, another 4,400 women will go on to develop cervical cancer.”  
19 The presentation goes on to tell doctors that women who do not get the vaccine will go on to develop  
20 cancer.

21 119. Merck’s foundational theory that HPV alone causes cervical cancer, while dogmatically  
22 asserted, is not proven.

23 120. Research indicates that cervical cancer is a multi-factor disease, with persistent HPV  
24 infections seeming to play a role, along with many other environmental and genetic factors, including  
25 smoking cigarettes or exposure to other toxic smoke sources, long-term use of oral contraceptives,  
26 nutritional deficiencies, multiple births (especially beginning at an early age), obesity, inflammation,  
27 and other factors. Not all cervical cancer is associated with HPV types in the vaccines and not all  
28 cervical cancer is associated with HPV at all.

1           121. Despite the lack of proof, Merck claimed that Gardasil could eliminate cervical cancer  
2 and other HPV-associated cancers.

3           122. However, *Merck knows* that the Gardasil vaccines cannot eliminate all cervical cancer  
4 or any other cancer that may be associated with HPV.

5           123. Even assuming the Gardasil vaccine is effective in preventing infection from the four to  
6 nine vaccine-targeted HPV types, the results may be short term, not guaranteed, and ignore the 200 or  
7 more other types of HPV not targeted by the vaccine, and some of which already have been associated  
8 with cancer. Even assuming these vaccine-targets are the types solely responsible for 100 percent of  
9 cervical cancer—which they are not—the vaccines have not been followed long enough to prove that  
10 Gardasil protects girls from cancer that would strike them 40 years later.

11           124. Under Merck’s hypothetical theory, the reduction of pre-cancerous lesions should  
12 translate to fewer cases of cervical cancer in 30 to 40 years.

13           125. Cervical cancer takes decades to develop and there are no studies that prove the  
14 Gardasil vaccines prevent cancer.

15           126. In January 2020, a study from the UK raised doubts about the validity of the clinical  
16 trials in determining the vaccine’s potential to prevent cervical cancer. The analysis, carried out by  
17 researchers at Newcastle University and Queen Mary University of London, revealed many  
18 methodological problems in the design of the Phase 2 and 3 trials, leading to uncertainty regarding  
19 understanding the effectiveness of HPV vaccination. *See Claire Rees et al., Will HPV Vaccine*  
20 *Prevent Cancer? J. OF THE ROYAL SOC. OF MED.* 1-15 (2020).

21           127. As Dr. Tom Jefferson of the Centre for Evidence-Based Medicine pointed out: “The  
22 reason for choosing vaccination against HPV was to prevent cancer but there’s no clinical evidence to  
23 prove it will do that.”

24           128. Gardasil has never been proven to prevent cervical or any other kind of cancer.

25           129. Yet Merck has marketed the Gardasil vaccines as if there is no question regarding their  
26 efficacy at preventing cervical cancer. In reality, they are at best protective against only four to nine  
27 of the over 200 strains of the human papillomavirus.

28 //

1                                   **G. The Gardasil Vaccines Contain Numerous Hazardous Ingredients, Including**  
2                                   **At Least One Ingredient Merck Failed to Disclose to Regulators and the Public**

3                                   **i. Gardasil Contains A Toxic Aluminum Adjuvant**

4                   130. To stimulate an enhanced immune response that allegedly *might possibly* last for 50  
5 years, Merck added to the Gardasil vaccine a particularly toxic aluminum-containing adjuvant—  
6 Amorphous Aluminum Hydroxyphosphate Sulfate (“AAHS”).

7                   131. Aluminum is a potent neurotoxin that can result in very serious harm.

8                   132. The original Gardasil vaccine contains 225 micrograms of AAHS and Gardasil 9  
9 contains 500 micrograms of AAHS.

10                  133. Federal law requires that manufacturers cannot add adjuvants to vaccines that have not  
11 been proven safe. 21 C.F.R. § 610.15(a).

12                  134. AAHS has never been proven safe. AAHS is a recent proprietary blend of aluminum  
13 and other unknown ingredients developed by Merck and used in Merck vaccines, including Gardasil.  
14 Prior vaccines have used a different aluminum formulation.

15                  135. Peer-reviewed studies show that aluminum binds to non-vaccine proteins, including the  
16 host’s own proteins, or to latent viruses, triggering autoimmune and other serious conditions. See  
17 Darja Kanduc, *Peptide Cross-reactivity: The Original Sin of Vaccines*, 4 FRONTIERS IN BIOSCIENCE  
18 1393 (June 2012).

19                  136. Aluminum, including AAHS, has been linked to scores of systemic side effects  
20 including, but not limited to: impairing cognitive and motor function; inducing autoimmune  
21 interactions; increasing blood brain barrier permeability; inducing macrophagic myofascitis in muscle;  
22 blocking neuronal signaling; interrupting cell-to-cell communications; corrupting neuronal-gial  
23 interactions; interfering with synaptic transmissions; altering enzyme function; impairing protein  
24 function; fostering development of abnormal tau proteins; and altering DNA.

25                                   **ii. Merck Lied About a Secret DNA Adjuvant Contained in The**  
26                                   **Gardasil Vaccines**

27                  137. Merck has repeatedly concealed or incorrectly identified Gardasil ingredients to the  
28 FDA and the public.

                  138. Merck lied both to the FDA and the public about including a secret and potentially

1 hazardous ingredient, HPV LI-DNA fragments, in Gardasil. These DNA fragments could act as a  
2 Toll-Like Receptor 9 (“TLR9”) agonist—further adjuvanting the vaccine and making it more potent.  
3 Merck used this hidden adjuvant to prolong the immunological effects of the vaccine, but illegally  
4 omitted it from its list of substances and ingredients in the vaccine.

5 139. Dr. Sin Hang Lee has opined that, without adding the TLR9 agonist, Gardasil would not  
6 be immunogenic. The DNA fragments bound to the AAHS nanoparticles act as the TLR9 agonist in  
7 both Gardasil and Gardasil 9 vaccines, creating the strongest immune-boosting adjuvant in use in any  
8 vaccine.

9 140. On multiple occasions, Merck falsely represented to the FDA and others, including  
10 regulators in other countries, that the Gardasil vaccine did not contain viral DNA, ignoring the DNA  
11 fragments.

12 141. This DNA adjuvant is not approved by the FDA, and Merck does not list it among the  
13 ingredients as federal law requires. See 21 C.F.R. § 610.61(o) (requiring that adjuvants be listed on  
14 biologics’ labeling). Even if not an adjuvant, the DNA fragments should have been listed because  
15 they represent a safety issue. 21 C.F.R. §610.61(n).

16 142. It is unlawful for vaccine manufacturers to use an experimental and undisclosed  
17 adjuvant.

18 143. When independent scientists found DNA fragments in every Gardasil vial tested, from  
19 all over the world, Merck at first denied, and then finally admitted, the vaccine does indeed include  
20 HPV L1-DNA fragments.

21 144. Tellingly, Merck entered into a business arrangement with Idera Pharmaceuticals in  
22 2006 to explore DNA adjuvants to further develop and commercialize Idera’s toll-like receptors in  
23 Merck’s vaccine program.

24 145. To this day, the Gardasil package inserts do not disclose that DNA fragments remain in  
25 the vaccine.

26 146. Dr. Lee also found HPV DNA fragments from the Gardasil vaccine in post-mortem  
27 spleen and blood samples taken from a young girl who died following administration of the vaccine.  
28 *See Sin Hang Lee, Detection of Human Papillomavirus L1 Gene DNA Fragments in Postmortem*

1 *Blood and Spleen After Gardasil Vaccination—A Case Report*, 3 ADVANCES IN BIOSCIENCE AND  
2 BIOTECHNOLOGY 1214 (December 2018).

3 147. Those fragments appear to have played a role in the teenager’s death.

4 148. The scientific literature suggests there are grave and little-understood risks attendant to  
5 injecting DNA into the human body.

6 **iii. Gardasil Contains Borax**

7 149. Gardasil contains sodium borate (borax). Borax is a toxic chemical and may have long-  
8 term toxic effects.

9 150. Merck has performed no studies to determine the impact of injecting borax into millions  
10 of young children or adults.

11 151. Sodium borate is known to have adverse effects on male reproductive systems in rats,  
12 mice, and dogs. Furthermore, borax causes increased fetal deaths, decreased fetal weight, and  
13 increased fetal malformations in rats, mice, and rabbits.

14 152. The European Chemical Agency requires a “DANGER!” warning on borax and states  
15 that borax “may damage fertility or the unborn child.”

16 153. The Material Safety Data Sheet (“MSDS”) for sodium borate states that sodium borate  
17 “[m]ay cause adverse reproductive effects” in humans.

18 154. The FDA has banned borax as a food additive in the United States, and yet allows  
19 Merck to use it in the Gardasil vaccine without any proof of safety.

20 **iv. Gardasil Contains Polysorbate 80**

21 155. Gardasil contains Polysorbate 80.

22 156. Polysorbate 80 crosses the blood-brain barrier.

23 157. Polysorbate 80 is used in drugs to open up the blood brain barrier in order to allow the  
24 active ingredients in a drug to reach the brain and to elicit the intended response. It acts as an  
25 emulsifier for molecules like AAHS and aluminum, enabling those molecules to pass through resistive  
26 cell membranes.

27 158. Polysorbate 80 is associated with many health injuries, including, anaphylaxis,  
28 infertility, and cardiac arrest.

1 159. Polysorbate 80 was implicated as a cause, possibly with other components, of  
2 anaphylaxis in Gardasil recipients in a study in Australia. *See* Julia Brotherton et al., *Anaphylaxis*  
3 *Following Quadrivalent Human Papillomavirus Vaccination*, 179 CANADIAN MEDICAL ASSOC. J. 525  
4 (September 9, 2008). Merck never tested Polysorbate 80 for safety in vaccines.

5 **v. Gardasil Contains Genetically Modified Yeast**

6 160. Gardasil contains genetically modified yeast.

7 161. Studies have linked yeast with autoimmune conditions. *See, e.g.*, Maurizio Rinaldi et  
8 al., *Anti-Saccharomyces Cerevisiae Autoantibodies in Autoimmune Diseases: from Bread Baking to*  
9 *Autoimmunity*, 45 CLINICAL REVIEWS IN ALLERGY AND IMMUNOLOGY 152 (October 2013).

10 162. Study participants with yeast allergies were excluded from Gardasil clinical trials.

11 163. Merck has performed no studies to determine the safety of injecting yeast into millions  
12 of children and young adults.

13 **H. As it Did in Vioxx, In Designing and Conducting Its Clinical Trials for**  
14 **Gardasil, Merck Concealed Risks to Falsely Enhance the Safety Profile of**  
15 **Gardasil**

16 164. Merck engaged in wholesale fraud during its safety and efficacy clinical studies.

17 165. In order to obtain its Gardasil license, Merck designed its studies purposefully to  
18 conceal adverse events and exaggerate efficacy.

19 166. Merck sold Gardasil to the public falsely claiming that pre-licensing safety tests proved  
20 it to be effective and safe.

21 167. In fact, Merck's own pre-licensing studies showed Gardasil to be of doubtful efficacy  
22 and dangerous.

23 168. The dishonesty in the clinical tests has led many physicians to recommend the  
24 vaccination, under false assumptions.

25 169. The clinical trials clearly demonstrated that the risks of both Gardasil and Gardasil 9  
26 vastly outweigh any proven or theoretical benefits.

27 170. Merck deliberately designed the Gardasil protocols to conceal evidence of chronic  
28 conditions such as autoimmune diseases, menstrual cycle problems, and death associated with the  
vaccine during the clinical studies.

1 171. Merck employed deceptive means to cover up injuries that study group participants  
2 suffered.

3 172. In early 2018, Lars Jørgensen, M.D., Ph.D. and Professor Peter Gøtzsche, M.D. (then  
4 with the Nordic Cochrane Centre), and Professor Tom Jefferson, M.D., of the Centre for Evidence-  
5 Based Medicine, published a study indexing all known industry and non-industry HPV vaccine  
6 clinical trials, and were disturbed to find that regulators such as the FDA and EMA (European  
7 Medicines Agency) assessed as little as half of all available clinical trial results when approving the  
8 HPV vaccines. Lars Jørgensen et al., *Index of the Human Papillomavirus (HPV) Vaccine Industry*  
9 *Clinical Study Programmers and Non-Industry Funded Studies: a Necessary Basis to Address*  
10 *Reporting Bias in a Systematic Review*, 7 SYSTEMATIC REVIEWS (January 18, 2018).

11 173. Per the indexing study discussed above, Merck appears to have kept a number of its  
12 clinical trial results secret. Moreover, it appears that Merck reported only those findings that support  
13 its own agenda.

14 174. Three separate reviews of the Gardasil vaccine by the Cochrane Collaboration found  
15 that the trial data were “largely inadequate.”

16 175. According to Dr. Tom Jefferson, “HPV [vaccine] harms have not been properly  
17 studied.”

18 176. In 2019, numerous medical professionals published an article in the British Medical  
19 Journal outlining the flaws and incomplete nature of the publications discussing Merck’s Gardasil  
20 clinical trials. The authors issued a “call to action” for independent researchers to reanalyze or  
21 “restore the reporting of multiple trials in Merck’s clinical development program for quadrivalent  
22 human papillomavirus (HPV) vaccine (Gardasil) vaccine.” Peter Doshi et al., *Call to Action: RIAT*  
23 *Restoration of Previously Unpublished Methodology in Gardasil Vaccine Trials*, 346 BRIT. MED. J.  
24 2865 (2019). The authors explained that the highly influential publications of these studies, which  
25 formed the basis of Gardasil’s FDA approval, “incompletely reported important methodological  
26 details and inaccurately describe the formulation that the control arm received, necessitating  
27 correction of the record.” *Id.* The authors explained that, while the publications claimed the clinical  
28 trials of Gardasil were “placebo-controlled,” “participants in the control arm of these trials did not

1 receive an inert substance, such as saline injection. Instead, they received an injection containing  
2 [AAHS], a proprietary adjuvant system that is used in Gardasil to boost immune response.” *Id.*

3 177. The researchers further opined that “the choice of AAHS-containing controls  
4 complicates the interpretation of efficacy and safety results in trials ... We consider the omission in  
5 journal articles, of any rationale for the selection of AAHS-containing control, to be a form of  
6 incomplete reporting (of important methodological details) and believe the rationale must be reported.  
7 We also consider that use of the term ‘placebo’ to describe an active comparator like AAHS  
8 inaccurately describes the formulation that the control arm received, and constitutes an important error  
9 that requires correction.” *Id.*

10 178. The authors pointed out that Merck’s conduct “raises ethical questions about trial  
11 conduct as well,” and that they and other scientists would need to review the Gardasil clinical trial raw  
12 data in order to be able to analyze the safety and adverse event profile of Gardasil meaningfully and  
13 independently. *Id.*

#### 14 **i. Small Clinical Trials**

15 179. Although nine to 12-year-olds are the primary target population for HPV vaccines,  
16 Merck used only a small percentage of this age group in the clinical trials. Protocol 018 was the only  
17 protocol comparing children receiving a vaccine to those who did not. In that study, Merck looked at  
18 results of fewer than 1,000 children 12 and younger for a vaccine targeting billions of boys and girls  
19 in that age group over time. In Protocol 018, 364 girls and 332 boys (696 children) were in the  
20 vaccine cohort, while 199 girls and 173 boys (372 children) received a non-aluminum control.

21 180. The small size of this trial means that it was incapable of ascertaining all injuries that  
22 could occur as a result of the vaccine.

#### 23 **ii. Merck Used a Highly Toxic “Placebo” to Mask Gardasil Injuries**

24 181. Instead of comparing health outcomes among volunteers in the Gardasil study group to  
25 health outcomes among volunteers receiving an inert placebo, Merck purposefully used a highly toxic  
26 placebo as a control in order to conceal Gardasil’s risks in all trials using comparators with the  
27 exception of Protocol 018, where only 372 children received a non-saline placebo containing  
28 everything in the vaccine except the adjuvant and antigen.

1 182. Comparing a new product against an inactive placebo provides an accurate picture of  
2 the product's effects, both good and bad. The World Health Organization ("WHO") recognizes that  
3 using a toxic comparator as a control (as Merck did here) creates a "methodological disadvantage."  
4 WHO states that "it may be difficult or impossible to assess the safety" of a vaccine when there is no  
5 true placebo.

6 183. Merck deliberately used toxic "placebos" in the control group, in order to mask harms  
7 caused by Gardasil to the study group.

8 184. Instead of testing Gardasil against a control with a true inert placebo, Merck tested its  
9 vaccine in almost all clinical trials against its highly neurotoxic aluminum adjuvant, AAHS.

10 185. Merck gave neurotoxic aluminum injections to approximately 10,000 girls and young  
11 women participating in Gardasil trials, to conceal the dangers of Gardasil vaccines.

12 186. Merck never safety tested AAHS before injecting it into thousands of girls and young  
13 women in the control groups and the girls and young women were not told they could receive an  
14 aluminum "placebo." Merck told the girls that they would receive either the vaccine or a safe inert  
15 placebo.

16 187. Merck violated rules and procedures governing clinical trials when it lied to the clinical  
17 study volunteers, telling them that the placebo was an inert saline solution, when in reality the placebo  
18 contained the highly neurotoxic aluminum adjuvant AAHS.

19 188. AAHS provoked terrible injuries and deaths in a number of the study participants when  
20 Merck illegally dosed the control group volunteers with AAHS.

21 189. Since the injuries in the Gardasil group were replicated in the AAHS control group, this  
22 scheme allowed Merck to falsely conclude that Gardasil's safety profile was comparable to the  
23 "placebo."

24 190. The scheme worked and enabled Merck to secure FDA licensing.

25 191. Merck lied to the FDA when it told public health officials that it had used a saline  
26 placebo in Protocol 018.

27 192. There was no legitimate public health rationale for Merck's failure to use a true saline  
28 placebo control in the original Gardasil clinical trials. At that time, no other vaccine was yet licensed

1 for the four HPV strains Gardasil was intended to prevent.

2 193. A small handful of girls in a subsequent Gardasil 9 trial group may have received the  
3 saline placebo, but only after they had already received three doses of Gardasil for the Gardasil 9 trial.

4 **iii. Merck Used Exclusionary Criteria to Further Conceal Gardasil**  
5 **Risks**

6 194. Merck also manipulated the Gardasil studies by excluding nearly half of the original  
7 recruits to avoid revealing the effects of the vaccine on vulnerable populations.

8 195. After recruiting thousands of volunteers to its study, Merck excluded all women who  
9 had admitted to vulnerabilities that might be aggravated by the vaccine, such as abnormal Pap tests or  
10 a history of immunological or nervous system disorders.

11 196. Women could also be excluded for “[a]ny condition which in the opinion of the  
12 investigator might interfere with the evaluation of the study objectives.”

13 197. Merck’s protocol had exclusion criteria for subjects with allergies to vaccine ingredients  
14 including aluminum (AAHS), yeast, and the select enzymes. For most of these ingredients, there are  
15 limited resources for the public to test for such allergies in advance of being vaccinated.

16 198. Merck excluded anyone with serious medical conditions from the Gardasil clinical  
17 trials, even though CDC recommends the Gardasil vaccine for everyone, regardless of whether or not  
18 they suffer from a serious medical condition.

19 199. Merck sought to exclude from the study all subjects who might be part of any subgroup  
20 that would suffer injuries or adverse reactions to any of Gardasil’s ingredients.

21 200. The study exclusion criteria are not listed as warnings on the package inserts, and the  
22 package insert for Gardasil only mentions an allergy to yeast or to a previous dose of Gardasil as a  
23 contraindication, rather than an allergy to any other component. Nonetheless, for most of the  
24 ingredients, it is almost impossible to determine if such an allergy exists prior to being vaccinated, and  
25 Merck does not recommend allergy testing before administering the vaccine.

26 201. Instead of testing the vaccine on a population representative of the cross-section of  
27 humans who would receive the approved vaccine, Merck selected robust, super-healthy trial  
28 participants who did not reflect the general population, in order to mask injurious effects on all the

1 vulnerable subgroups that now receive the vaccine. Therefore, the population tested in the clinical  
2 trials was a much less vulnerable population than the population now receiving Gardasil.

3 **iv. Merck Deceived Regulators and The Public by Classifying Many**  
4 **Serious Adverse Events, Which Afflicted Nearly Half of All Study**  
5 **Participants, As Coincidences**

6 202. Because Merck did not use a true placebo, determining which injuries were attributable  
7 to the vaccine and which were attributable to unfortunate coincidence was entirely within the  
8 discretion of Merck's paid researchers.

9 203. In order to cover up and conceal injuries from its experimental vaccine, Merck, during  
10 the Gardasil trials, employed a metric, "new medical conditions," that allowed the company to dismiss  
11 and fraudulently conceal infections, reproductive disorders, neurological symptoms, and autoimmune  
12 conditions, which affected a troubling 50 percent of all clinical trial participants.

13 204. Merck's researchers systematically dismissed reports of serious adverse events from 49  
14 percent of trial participants in order to mask the dangers of the vaccine.

15 205. Instead of reporting these injuries as "adverse events," Merck dismissed practically all  
16 of these illnesses and injuries as unrelated to the vaccine by classifying them under its trashcan metric  
17 "new medical conditions," a scheme Merck could get away with only because it used a "spiked"  
18 (poisonous) placebo, that was yielding injuries at comparable rates.

19 206. Merck's use of a toxic placebo allowed the company to conceal from the public an  
20 epidemic of autoimmune diseases and other injuries and deaths associated with its multi-billion-dollar  
21 HPV vaccine.

22 207. Because Merck conducted its studies without a true placebo, Merck investigators had  
23 wide discretion to decide what constituted an adverse event, and used that power to dismiss a wave of  
24 grave vaccine injuries, injuries that sickened half of the trial volunteers, as coincidental.

25 208. Almost half (49 percent) of all trial participants, regardless of whether they received the  
26 vaccine or Merck's toxic placebo, reported adverse events, including serious illnesses such as blood,  
27 lymphatic, cardiac, gastrointestinal, immune, musculoskeletal, reproductive, neurological and  
28 psychological conditions, chronic illnesses such as thyroiditis, arthritis and multiple sclerosis, and  
conditions requiring surgeries. *See, e.g., Nancy B. Miller, Clinical Review of Biologics License*

1 *Application for Human Papillomavirus 6, 11, 16, 18 LI Virus Like Particle Vaccine (S. cerevisiae)*  
2 *(STN 125126 GARDASIL), manufactured by Merck, Inc. at 393-94 (Table 302) (June 8, 2006).*

3 **v. Merck Manipulated the Study Protocols to Block Participants and**  
4 **Researchers from Reporting Injuries and Designed the Studies to**  
5 **Mask Any Long-Term Adverse Events**

6 209. Merck adopted multiple strategies to discourage test subjects from reporting injuries.

7 210. Merck provided Vaccination Report Cards to a limited number of trial participants. For  
8 example, in Protocol 015, only approximately 10 percent of participants—all in the United States,  
9 despite trial sites worldwide—received Vaccination Report Cards to memorialize reactions in the first  
10 few days following injections.

11 211. Furthermore, the report cards only included *categories* of “Approved Injuries”—mainly  
12 jab site reactions (burning, itching, redness, bruising)—leaving no room to report more serious  
13 unexplained injuries such as autoimmune diseases. In fact, they were designed for the purposes of  
14 reporting non-serious reactions only.

15 212. Furthermore, Merck instructed those participants to record information for only 14 days  
16 following the injection.

17 213. In this way, Merck foreclosed reporting injuries with longer incubation periods or  
18 delayed diagnostic horizons.

19 214. Abbreviated reporting periods were part of Merck’s deliberate scheme to conceal  
20 chronic conditions such as autoimmune or menstrual cycle problems, and premature ovarian failure,  
21 all of which have been widely associated with the vaccine, but would be unlikely to show up in the  
22 first 14 days following injection.

23 215. Merck researchers did not systematically collect adverse event data from the trials,  
24 which were spread out over hundreds of test sites all over the world.

25 216. To conceal the dangerous side effects of its vaccine, Merck purposely did not follow up  
26 with girls who experienced serious adverse events during the Gardasil clinical trials.

27 217. Merck failed to provide the trial subjects a standardized questionnaire checklist of  
28 symptoms to document a comparison of pre- and post-inoculation symptoms.

29 218. To discourage its clinicians from reporting adverse events, Merck made the paperwork

1 reporting requirements for supervising clinicians onerous and time-consuming, and refused to pay  
2 investigators additional compensation for filling out the paperwork.

3 219. Thus, Merck disincentivized researchers from reviewing participants’ medical records,  
4 even when the participant developed a “serious medical condition that meets the criteria for serious  
5 adverse experiences” as described in the protocol.

6 220. Merck granted extraordinary discretion to its researchers to determine what constituted  
7 a reportable adverse event, while incentivizing them to report nothing and to dismiss all injuries as  
8 unrelated to the vaccine.

9 221. Merck used subpar, subjective data collection methods, relying on participants’  
10 recollections and the biased viewpoints of its trial investigators.

11 222. Merck downplayed the incidence of serious injuries and used statistical gimmickry to  
12 under-report entries.

13 **vi. Merck Deceived Regulators and the Public About Its Pivotal**  
14 **Gardasil Clinical Trial (Protocol 018)**

15 223. Merck tested Gardasil and Gardasil 9 in some 50 clinical trials, each one called a  
16 “Protocol.” However, results for many of these studies are not available to the public or even to the  
17 regulators licensing Gardasil. *See* Lars Jørgensen, *et al.*, *Index of the Human Papillomavirus (HPV)*  
18 *Vaccine Industry Clinical Study Programmers and Non-Industry Funded Studies: a Necessary Basis*  
19 *to Address Reporting Bias in a Systematic Review*, 7 *SYSTEMATIC REVIEWS* 8 (January 18, 2018).

20 224. Gardasil’s most important clinical trial was Protocol 018. The FDA considered  
21 Protocol 018 the pivotal trial upon which Gardasil licensing approvals hinged, because FDA believed  
22 (1) it was the only trial where Merck used a “true saline placebo,” and (2) it was the only trial with a  
23 comparator group that included girls aged 11 to 12—the target age for the Gardasil vaccine. *See*  
24 *Transcript of FDA Center For Biologics Evaluation And Research VRBPAC Meeting, May 18, 2006,*  
25 *at 93 (Dr. Nancy Miller).*

26 225. Merck lied to regulators, to the public, and to subjects in its clinical trials by claiming  
27 that the Protocol 018 “placebo” group received an actual saline or inert placebo.

28 226. When the FDA approved Gardasil, it described the Protocol 018 control as a “true

1 saline placebo.”

2 227. The FDA declared that the Protocol 018 trial was “of particular interest” because Merck  
3 used a true saline placebo instead of the adjuvant as a control.

4 228. Merck told regulators that it gave a “saline placebo” to only one small group of  
5 approximately 600 nine to 15-year-old children.

6 229. In fact, Merck did not give even this modest control group a true saline placebo, but  
7 rather, group members were given a shot containing “the carrier solution”—a witches’ brew of toxic  
8 substances including polysorbate 80, sodium borate (borax), genetically modified yeast, L-histidine,  
9 and possibly a fragmented DNA adjuvant.

10 230. The only components of Gardasil the control group did not receive were the HPV  
11 antigens and the aluminum adjuvant.

12 231. Despite the witches’ brew of toxic chemicals in the carrier solution, those children fared  
13 much better than any other study or control group participants, all of whom received the AAHS  
14 aluminum adjuvant.

15 232. Only 29 percent of the vaccinated children and 31 percent of control recipients in  
16 Protocol 018 reported new illnesses from Day 1 through Month 12, compared to an alarming 49.6  
17 percent of those vaccinated and 49 percent of AAHS controls in the “pooled group” (composed of  
18 some 10,000 young women and with the other participants combined) from Day 1 only through  
19 Month 7 (not 12). Because the pooled group also included Protocol 018, even those numbers may not  
20 be accurate with respect to those who received either a vaccine with a full dose of AAHS or those who  
21 received an AAHS control.

22 233. Few of the participants in the Protocol 018 control group got systemic autoimmune  
23 diseases, compared to 2.3 percent (1 in every 43) in the pooled group. In a follow-up clinical review  
24 in 2008, the FDA identified three girls in the carrier-solution group with autoimmune disease. Based  
25 on the number of girls in the placebo group as stated in the original 2006 clinical review, fewer than 1  
26 percent of girls in the carrier solution group reported autoimmune disease.

27 234. In order to further deceive the public and regulators, upon information and belief,  
28 Merck cut the dose of aluminum adjuvant in half when it administered the vaccine to the nine to

1 fifteen-year-old children in its Protocol 018 study group.

2 235. As a result, this group showed significantly lower “new medical conditions” compared  
3 to other protocols.

4 236. Upon information and belief, Merck pretended that the vaccinated children in the  
5 Protocol 018 study group received the full dose adjuvant by obfuscating the change in formulation in  
6 the description.

7 237. Upon information and belief, Merck had cut the adjuvant in half, knowing that this  
8 would artificially and fraudulently lower the number of adverse events and create the illusion that the  
9 vaccine was safe.

10 238. Upon information and belief, Merck lied about this fact to the FDA.

11 239. The data from that study therefore do not support the safety of the Gardasil formulation  
12 since Merck was not testing Gardasil, but a far less toxic formulation.

13 240. Upon information and belief, Merck was testing a product with only half the dose of  
14 Gardasil’s most toxic component.

15 241. Upon information and belief, this is blatant scientific fraud, which continues to this day  
16 because this is the study upon which current vaccine safety and long-term efficacy assurances are  
17 based.

18 242. As set forth above, upon information and belief, Merck’s deception served its purpose;  
19 Only 29 percent of the vaccinated children in Protocol 018 reported new illness, compared to an  
20 alarming 49.6 percent in the pooled group to receive the full dose adjuvant in the vaccine.

21 **I. Contrary to Merck’s Representations, Gardasil May Actually Cause and**  
22 **Increase the Risk of Cervical and Other Cancers**

23 243. Gardasil’s label states, “Gardasil has not been evaluated for potential to cause  
24 carcinogenicity or genotoxicity.” The Gardasil 9 label states: “GARDASIL9 has not been evaluated  
25 for the potential to cause carcinogenicity, genotoxicity or impairment of male fertility.”

26 244. Peer-reviewed studies, including CDC’s own studies, have suggested that the  
27 suppression of the HPV strains targeted by the Gardasil vaccine may actually open the ecological  
28 niche for replacement by more virulent strains. *See Fangjian Guo et al., Comparison of HPV*

1 prevalence between HPV-vaccinated and non-vaccinated young adult women (20–26 years), 11  
2 HUMAN VACCINES & IMMUNOTHERAPEUTICS 2337 (October 2015); Sonja Fischer et al., *Shift in*  
3 *prevalence of HPV types in cervical cytology specimens in the era of HPV vaccinations*, 12  
4 ONCOLOGY LETTERS 601 (2016); J. Lyons-Weiler, *Biased Cochrane Report Ignores Flaws in HPV*  
5 *Vaccine Studies, and Studies of HPV Type Replacement*, (May 18, 2018). In other words, Gardasil  
6 may increase the chances of getting cancer.

7 245. In short, the Gardasil vaccines, which Merck markets as anti-cancer products, may  
8 themselves cause cancer or mutagenetic changes that can lead to cancer.

9 246. Merck concealed from the public data from its clinical trials indicating that the vaccines  
10 enhance the risk of cervical cancers in many women.

11 247. Merck’s study showed that women exposed to HPV before being vaccinated were 44.6  
12 percent more likely to develop cancerous lesions compared to unvaccinated women, even within a few  
13 years of receiving the vaccine.

14 248. In other words, Merck’s studies suggest that its HPV vaccines may cause cancer in  
15 women who have previously been exposed to HPV, particularly if they also have a current infection.

16 249. In some studies, more than 30 percent of girls show evidence of exposure to HPV  
17 before age ten, from casual exposures, unwashed hands or in the birth canal. Flora Bacopoulou et al.,  
18 *Genital HPV in Children and Adolescents: Does Sexual Activity Make a Difference?*, 29 JOURNAL OF  
19 PEDIATRIC & ADOLESCENT GYNECOLOGY 228 (June 2016).

20 250. Even in light of the data demonstrating that Gardasil can increase the risk of cancer in  
21 girls who previously have been exposed to HPV, in order to increase profits, Merck’s Gardasil labels  
22 and promotional material do not inform patients and medical doctors of this important risk factor.

23 251. Some clinical trial participants have developed cancer, including cervical cancer.

24 252. Numerous women have reported a sudden appearance of exceptionally aggressive  
25 cervical cancers following vaccination.

26 253. Cervical cancer rates are climbing rapidly in all the countries where Gardasil has a high  
27 uptake.

28 254. An Alabama study shows that the counties with the highest Gardasil uptakes also had

1 the highest cervical cancer rates.

2 255. After the introduction of HPV Vaccine in Britain, cervical cancer rates among young  
3 women aged 25 to 29 has risen 54 percent.

4 256. In Australia, government data reveals there has been a sharp increase in cervical cancer  
5 rates in young women following the implementation of the Gardasil vaccine. The most recent data  
6 reveal that, 13 years after Gardasil was released and pushed upon teenagers and young adults, there  
7 has been a 16 percent increase in 25 to 29 year olds and a 30 percent increase in 30 to 34-year-old  
8 girls contracting cervical cancer, corroborating the clinical trial data that Gardasil may *increase* the  
9 risk of cervical cancer, particularly in patients who had previous HPV infections. Meanwhile, rates  
10 are decreasing for older women (who have not been vaccinated).

11 257. In addition to the belief that Gardasil may create and open an ecological niche for  
12 replacement by more virulent strains of HPV, resulting in the increase of cervical cancers as outlined  
13 above, in light of Merck's false advertising that Gardasil prevents cervical cancer, young women who  
14 have received Gardasil are foregoing regular screening and Pap tests in the mistaken belief that HPV  
15 vaccines have eliminated all their risks.

16 258. Cervical screening is proven to reduce the cases of cervical cancer, and girls who have  
17 taken the vaccine are less likely to undergo cervical screenings.

18 259. Data show that girls who received HPV vaccines before turning 21 are far less likely to  
19 get cervical cancer screening than those who receive the vaccines after turning 21.

20 260. The cervical screening is more cost effective than vaccination alone or vaccination with  
21 screening.

22 261. Therefore, Pap tests, which detect cervical tissue abnormalities, and HPV DNA testing  
23 are the most effective frontline public health responses to cervical health problems.

24 **J. Merck has Concealed the Fact that Gardasil Induces and Increases the Risk of**  
25 **Autoimmune Diseases and Other Injuries, Including But Not Limited to,**  
26 **Postural Orthostatic Tachycardia Syndrome, Chronic Fatigue Syndrome,**  
**Neuropathy, Fibromyalgia and Dysautonomia**

27 262. Gardasil induces and increases the risk of autoimmune disease.

28 263. Gardasil has been linked to a myriad of autoimmune disorders, including but not

1 limited, to: Guillain–Barré syndrome (“GBS”), postural orthostatic tachycardia syndrome (“POTS”),  
2 Orthostatic Intolerance (“OI”), chronic inflammatory demyelinating polyneuropathy (“CDIP”), small  
3 fiber neuropathy (“SFN”), systemic lupus erythematosus (“SLE”), immune thrombocytopenic  
4 purpura (“ITP”), multiple sclerosis (“MS”), acute disseminated encephalomyelitis (“ADEM”),  
5 antiphospholipid syndrome (“APS”), transverse myelitis, rheumatoid arthritis, interconnective tissue  
6 disorder, autoimmune pancreatitis (“AIP”), and autoimmune hepatitis.

7         264. Gardasil has also been linked to a myriad of diseases and symptoms that are associated  
8 with induced-autoimmune disease, including, for example, fibromyalgia, dysautonomia, premature  
9 ovarian failure, chronic fatigue syndrome (“CFS”), chronic regional pain syndrome, cognitive  
10 dysfunction, migraines, severe headaches, persistent gastrointestinal discomfort, widespread pain of a  
11 neuropathic character, encephalitis syndrome, autonomic dysfunction, joint pain, and brain fog.

12         265. In a 2015 textbook, *VACCINES AND AUTOIMMUNITY*, edited by Dr. Yehuda Shoenfeld,  
13 the father of autoimmunology research, and many of the world’s leading autoimmunity experts, the  
14 scientists concluded that Gardasil can cause autoimmune disorders because of the vaccine’s strong  
15 immune stimulating ingredients. See Lucija Tomljenovic & Christopher A. Shaw, *Adverse Reactions*  
16 *to Human Papillomavirus Vaccines*, *VACCINES & AUTOIMMUNITY* 163 (Yehuda Shoenfeld et al. eds.,  
17 2015).

18         266. Medical experts have opined that the mixture of adjuvants contained in vaccines, in  
19 particular in the Gardasil vaccines, is responsible for post-vaccination induced autoimmune diseases  
20 in select patients. The risks have become so prolific that medical experts have coined a new umbrella  
21 syndrome – Autoimmune/Inflammatory Syndrome Induced by Adjuvants (“ASIA”) to refer to the  
22 spectrum of immune-mediated diseases triggered by an adjuvant stimulus contained in vaccines, such  
23 as aluminum. See e.g., YEHUDA SHOENFELD ET AL, EDS., *VACCINES & AUTOIMMUNITY* 2 (2015).

24         267. Indeed, even in animal studies, it has been revealed that aluminum adjuvants can induce  
25 autoimmune disease in tested animals. By way of example, in a series of studies conducted by Lluís  
26 Luján, DVM, Ph.D., and his colleagues, it was revealed that sheep injected with aluminum-containing  
27 adjuvants commonly come down with severe autoimmune diseases and other adverse reactions.

28         268. Specific to the Gardasil vaccines, which contain adjuvants, including, amorphous

1 aluminum hydroxyphosphate sulfate (AAHS) and the previously undisclosed HPV L1 gene DNA  
2 fragments, a number of mechanisms of action have been outlined (as discussed *infra*) as to how  
3 Gardasil induces autoimmune disease in select patients.

4         269. Given the number of HPV strains that exist, a great part of the human population has  
5 HPV, however, HPV by itself is generally not immunogenic, and generally does not evoke immune  
6 responses. Indeed, HPV shares a high number of peptide sequences with human proteins, so that the  
7 human immune system generally does not react against HPV in order to not harm self-proteins.  
8 Immunotolerance thus generally blocks reactions against HPV in order to avoid autoimmune attacks  
9 against the human proteins.

10         270. To induce anti-HPV immune reactions, Merck added various adjuvants, including  
11 amorphous aluminum hydroxyphosphate sulfate (AAHS), to the Gardasil vaccine. Adjuvants, such as  
12 aluminum, are inflammatory substances that hyperactivate the immune system. Adjuvants are thus  
13 the “secret sauce” used by Merck to hyperactivate the immune system and make HPV immunogenic.

14         271. While adjuvants are added with the intent of destroying the HPV virus, they also can  
15 have the unintended result of rendering the immune system “blind” and unable to distinguish human  
16 proteins from HPV proteins—accordingly, human proteins that share peptide sequences with HPV are  
17 at risk of also being attacked by the vaccine.

18         272. While Gardasil causes immune hyperactivation and production of anti-HPV antibodies  
19 to fend off certain strains of the HPV virus, it can also result in the immune system losing its ability to  
20 differentiate human proteins from foreign proteins, causing the immune system to attack the body’s  
21 own proteins and organs. Because of the massive peptide commonality between HPV and human  
22 proteins, the indiscriminate attack triggered by the Gardasil adjuvants will cause massive cross-  
23 reactions and dangerous attacks against human proteins, leading to a number of autoimmune diseases  
24 manifested throughout the different organs of the body. This process is sometimes referred to as  
25 “molecular mimicry.”

26         273. In addition to “molecular mimicry,” other mechanisms of action that explain how  
27 Gardasil can induce autoimmune disease are “epitope spreading,” whereby invading Gardasil  
28 antigens, including the toxic aluminum adjuvant, accelerate autoimmune process by location

1 activation of antigen presenting cells, and “bystander activation,” wherein antigens and the aluminum  
2 adjuvants in the Gardasil vaccine activate pre-primed autoreactive T cells, which can initiate  
3 autoimmune disease (bystander activation of autoreactive immune T cells), or where virus-specific T  
4 cells initiate bystander activation resulting in the immune system killing uninfected and unintended  
5 neighboring cells.

6         274. Relevant to the injuries at issue in this case, when a person is lying down,  
7 approximately one-quarter of their blood volume resides in the chest area. When the person stands  
8 up, a significant amount of that blood shifts to the lower extremities. This causes impaired return of  
9 blood flow to the heart which also reduces blood pressure. In healthy individuals, the autonomic  
10 nervous system adjusts the heartrate to counteract this effect and the hemodynamic changes are  
11 negligible. However, in individuals (such as Carrillo) who are now suffering from dysautonomia or  
12 autonomic ailments, such as POTS or OI, the body’s ability to adjust the heartrate and compensate for  
13 the blood flow is corrupted, resulting in a host of wide ranging symptoms, including but not limited  
14 to, dizziness, lightheadedness, vertigo, woozy sensation, chronic headaches, vision issues due to the  
15 loss of blood flow to the brain, light and sound sensitivity, loss of consciousness, shortness of breath,  
16 chest pain, gastrointestinal issues, body pains, insomnia, and confusion and/or difficulty sleeping. In  
17 certain cases of POTS, patients will also be diagnosed with other medical conditions, including but  
18 not limited to, chronic fatigue syndrome and fibromyalgia.

19         275. Medical research has determined that certain dysautonomia diseases such as POTS and  
20 OI have an autoimmune etiology. Norepinephrine, a key neurotransmitter of the sympathetic (“fight  
21 or flight”) system, exerts its mechanism of action by binding to receptors located in the smooth  
22 muscle of the blood vessels and various organs, including the heart. These receptors include alpha-1,  
23 alpha-2, beta-1, beta-2, and beta-3 receptors, and, as a group, are generally known as the adrenergic  
24 receptors. The adrenergic receptors, and other receptors, including but not limited to the ganglionic  
25 and muscarinic acetylcholine receptors, are believed to be affected in certain cases of POTS and OI.  
26 *See e.g., Hongliang Li et al., Autoimmune Basis for Postural Tachycardia Syndrome, 3 J. AMERICAN*  
27 *HEART ASSOC. e000755 (2014); Artur Fedorowski et al., Antiadrenergic Autoimmunity in Postural*  
28 *Tachycardia Syndrome, 19 EUROPACE 1211 (2017); Mohammed Ruzieh et al., The Role of*

1 *Autoantibodies in the Syndromes of Orthostatic Intolerance: A Systematic Review*, 51 SCANDINAVIAN  
2 CARDIOVASCULAR J. 243 (2017); Shu-ichi Ikeda et al., *Autoantibodies Against Autonomic Nerve*  
3 *Receptors in Adolescent Japanese Girls after Immunization with Human Papillomavirus Vaccine*, 2  
4 ANNALS OF ARTHRITIS AND CLINICAL RHEUMATOLOGY 1014 (2019); William T. Gunning, *Postural*  
5 *Orthostatic Tachycardia Syndrome is Associated With Elevated G-Protein Coupled Receptor*  
6 *Autoantibodies*, 8 J. AMERICAN HEART ASSOC. e013602 (2019).

7 276. A variety of published medical journal articles have discussed the association between  
8 Gardasil and a myriad of serious injuries, and have reported on patients developing POTS, OI,  
9 fibromyalgia, and other symptoms of autonomic impairment following Gardasil vaccination. *See*  
10 Svetlana Blitshetyn, *Postural Tachycardia Syndrome After Vaccination with Gardasil*, 17 EUROPEAN  
11 J. OF NEUROLOGY e52 (2010); Svetlana Blitshetyn, *Postural Tachycardia Syndrome Following*  
12 *Human Papillomavirus Vaccination*, 21 EUROPEAN J. OF NEUROLOGY 135 (2014); Tomomi Kinoshita  
13 et al., *Peripheral Sympathetic Nerve Dysfunction in Adolescent Japanese Girls Following*  
14 *Immunization With Human Papillomavirus Vaccine*, 53 INTERNAL MEDICINE 2185 (2014); Louise S.  
15 Brinith et al., *Orthostatic Intolerance and Postural Tachycardia Syndrome As Suspected Adverse*  
16 *Effects of Vaccination Against Human Papilloma Virus*, 33 VACCINE 2602 (2015); Manuel Martinez-  
17 Lavin et al., *HPV Vaccination Syndrome. A Questionnaire Based Study*, 34 J. CLINICAL  
18 RHEUMATOLOGY 1981 (2015); Louise S. Brinith et al., *Is Chronic Fatigue Syndrome/Myalgic*  
19 *Encephalomyelitis a Relevant Diagnosis in Patients with Suspected Side Effects to Human Papilloma*  
20 *Virus Vaccine*, 1 INT. J. OF VACCINE & VACCINATION 3 (2015); Jill R. Schofield et al., *Autoimmunity,*  
21 *Autonomic Neuropathy, and HPV Vaccination, A Vulnerable Subpopulation*, CLINICAL PEDIATRICS  
22 (2017); Rebecca E. Chandler et al., *Current Safety Concerns With Human Papillomavirus Vaccine: A*  
23 *Cluster Analysis of Reports in VigiBase*, 40 DRUG SAFETY 81 (2017); Svetlana Blitshetyn et al.,  
24 *Autonomic Dysfunction and HPV Immunization An Overview*, IMMUNOLOGIC RESEARCH (2018); and  
25 Svetlana Blitshetyn, *Human Papilloma Virus (HPV) Vaccine Safety Concerning POTS, CRPS and*  
26 *Related Conditions*, CLINICAL AUTONOMIC RESEARCH (2019).

27 277. In a 2017 review, Drs. Tom Jefferson and Lars Jørgensen criticized the European  
28 Medicines Agency (“EMA”) for turning a blind eye to the debilitating autoimmune injuries, including

1 CRPS and POTS that young women had suffered following vaccination with HPV vaccine. Tom  
2 Jefferson et al., *Human Papillomavirus Vaccines, Complex Regional Pain Syndrome, Postural*  
3 *Orthostatic Tachycardia Syndrome, and Autonomic Dysfunction – A Review of the Regulatory*  
4 *Evidence from the European Medicines Agency*, 3 INDIAN J. OF MED. ETHICS 30 (Jan. – March 2017).

5 278. In a separate article, the same authors describe their process for extracting data from not  
6 only peer-reviewed journal publications, but also unpublished data from pharmaceutical company  
7 clinical study reports and trial register entries from ClinicalTrials.gov, under the assumption that  
8 “more than half of all studies are never published, and the published studies’ intervention effects are  
9 often exaggerated in comparison to the unpublished studies. This introduces reporting bias that  
10 undermines the validity of systematic reviews. To address reporting bias in systematic reviews, it is  
11 necessary to use industry and regulatory trial registers and trial data—in particular, the drug  
12 manufacturers’ complete study programs.” They found that 88 percent of industry studies were solely  
13 industry-funded, and found serious deficiencies and variability in the availability of HPV vaccine  
14 study data. For example, only half of the completed studies listed on ClinicalTrials.gov posted their  
15 results. The clinical study reports the authors obtained confirmed that the amount of information and  
16 data are vastly greater than that in journal publications. When the authors compared the data the  
17 EMA used (which was provided by GlaxoSmithKline and Merck Sharp and Dohme) to conduct their  
18 review of the relationship between HPV vaccination and both POTS and CRPS, the authors found that  
19 only 48 percent of the manufacturers’ data were reported. According to the authors, “we find this  
20 very disturbing.” Lars Jørgensen et al., *Index of the Human Papillomavirus (HPV) Vaccine Industry*  
21 *Clinical Study Programmes and Non-Industry Funded Studies: A Necessary Basis to Address*  
22 *Reporting Bias in a Systematic Review*, 7 SYSTEMATIC REVIEW 8 (2018).

23 279. Likewise, in a recently released February 2020 peer-reviewed study, researchers who  
24 analyzed the available clinical trial data for all HPV vaccines, which include the Gardasil vaccines and  
25 another HPV vaccine currently only available in Europe, concluded that “HPV vaccines increased  
26 serious nervous disorders.” Lars Jørgensen et al., *Benefits and Harms of the Human Papillomavirus*  
27 *(HPV) Vaccines: Systemic Review with Meta-Analyses of Trial Data from Clinical Study Reports*, 9  
28 SYSTEMATIC REVIEWS 43 (February 2020).

1           280. In addition, Jørgensen and his co-authors observed that, in reanalyzing the association  
2 between HPV vaccines and one specific autoimmune disease, POTS, the HPV vaccines were  
3 associated with a nearly two-fold increased risk of POTS. *Id.*

4           281. Jørgensen and his co-authors also noted many of the same shortcomings associated with  
5 the Gardasil clinical trials as have already been discussed in this Complaint, including, for example,  
6 the fact that no true placebo was utilized by Merck as a comparator (i.e., the comparator/control used  
7 by Merck in the Gardasil clinical trials contained aluminum adjuvant). The researchers noted that  
8 “[t]he use of active comparators may have underestimated harms related to HPV vaccines,” and that  
9 “[t]he degree of harms might therefore be higher in clinical practice than in the trials.” *Id.*

10           282. Jørgensen and his co-authors also noted that the clinical trials revealed that Gardasil 9  
11 induced more harms than Gardasil, which could be explained by the fact that Gardasil 9 contains more  
12 of the AAHS aluminum adjuvant (500 micrograms of AAHS in Gardasil 9 vs. 225 micrograms of  
13 AAHS in Gardasil), and this dose-response relationship further corroborates the plausible claim that  
14 the AAHS aluminum adjuvant is a culprit in causing adverse events. *Id.*

15           283. Other researchers, including Tomljenovic and Shaw, who have closely looked into  
16 Gardasil, have opined that risks from the Gardasil vaccine seem to significantly outweigh the as yet  
17 unproven long-term benefits. In their view, vaccination is unjustified if the vaccine carries any  
18 substantial risk, let alone a risk of death, because healthy teenagers face an almost zero percent risk of  
19 death from cervical cancer.

20                   **K. Merck has Concealed the Fact that Gardasil Increases the Risk of Fertility**  
21                   **Problems**

22           284. Merck has never tested the impact of the Gardasil vaccines on human fertility.

23           285. Nevertheless, study volunteers reported devastating impacts on human fertility during  
24 combined trials, offering substantial evidence that the vaccine may be causing widespread impacts on  
25 human fertility, including increases in miscarriage, birth defects, premature ovarian failure, and  
26 premature menopause in girls and young women.

27           286. One of the serious adverse events now emerging in vaccinated girls, including teens, is  
28 premature ovarian failure. *See, e.g., D. T. Little and H. R. Ward, Adolescent Premature Ovarian*

1 *Insufficiency Following Human Papillomavirus Vaccination: A Case Series Seen in General Practice,*  
2 JOURNAL OF INVESTIGATIVE MEDICINE HIGH IMPACT, Case Reports 1-12 (Oct.-Dec. 2014); D. T. Little  
3 and H. R. Ward, *Premature ovarian failure 3 years after menarche in a 16-year-old girl following*  
4 *human papillomavirus vaccination*, BMJ CASE REPORTS (September 30, 2012).

5 287. Premature ovarian failure can occur after aluminum destroys the maturation process of  
6 the eggs in the ovaries.

7 288. Fertility has plummeted among American women following the 2006 mass introduction  
8 of the Gardasil vaccine. This is most evident in teen pregnancy statistics where numbers have more  
9 than halved since 2007.

10 289. The total fertility rate for the United States in 2017 continued to dip below what is  
11 needed for the population to replace itself, according to a report by the National Center of Health  
12 Statistics issued in January 2019, and the rate for women 15 to 44 fell another 2 percent between 2017  
13 and 2018.

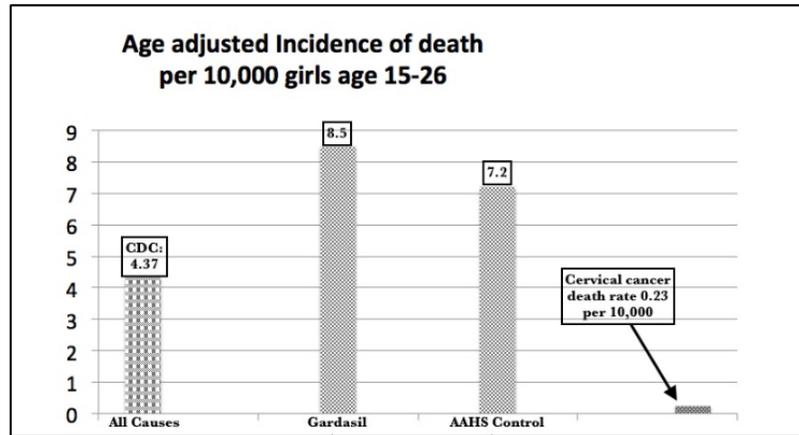
14 **L. There were an Increased Number of Deaths in the Gardasil Studies**

15 290. Merck's own preliminary studies predicted that Gardasil would kill and injure far more  
16 Americans than the HPV virus, prior to the introduction of the vaccine.

17 291. The average death rate in young women in the U.S. general population is 4.37 per  
18 10,000. See Brady E. Hamilton et al., "Births: Provisional Data for 2016," *Vital Statistics Rapid*  
19 *Release, Report No. 002*, June 2017.

20 292. The Gardasil pooled group had a death rate of 8.5 per 10,000, or almost double the  
21 background rate in the U.S.

22  
23  
24  
25  
26  
27  
28



Background CDC rate 4.37 source: *National Vital Statistics Report Vol. 53 2002 page 24*.<sup>37</sup>  
 Gardasil rate 8.5: 10/11,778. AAHS control rate 7.2: 7/9,680<sup>38</sup>  
 Cervical cancer mortality: 2.3 per 100,000 source: *National Cancer Institute SEER Cancer Statistics Review 2015*<sup>39</sup>

293. When Merck added in deaths from belated clinical trials, the death rate jumped to 13.3 per 10,000 (21 deaths out of 15,706).

294. Merck dismissed all deaths as coincidences.

295. The total number of deaths was 21 in the HPV vaccine group and 19 in the comparator (AAHS) groups.

296. The death rate among vaccine recipients was 13.3 per 10,000, or 133 per 100,000 (21/15,706).

297. To put this in perspective, the death rate from cervical cancer in the United States is 2.3 per 100,000 women. This means that, according to Merck's own data, a girl is 58 times more likely to die from Gardasil than from cervical cancer.

**M. Post-Marketing Injuries—The Raft of Injuries Seen in Merck's Clinical Trials Has Now Become A Population-Wide Chronic Disease Epidemic**

298. By 2010, reports coming in from all over the world linked the Gardasil vaccine to bizarre and troubling symptoms.

299. Many Gardasil survivors will have lifelong handicaps.

300. The severe adverse events from the Gardasil vaccination, seen since its widespread distribution, are similar to those injuries that Merck covered up during its clinical trials. They include autoimmune diseases, suicides, deaths, premature ovarian failures, reproductive problems, infertility,

1 cervical cancer, sudden collapse, seizures, multiple sclerosis, strokes, heart palpitations, chronic  
2 muscle pain, complex regional pain syndrome, and weakness.

3 301. Other frequently reported injuries include: disturbances of consciousness; systemic pain  
4 including headache, myalgia, arthralgia, back pain and other pain; motor dysfunction, such as  
5 paralysis, muscular weightiness, and involuntary movements; numbness and sensory disturbances;  
6 autonomic symptoms including hypotension, tachycardia, nausea, vomiting, and diarrhea; respiratory  
7 dysfunction, including dyspnea and asthma; endocrine disorders, such as menstrual disorder and  
8 hypermenorrhea; and lastly, hypersensitivity to light, heart palpitations, migraine headaches,  
9 dizziness, cognitive deficits, personality changes, vision loss, joint aches, headaches, brain  
10 inflammation, chronic fatigue, death, and severe juvenile rheumatoid arthritis.

11 302. The data show that Gardasil is yielding far more reports of adverse events than any  
12 other vaccine. For example, Gardasil had 8.5 times more emergency room visits, 12.5 times more  
13 hospitalizations, 10 times more life-threatening events, and 26.5 more disabilities than Menactra,  
14 another vaccine with an extremely high-risk profile.

15 303. As of December 2019, there have been more than 64,000 Gardasil adverse events  
16 reported to the FDA's Vaccine Adverse Event Reporting System ("VAERS") since 2006.

17 304. Moreover, studies have shown that only approximately 1 percent of adverse events are  
18 actually reported to FDA's voluntary reporting systems, thus, the true number of Gardasil adverse  
19 events in the United States may be as high as 6.4 million incidents.

20 305. The Vaccine Injury Compensation Program has paid out millions of dollars in damages  
21 for Gardasil-induced injuries and deaths.

22 306. Gardasil now has more reported injuries than any other vaccine.

23 307. As of December 2019, some 10 percent of the serious injuries reported to VAERS are  
24 attributed to Gardasil and Gardasil 9.

25 308. The adverse events also include deaths. Parents, doctors, and scientists have reported  
26 hundreds of deaths from the Gardasil vaccine, post-marketing.

27 309. In order to conceal Gardasil's link to the deaths of teenagers, Merck has submitted  
28 fraudulent reports to VAERS, and posts fraudulent and misleading statements on its Worldwide

1 Adverse Experience System.

2 310. For example, Merck attributed the death of a young woman from Maryland, Christina  
3 Tarsell, to a viral infection. Following years of litigation, a court determined that Gardasil caused  
4 Christina's death. There was no evidence of viral infection. Merck invented this story to deceive the  
5 public about Gardasil's safety.

6 311. Merck submitted fraudulent information about Christina Tarsell's death to its  
7 Worldwide Adverse Experience System and lied to the FDA through the VAERS system. Merck  
8 claimed that Christina's gynecologist had told the company that her death was due to viral infection.  
9 Christina's gynecologist denied that she had ever given this information to Merck. To this day, Merck  
10 has refused to change its false entry on its own reporting system.

11 **N. The Gardasil Vaccines' Harms Are Not Limited to the United States, Rather**  
12 **the Vaccines Have Injured Patients All Over the World**

13 312. Gardasil is used widely in the international market. Widespread global experience has  
14 likewise confirmed that the vaccine causes serious adverse events with minimal proven benefit.

15 313. According to the World Health Organization's Adverse Event Databases, there have  
16 been more than 100,000 serious adverse events associated with Gardasil, outside the Americas. *See*  
17 WHO Vigibase database, keyword Gardasil: <http://www.vigiaccess.org>.

18 **i. In Light of Gardasil's Serious and Debilitating Adverse Events, the**  
19 **Japanese Government Rescinded Its Recommendation that Girls**  
20 **Receive Gardasil**

21 314. In Japan, a country with a robust history of relative honesty about vaccine side effects,  
22 the cascade of Gardasil injuries became a public scandal.

23 315. Japan's health ministry discovered adverse events reported after Gardasil were many  
24 times higher than other vaccines on the recommended schedule. These included seizures, severe  
25 headaches, partial paralysis, and complex regional pain syndrome. See Hirokuni Beppu et al., *Lessons*  
26 *Learnt in Japan From Adverse Reactions to the HPV Vaccine: A Medical Ethics Perspective*, 2  
INDIAN J MED ETHICS 82 (April-June 2017).

27 316. Japanese researchers found that the adverse events rate of the HPV vaccine was as high  
28 as 9 percent, and that pregnant women injected with the vaccine aborted or miscarried 30 percent of

1 their babies. *See* Ministry of Health, Labour and Welfare, Transcript “The Public Hearing on Adverse  
2 Events following HPV vaccine in Japan,” February 26, 2014.

3 317. The injuries caused the Japanese government to rescind its recommendation that girls  
4 receive the HPV vaccine.

5 318. Japan withdrew its recommendation for Gardasil three months after it had added the  
6 vaccine to the immunization schedule, due to “an undeniable causal relationship between persistent  
7 pain and the vaccination.”

8 319. Uptake rates for the vaccine in Japan are now under 1 percent, compared to 53.7 percent  
9 fully-vaccinated teenaged girls in the United States.

10 320. In late 2016, Japanese industry watchdog, MedWatcher Japan, issued a scathing letter  
11 faulting the WHO for failing to acknowledge the growing body of scientific evidence demonstrating  
12 high risk of devastating side effects.

13 321. In 2015, the Japanese Association of Medical Sciences issued official guidelines for  
14 managing Gardasil injuries post-vaccination.

15 322. That same year, the Japanese Health Ministry published a list of medical institutions  
16 where staffs were especially trained to treat patients who had sustained Gardasil-induced injuries.

17 323. The Japanese government also launched a series of special clinics to evaluate and treat  
18 illnesses caused by the Gardasil vaccines.

19 324. The president of the Japanese Association of Medical Sciences stated that there was no  
20 proof that the vaccines prevent cancer.

21 325. These were developments that Merck was extremely anxious to suppress.

22 326. Merck hired the think tank, the Center for Strategic and International Studies (“CSIS”)  
23 and Professor Heidi Larson of the Vaccine Confidence Project in London, to assess the reasons for the  
24 Japanese situation. The overall conclusion was that the symptoms the girls were suffering from were  
25 psychogenic in nature and were a result of rumors spread online. In essence, Merck blamed the  
26 victims for the Gardasil-induced adverse events in Japan.

27 //

28 //



1 333. The Report accused PATH, which was in collaboration with Merck, of lying to illiterate  
2 tribal girls to obtain informed consent, widespread forging of consent forms by Merck operatives,  
3 offering financial inducements to participate, and providing grossly inadequate information about  
4 potential risks. *Id.*

5 334. Many of the participants suffered adverse events including loss of menstrual cycles and  
6 psychological changes like depression and anxiety. According to the report, PATH's "sole aim has to  
7 been to promote the commercial interests of HPV vaccine manufacturers, who would have reaped a  
8 windfall of profits had they been successful in getting the HPV vaccine included in the universal  
9 immunization program of the country... This [conduct] is a clear-cut violation of the human rights of  
10 these girls and adolescents." *Id.*

11 335. A 2013 article in the *South Asian Journal of Cancer* concludes that the HPV vaccine  
12 program is unjustifiable. "It would be far more productive to understand and strengthen the reasons  
13 behind the trend of decreasing cervical cancer rates than to expose an entire population to an uncertain  
14 intervention that has not been proven to prevent a single cervical cancer or cervical cancer death to  
15 date." See Sudeep Gupta, *Is Human Papillomavirus Vaccination Likely to be a Useful Strategy in*  
16 *India?* 2 SOUTH ASIAN J CANCER 194 (October-December 2014).

17 336. The article goes on to say: "A healthy 16-year-old is at zero immediate risk of dying  
18 from cervical cancer, but is faced with a small, but real risk of death or serious disability from a  
19 vaccine that has yet to prevent a single case of cervical cancer... There is a genuine cause for concern  
20 regarding mass vaccination in this country." *Id.*

21 337. On April 2017, the Indian government blocked the Gates Foundation from further  
22 funding of the Public Health Foundation of India and other non-governmental organizations,  
23 effectively barring them from influencing India's national vaccine program. See Nida Najar, *India's*  
24 *Ban on Foreign Money for Health Group Hits Gates Foundation*, THE NEW YORK TIMES, April 20,  
25 2017.

26 **O. Merck's Fraud Has Paid Off Handsomely, Resulting in Over \$3 Billion in**  
27 **Gardasil Sales Annually**

28 338. Merck's corruption and fraud in researching, testing, labeling, and promoting Gardasil

1 have paid off handsomely.

2 339. Presently, two doses of Gardasil 9 typically cost about \$450, plus the cost of two office  
3 visits.

4 340. By comparison, the cost of the DTaP vaccine is about \$25 per dose.

5 341. The HPV vaccine is the most expensive vaccine on the market.

6 342. Since approximately 1 in 42,000 American women die of cervical cancer annually, the  
7 cost of avoiding a single death is over \$18 million, assuming the Gardasil vaccine is 100 percent  
8 effective.

9 343. In 2018, the Gardasil vaccines made \$2.2 billion for Merck in the U.S. alone.

10 344. In 2019, Merck made \$3.7 billion in worldwide revenues from the Gardasil vaccines.

11 345. Gardasil is Merck's most lucrative vaccine and its third-highest selling product.

12 346. Gardasil is crucial to Merck's overall financial health. Merck identifies Gardasil as one  
13 of its "key products," meaning that any change in Gardasil's cash flow affects the corporation as a  
14 whole.

15 347. Merck's 10-K financial reports note that, for example, the discovery of a previously  
16 unknown side effect, or the removal of Gardasil from the market, would hurt Merck's bottom line.

17 **III. Carrillo Sustained Autoimmune Disease and Other Serious Injuries, Including but**  
18 **Not Limited to, Postural Orthostatic Tachycardia Syndrome ("POTS"),**  
19 **Orthostatic Intolerance ("OI"), and Dysautonomia as a Result of Her Gardasil**  
20 **Injections**

21 **A. Gardasil and Its Ingredients Caused Carrillo's Autoimmune Disease and Other**  
22 **Related Injuries and Has Resulted in Her Suffering from Severe, Debilitating,**  
23 **Disabling and Painful Chronic Injuries**

24 348. Carrillo was 12 years old when she received her first shot of Gardasil on August 17,  
25 2012 at the recommendation of Gina Posner, M.D. at a MemorialCare facility in Fountain Valley,  
26 California. Almost immediately, Carrillo experienced a seizure-like episode which included a staring  
27 spell, facial swelling, slurred speech, and a severe headache.

28 349. Carrillo's mother, Marlena Carrillo, agreed to her daughter receiving her first Gardasil  
injection after being exposed to various online, print, and television marketing materials. These  
materials stated, *inter alia*, that Gardasil is very safe, that Gardasil prevents cancer, and that good

1 mothers must vaccinate their children with the Gardasil vaccine. Carrillo's mother relied upon  
2 Merck's ubiquitous representations concerning the safety and efficacy of the Gardasil vaccine as well  
3 as the representations of Carrillo's medical providers at MemorialCare concerning the safety and  
4 efficacy of Gardasil when she consented to her daughter's Gardasil vaccinations.

5 350. Prior to receiving her Gardasil injections, Carrillo was a happy, talented, physically  
6 active child in her usual state of health. She enjoyed playing musical instruments and had early  
7 ambitions to study art.

8 351. Within a few days of receiving her first dosage of Gardasil, Carrillo developed  
9 migraines, dizziness, and numbness. Over the following months, she also experienced constant  
10 headaches and severe migraines, abdominal pain, nausea, vomiting, rapid heartbeat and palpitations,  
11 insomnia, and symptoms of auditory hallucinations and parasomnias.

12 352. In February 2013, Carrillo experienced a seizure and was taken to the Emergency  
13 Department at Orange County Memorial Hospital. A head CT was performed and returned normal,  
14 and she was diagnosed with a first-time seizure.

15 353. In March 2013, after suffering from headaches, vomiting, and nausea for about five  
16 days, Carrillo was taken to the hospital for a DHE protocol. Although the protocol resolved her  
17 nausea and vomiting, Carrillo continued to have migraines and occasional hallucinations.

18 354. In April/May of 2014, Carrillo began to experience irregular menstrual problems,  
19 including heavy bleeding at the beginning of each cycle. After six months of suffering, Carrillo's  
20 mother made an appointment for a consultation with a pediatrician.

21 355. On October 21, 2014, during a visit to discuss measures to monitor and control her  
22 menstrual problems, Carrillo was prescribed and administered her second dosage of Gardasil by Julie  
23 Fallon, M.D., and staff at the same MemorialCare facility in Fountain Valley, California. Two days  
24 later, on October 23, 2014, Carrillo collapsed at school while running in her P.E. class and was taken  
25 to the Emergency Department of Children's Hospital of Orange County.

26 356. By early December 2014, Carrillo's menstrual problems had changed to an absence of  
27 menses and severe abdominal pain. An ultrasound performed in March 2015, showed that she had a  
28 hemorrhagic cyst in her right ovary and large Nabothian cysts in her cervix. Further testing indicated

1 that the cysts were getting larger, and as Carrillo was in constant pain, she decided to have the cyst on  
2 her ovary surgically removed. In May and June 2015, Carrillo experienced several more seizures and  
3 was taken to the hospital each time.

4 357. As the months progressed, so did Carrillo's injuries. She was seen by multiple  
5 physicians and specialists for complaints, which included, among others: constant nausea and  
6 abdominal pain; reflux and heartburn; multiple seizures; feeling faint and lightheaded; heart rate  
7 irregularities and palpitations; chest pains; dizziness and blurry vision; dyspnea with walking;  
8 significant fatigue; continued menstrual irregularities; joint hypermobility; hives and facial flushing;  
9 severe food allergies; chronic dehydration; and recurring ovarian cysts.

10 358. As a result of her post-Gardasil symptoms, Carrillo has been unable to engage in the  
11 normal activities that a teenager and young adult would enjoy. As a result of her Gardasil-induced  
12 injuries, she had to drop out of high school to complete her schooling at home. She is unable to hold  
13 down a job for any significant amount of time due to chronic pain and poor health. Carrillo cannot  
14 drive a car because of the risks of fainting or having a seizure while driving.

15 359. Carrillo was once a happy child, but as a result of her post-Gardasil symptoms, she has  
16 experienced a significant decline in her mental health. Due to the significant stressors related to her  
17 physical illnesses, she experienced hallucinations and sustained severe emotional distress which led to  
18 her cutting herself as a young teenager.

19 360. Carrillo suffers from recurring ovarian cysts, endometriosis, and early onset menopause.  
20 She does not get regular periods, therefore will not be able to conceive naturally in the future. She has  
21 a high risk for seizure, stroke, heart attack and blood clots and is medically unable to undergo  
22 hormone therapy to relieve the pain from the ovarian cysts, or to restore her menses. Therefore, she  
23 must live with the chronic, debilitating pain from the recurring cysts, and have them surgically  
24 removed when necessary. To date, Carrillo has had four or more surgeries to remove ovarian cysts.

25 361. Based on her chronic and severe post-Gardasil symptoms and adverse events as outlined  
26 above and the tests performed by a number of medical providers, Plaintiff has been diagnosed with  
27 various medical conditions, including but not limited to, dysautonomia, postural orthostatic  
28 tachycardia syndrome ("POTS"), orthostatic intolerance ("OI"), mast cell activation syndrome

1 (“MCAS”), complex migraine headaches, seizure disorder, vasculitis, eosinophilic esophagitis,  
2 endometriosis, and interstitial cystitis.

3 362. As previously discussed, the medical literature has documented other patients who, like  
4 Carrillo, have suffered serious autonomic dysfunctions, and who experienced the same side effects as  
5 those Carrillo has suffered, and who were diagnosed with Gardasil-induced autonomic diseases  
6 including POTS, OI, and other conditions. See Svetlana Blitshetyn, *Postural Tachycardia Syndrome*  
7 *After Vaccination with Gardasil*, 17 EUROPEAN J. OF NEUROLOGY e52 (2010); Svetlana Blitshetyn,  
8 *Postural Tachycardia Syndrome Following Human Papillomavirus Vaccination*, 21 EUROPEAN J. OF  
9 NEUROLOGY 135 (2014); Tomomi Kinoshita et al., *Peripheral Sympathetic Nerve Dysfunction in*  
10 *Adolescent Japanese Girls Following Immunization With Human Papillomavirus Vaccine*, 53  
11 INTERNAL MEDICINE 2185 (2014); Louise S. Brinith et al., *Orthostatic Intolerance and Postural*  
12 *Tachycardia Syndrome As Suspected Adverse Effects of Vaccination Against Human Papilloma Virus*,  
13 33 VACCINE 2602 (2015); Manuel Martinez-Lavin et al., *HPV Vaccination Syndrome. A*  
14 *Questionnaire Based Study*, 34 J. CLINICAL RHEUMATOLOGY 1981 (2015); Louise S. Brinith et al., *Is*  
15 *Chronic Fatigue Syndrome/Myalgic Encephalomyelitis a Relevant Diagnosis in Patients with*  
16 *Suspected Side Effects to Human Papilloma Virus Vaccine*, 1 INT. J. OF VACCINE & VACCINATION 3  
17 (2015); Jill R. Schofield et al., *Autoimmunity, Autonomic Neuropathy, and HPV Vaccination, A*  
18 *Vulnerable Subpopulation*, CLINICAL PEDIATRICS (2017); Rebecca E. Chandler et al., *Current Safety*  
19 *Concerns With Human Papillomavirus Vaccine: A Cluster Analysis of Reports in VigiBase*, 40 DRUG  
20 SAFETY 81 (2017); Svetlana Blitshetyn et al., *Autonomic Dysfunction and HPV Immunization An*  
21 *Overview*, IMMUNOLOGIC RESEARCH (2018); and Svetlana Blitshetyn, *Human Papilloma Virus (HPV)*  
22 *Vaccine Safety Concerning POTS, CRPS and Related Conditions*, CLINICAL AUTONOMIC RESEARCH  
23 (2019); Lars Jørgensen et al., *Benefits and Harms of the Human Papillomavirus (HPV) Vaccines:*  
24 *Systemic Review with Meta-Analyses of Trial Data from Clinical Study Reports*, 9 SYSTEMATIC  
25 REVIEWS 43 (February 2020).

26 363. Carrillo contends that her injections of Gardasil, individually or in combination, caused  
27 her to develop serious and debilitating injuries, including but not limited to, dysautonomia, postural  
28 orthostatic tachycardia syndrome (“POTS”), orthostatic intolerance (“OI”), mast cell activation

1 syndrome (“MCAS”), complex migraine headaches, seizure disorder, vasculitis, eosinophilic  
2 esophagitis, endometriosis, and interstitial cystitis, as well as a constellation of adverse symptoms,  
3 complications, and injuries, many of which are alleged herein and all of which were caused by  
4 Gardasil or otherwise linked to her Gardasil-induced autoimmune disorder.

5 **B. “It is Not Revolutions and Upheavals That Clear the Road to New and Better**  
6 **Days, But Revelations, Lavishness and Torments of Someone’s Soul, Inspired**  
7 **and Ablaze.” – Boris Pasternak, *After the Storm***

8 364. Pursuant to Section 300aa-11(a) of the National Vaccine Injury Compensation  
9 Program: “No person may bring a civil action for damages ..... against a vaccine administrator or  
10 manufacturer in a State or Federal court for damages arising from a vaccine-related injury ...  
11 associated with the administration of a vaccine ..... unless a petition has been filed, in accordance  
12 with section 300aa-16 of this title, for compensation under the Program for such injury ... and (I) the  
13 United States Court of Federal Claims has issued a judgment under section 300aa-12 of this title on  
14 such petition and (II) such person elects under section 300aa-21(a) to file such an action.” *See* 42  
15 U.S.C. §§ 300aa–11(a)(2)(A).

16 365. Title 42, Section 300aa-16 (c) further states: “If a petition is filed under section 300aa-  
17 11 of this title for a vaccine-related injury or death, limitations of actions under State law shall be  
18 stayed with respect to a civil action brought for such injury or death for the period beginning on the  
19 date the Petition is filed and ending on the date...an election is made under section 300aa-21(a) of this  
20 title to file the civil action ...” *See* 42 U.S.C. §§ 300aa–16(c).

21 366. In full compliance with the aforementioned federal law, Carrillo, duly filed her petition  
22 with the U.S. Court of Federal Claims on October 12, 2017, seeking compensation for her Gardasil  
23 vaccine-related injuries under the National Vaccine Injury Compensation Program. A judgement  
24 thereon was rendered on or about August 5, 2020, and Carrillo duly filed her election to file a civil  
25 action on August 6, 2020.

26 367. Having complied with National Vaccine Injury Compensation Program administrative  
27 procedure and having duly filed her election to proceed with a civil action, Carrillo hereby timely  
28 initiates the instant action against Merck, the manufacturer, designer and promoter of the Gardasil  
vaccines which caused her debilitating injuries. Through this civil action, Carrillo seeks to hold

1 Merck and the MemorialCare defendants accountable for their respective negligent, reckless, and/or  
2 fraudulent conduct, and he seeks full compensation from defendants for the physical and emotional  
3 injuries and harms he has sustained as a result of Gardasil.

4 368. Moreover, by engaging in conduct that Merck knew was unsafe and likely to injure  
5 patients, and by placing Gardasil's profits ahead of patient safety, Merck has engaged in the same  
6 fraudulent, malicious and oppressive conduct it engaged in with respect to Vioxx. Plaintiff, therefore,  
7 requests that exemplary damages be assessed against Merck, so as to, once again, attempt to deter  
8 Merck and other would-be defendants from engaging in similar reprehensible conduct.

9 **CAUSES OF ACTION**

10 **COUNT ONE**

11 **NEGLIGENCE AGAINST MERCK**

12 (Against Merck and DOES 1 through 25)

13 369. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set  
14 forth herein and further alleges:

15 370. Merck and Does 1 through 25, and each of them are the researcher, designer,  
16 manufacturer, labeler, and promoter of the Gardasil and the subsequent Gardasil 9 vaccines.

17 371. Merck marketed Gardasil to patients, including teenagers such as Plaintiff, her mother,  
18 and her medical providers.

19 372. Merck had a duty to exercise reasonable care in the design, research, manufacture,  
20 marketing, advertisement, supply, promotion, packaging, sale, and distribution of Gardasil, including  
21 the duty to take all reasonable steps necessary to research, manufacture, label, promote and/or sell a  
22 product that was not unreasonably dangerous to consumers, users, and other persons coming into  
23 contact with the product.

24 373. At all times relevant to this litigation, Merck had a duty to exercise reasonable care in  
25 the marketing, advertising, and sale of Gardasil. Merck's duty of care owed to consumers and the  
26 general public included providing accurate, true, and correct information concerning the efficacy and  
27 risks of Gardasil and appropriate, complete, and accurate warnings concerning the potential adverse  
28 effects of Gardasil and its various ingredients and adjuvants.

1           374. At all times relevant to this litigation, Merck knew, or, in the exercise of reasonable  
2 care, should have known of the hazards and dangers of Gardasil, and specifically, the serious,  
3 debilitating and potentially fatal adverse events associated with Gardasil, including but not limited to  
4 POTS, OI, SFN, autoimmune diseases, fibromyalgia, disabling injuries, increased risk of cancer, and  
5 death.

6           375. Accordingly, at all times relevant to this litigation, Merck knew, or, in the exercise of  
7 reasonable care, should have known, that use of Gardasil could cause Plaintiff's injuries, and thus  
8 created a dangerous and unreasonable risk of injury to the users of these products, including Plaintiff.

9           376. Merck knew, or, in the exercise of reasonable care, should have known, that its  
10 negligently and poorly designed clinical trials and studies were insufficient to test the true long-term  
11 safety and efficacy of Gardasil.

12           377. Merck also knew, or, in the exercise of reasonable care, should have known, that its  
13 targeted consumers and patients (who were pre-teen and teen children), the parents of these patients,  
14 and the children's medical providers were unaware of the true risks and the magnitude of the risks  
15 associated with Gardasil and the disclosed and undisclosed ingredients of Gardasil.

16           378. As such, Merck breached its duty of reasonable care and failed to exercise ordinary care  
17 in the research, development, manufacturing, testing, marketing, supply, promotion, advertisement,  
18 packaging, labeling, sale, and distribution of Gardasil, in that Merck manufactured and produced a  
19 defective and ineffective vaccine, knew or had reason to know of the defects and inefficacies inherent  
20 in its products, knew or had reason to know that a patient's exposure to Gardasil created a significant  
21 risk of harm and unreasonably dangerous side effects, and failed to prevent or adequately warn of  
22 these defects, risks and injuries.

23           379. Merck failed to appropriately and adequately test the safety and efficacy of Gardasil and  
24 its individual ingredients and adjuvants.

25           380. Despite the ability and means to investigate, study, and test its products and to provide  
26 adequate warnings, Merck has failed to do so. Indeed, Merck has wrongfully concealed information  
27 and has further made false and/or misleading statements concerning the safety and efficacy of  
28 Gardasil.

1 381. Merck's negligence is outlined in detail in this Complaint, and included, among other  
2 things:

- 3 a) Manufacturing, producing, promoting, creating, researching, labeling, selling,  
4 and/or distributing Gardasil without thorough and adequate pre-and post-market  
5 testing and studies;
- 6 b) Manufacturing, producing, promoting, researching, labeling, selling, and/or  
7 distributing Gardasil while negligently and intentionally concealing and failing  
8 to accurately and adequately disclose the results of the trials, tests, and studies of  
9 Gardasil, and, consequently, the lack of efficacy and risk of serious harm  
10 associated with Gardasil;
- 11 c) Failing to undertake sufficient studies and conduct necessary tests to determine  
12 the safety of the ingredients and/or adjuvants contained within Gardasil, and the  
13 propensity of these ingredients to render Gardasil toxic, increase the toxicity of  
14 Gardasil, whether these ingredients are carcinogenic or associated with  
15 autoimmune diseases and other injures;
- 16 d) Negligently designing and conducting its clinical trials so as to prevent the  
17 clinical trials from revealing the true risks, including but not limited to, long  
18 terms risks and risks of autoimmune diseases associated with Gardasil;
- 19 e) Negligently designing and conducting its clinical trials so as to mask the true  
20 risks, including but not limited to, long terms risks and risks of autoimmune  
21 diseases and cancers associated with Gardasil;
- 22 f) Failing to test Gardasil against a true inert placebo and lying to the public that  
23 Gardasil was tested against a placebo, when in reality, all, or nearly all, studies  
24 used a toxic placebo that included the aluminum adjuvant AAHS;
- 25 g) Failing to have a sufficient number of studies for the targeted patient population  
26 which included pre-teen girls (and boys) between the ages of nine and 12;
- 27 h) Not using the commercial dosage (and instead using a lower dosage of the  
28 adjuvant and ingredients) in one of the key clinical trials used to obtain licensing

1 for the commercial dosage of Gardasil;

- 2 i) Using restrictive exclusionary criteria in the clinical study patient population  
3 (including, for example, the exclusion of anyone who had prior abnormal Pap  
4 tests, who had a history of immunological or nervous system disorders, or was  
5 allergic to aluminum or other ingredients), but then not revealing or warning  
6 about these exclusionary criteria in the label and knowing that, for most of these  
7 ingredients and allergies, there are limited resources for the public to test for  
8 such allergies in advance of being vaccinated;
- 9 j) Negligently designing and conducting its trials so as to create the illusion of  
10 efficacy when in reality the Gardasil Vaccines *have not* been shown to be  
11 effective against preventing cervical cancer;
- 12 k) Failing to use reasonable and prudent care in the research, manufacture,  
13 labeling, and development of Gardasil so as to avoid the risk of serious harm  
14 associated with the prevalent use of Gardasil;
- 15 l) Failing to provide adequate instructions, guidelines, warnings, and safety  
16 precautions to those persons who Merck could reasonably foresee would use  
17 and/or be exposed to Gardasil;
- 18 m) Failing to disclose to Plaintiff, her mother, her medical providers, and to the  
19 general public that Gardasil is ineffective when used in patients who have  
20 previously been exposed to HPV, and also failing to disclose that Gardasil  
21 actually increases the risk of cervical cancer, including in any child or patient  
22 who has previously been exposed to HPV;
- 23 n) Failing to disclose to Plaintiff, her mother, her medical providers and to the  
24 general public that use of and exposure to Gardasil presents severe risks of  
25 cancer (including cervical cancer, the very cancer it is promoted as preventing),  
26 fertility problems, autoimmune diseases and other grave illnesses as alleged  
27 herein;
- 28 o) Failing to disclose to Plaintiff, her mother, her medical providers and to the

1 general public that use of and exposure to Gardasil presents severe risks of  
2 triggering and increasing the risk of various autoimmune diseases, including but  
3 not limited to POTS and OI;

- 4 p) Failing to disclose to Plaintiff, her mother, her medical providers and to the  
5 general public that, contrary to Merck's promotion of the vaccine, Gardasil has  
6 not been shown to be effective at preventing cervical cancer and that the safest  
7 and most effective means of monitoring and combating cervical cancer is  
8 regular testing, including Pap tests;
- 9 q) Representing that Gardasil was safe and effective for its intended use when, in  
10 fact, Merck knew or should have known the vaccine was not safe and not  
11 effective for its intended use;
- 12 r) Falsely advertising, marketing, and recommending the use of Gardasil, while  
13 concealing and failing to disclose or warn of the dangers Merck knew to be  
14 associated with or caused by the use of Gardasil;
- 15 s) Falsely promoting Gardasil as preventing cervical cancer when Merck knows  
16 that it has not done any studies to demonstrate that Gardasil prevents cervical  
17 cancer, and, indeed, its clinical studies revealed that Gardasil actually increases  
18 the risk of cervical cancer;
- 19 t) Engaging in false advertising and disease mongering by scaring parents and  
20 children into believing that cervical cancer is far more prevalent than it really is;  
21 that all cervical cancer was linked to HPV; that Gardasil prevented cervical  
22 cancer, when in reality none of these representations were true as cervical cancer  
23 rates were declining in the United States due to Pap testing, and Gardasil has not  
24 been shown to prevent against all strains of HPV that are associated with  
25 cervical cancer, and indeed, it has never been shown to prevent cervical cancer;
- 26 u) Failing to disclose all of the ingredients in Gardasil, including but not limited to  
27 the fact that Gardasil contains dangerous HPV L1-DNA fragments and that  
28 these DNA fragments could act as a Toll-Like Receptor 9 (TLR9) agonist—

- 1 further adjuvanting the vaccine and making it more potent and dangerous;
- 2 v) Declining to make any changes to Gardasil's labeling or other promotional
- 3 materials that would alert consumers and the general public of the true risks and
- 4 defects of Gardasil;
- 5 w) Systemically suppressing or downplaying contrary evidence about the risks,
- 6 incidence, and prevalence of the side effects of the Gardasil Vaccines by, *inter*
- 7 *alia*, orchestrating the retraction of peer-reviewed and published studies and
- 8 vilifying and attempting to ruin the careers of any scientists who openly question
- 9 Gardasil's safety and efficacy.

10 382. Merck knew and/or should have known that it was foreseeable that patients, such as

11 Plaintiff, would suffer injuries as a result of Merck's failure to exercise ordinary care in the

12 manufacturing, marketing, labeling, distribution, and sale of Gardasil.

13 383. Plaintiff and her mom, and upon information and belief, her medical providers, did not

14 know the true nature and extent of the injuries that could result from the intended use of and/or

15 exposure to Gardasil or its adjuvants and ingredients.

16 384. Merck's negligence was the proximate cause of the injuries, harm, and economic losses

17 that Plaintiff suffered, and will continue to suffer, as described herein.

18 385. Had Merck not engaged in the negligent and fraudulent conduct alleged herein and/or

19 had Merck, via its labeling, advertisements, and promotions provided adequate and truthful warnings

20 and properly disclosed and disseminated the true risks, limitations, and lack of efficacy associated

21 with Gardasil to medical providers, patients, and the public, then upon information and belief,

22 Plaintiff's medical providers would not have offered or recommended Gardasil to Plaintiff.

23 Moreover, even if after Merck's dissemination of truthful information concerning the true risks and

24 efficacy limitation of Gardasil, Plaintiff's medical providers had offered Gardasil, then upon

25 information and belief, the providers would have heeded any warnings issued by Merck and relayed

26 to Plaintiff and her mother the safety risks and efficacy limitations that Merck should have warned

27 them about, but failed to do so. Had Plaintiff and her mother been informed of the true risks and

28 efficacy limitation concerning Gardasil, either through her medical providers or through Merck's

1 ubiquitous direct-to-consumer promotional marketing, then neither Plaintiff nor her mother would  
2 have consented to Plaintiff being injected with Gardasil.

3 386. As a proximate result of Merck's wrongful acts and omissions and its negligent and  
4 fraudulent testing, labeling, manufacturing, marketing and promotion of Gardasil, Plaintiff has  
5 suffered and continues to suffer severe and permanent physical injuries and associated symptomology  
6 and has suffered severe and permanent emotional injuries, including pain and suffering. Plaintiff also  
7 has a substantial fear of suffering additional and ongoing harms, including but not limited to now  
8 being at an increased risk of cancer and future symptoms and harms associated with her autoimmune  
9 disease and other injuries caused by Gardasil.

10 387. As a direct and proximate result of her Gardasil-induced injuries, Plaintiff has suffered  
11 and continues to suffer economic losses, including considerable financial expenses for medical care  
12 and treatment, and diminished income capacity, and he will continue to incur these losses and  
13 expenses in the future.

14 388. Merck's conduct, as described above, was oppressive, fraudulent, and malicious.  
15 Merck regularly risks the lives of teenagers, including Plaintiff, with full knowledge of the limited  
16 efficacy of Gardasil and the severe and sometimes fatal dangers of Gardasil. Merck has made  
17 conscious decisions to not warn or inform the unsuspecting public, including Plaintiff, her mother,  
18 and her medical providers. Merck's conduct, including its false promotion of Gardasil and its failure  
19 to issue appropriate warnings concerning the severe risks of Gardasil, created a substantial risk of  
20 significant harm to children and patients who were being injected with Gardasil, and therefore  
21 warrants an award of punitive damages.

22 389. WHEREFORE, Plaintiff requests that the Court enter judgment in her favor for  
23 compensatory and punitive damages, together with interest and costs herein incurred, and all such  
24 other and further relief as this Court deems just and proper. Plaintiff also demands a jury trial on the  
25 issues contained herein.

26 //

27 //

28 //

1 **COUNT TWO**

2 **STRICT LIABILITY FAILURE TO WARN**

3 (Against Merck and DOES 1 through 25)

4 390. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set  
5 forth herein, and further alleges:

6 391. Plaintiff brings this strict liability claim against Merck and DOES 1 through 25 for  
7 failure to warn.

8 392. At all times relevant to this litigation, Merck engaged in the business of researching,  
9 testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting  
10 Gardasil, which is defective and unreasonably dangerous to consumers, including Plaintiff, because it  
11 does not contain adequate warnings or instructions concerning the dangerous characteristics of  
12 Gardasil and its ingredients and adjuvants. These actions were under the ultimate control and  
13 supervision of Merck.

14 393. Merck researched, developed, designed, tested, manufactured, inspected, labeled,  
15 distributed, marketed, promoted, sold, and otherwise released into the stream of commerce Gardasil,  
16 and in the course of same, directly advertised or marketed the vaccine to consumers and end users,  
17 including Plaintiff, her mother, and medical providers, and Merck therefore had a duty to warn of the  
18 risks associated with the reasonably foreseeable uses of Gardasil and a duty to instruct on the proper,  
19 safe use of these products.

20 394. At all times relevant to this litigation, Merck had a duty to properly research, test,  
21 develop, design, manufacture, inspect, package, label, market, promote, sell, distribute, provide proper  
22 warnings, and take such steps as necessary to ensure that Gardasil did not cause users and consumers  
23 to suffer from unreasonable and dangerous risks. Merck had a continuing duty to instruct on the  
24 proper, safe use of these products. Merck, as manufacturer, seller, or distributor of vaccines, is held to  
25 the knowledge of an expert in the field.

26 395. At the time of manufacture, Merck could have provided warnings or instructions  
27 regarding the full and complete risks of Gardasil because it knew or should have known of the  
28 unreasonable risks of harm associated with the use of and/or exposure to these products.

1           396. At all times relevant to this litigation, Merck failed to properly investigate, study,  
2 research, test, manufacture, label or promote Gardasil. Merck also failed to minimize the dangers to  
3 children, patients, and consumers of Gardasil products and to those who would foreseeably use or be  
4 harmed by Gardasil, including Plaintiff.

5           397. Despite the fact that Merck knew or should have known that Gardasil posed a grave and  
6 unreasonable risk of harm (including but not limited to increased risk of autoimmune disease, and the  
7 various other Gardasil induced injuries that Plaintiff has sustained), it failed to warn of the risks  
8 associated with Gardasil. The dangerous propensities of Gardasil and the carcinogenic characteristics  
9 and autoimmune-inducing characteristics of Gardasil, as described in this Complaint, were known to  
10 Merck, or scientifically knowable to Merck through appropriate research and testing by known  
11 methods, at the time it distributed, supplied, or sold Gardasil, and not known to end users and  
12 consumers, such as Plaintiff, her mother and medical providers.

13           398. Merck knew or should have known that Gardasil and its ingredients and adjuvants  
14 created significant risks of serious bodily harm to children and patients, as alleged herein, and Merck  
15 failed to adequately warn patients, parents, medical providers and reasonably foreseeable users of the  
16 risks and lack of efficacy of Gardasil. Merck has wrongfully concealed information concerning  
17 Gardasil's dangerous nature and lack of efficacy and has further made false and misleading statements  
18 concerning the safety and efficacy of Gardasil.

19           399. At all times relevant to this litigation, Merck's Gardasil products reached the intended  
20 consumers, handlers, and users or other persons coming into contact with these products throughout  
21 the United States, including Plaintiff, without substantial change in their condition as designed,  
22 manufactured, sold, distributed, labeled, and marketed by Merck.

23           400. Plaintiff was injected with Gardasil in its intended or reasonably foreseeable manner  
24 without knowledge of its unreasonable dangerous and inefficacious characteristics.

25           401. Plaintiff could not have reasonably discovered the defects and risks associated with  
26 Gardasil before or at the time of her injections. Plaintiff and her mother relied upon the skill, superior  
27 knowledge, and judgment of Merck.

28           402. Merck knew or should have known that the warnings disseminated with Gardasil were

1 inadequate, and failed to communicate adequate information concerning the true risks and lack of  
2 efficacy of Gardasil and failed to communicate warnings and instructions that were appropriate and  
3 adequate to render the products safe for their ordinary, intended, and reasonably foreseeable uses,  
4 including injection in teenagers.

5 403. The information that Merck did provide or communicate failed to contain relevant  
6 warnings, hazards, and precautions that would have enabled patients, parents of patients and the  
7 medical providers of patients to properly utilize, recommend or consent to the utilization of Gardasil.  
8 Instead, Merck disseminated information that was inaccurate, false, and misleading and which failed  
9 to communicate accurately or adequately the lack of efficacy, comparative severity, duration, and  
10 extent of the serious risk of injuries associated Gardasil; continued to aggressively promote the  
11 efficacy and safety of its products, even after it knew or should have known of Gardasil's  
12 unreasonable risks and lack of efficacy; and concealed, downplayed, or otherwise suppressed, through  
13 aggressive marketing and promotion, any information or research about the risks, defects and dangers  
14 of Gardasil.

15 404. To this day, Merck has failed to adequately and accurately warn of the true risks of  
16 Plaintiff's injuries, including but not limited to, POTS, OI, mast cell activation, and autoimmune  
17 diseases, associated with the use of and exposure to Gardasil, and has failed to warn of the additional  
18 risks that Plaintiff is now exposed to, including, but not limited to, the increased risk of cancer and  
19 other potential side effects and ailments.

20 405. As a result of Merck's failure to warn and false promotion, Gardasil is and was  
21 defective and unreasonably dangerous when it left the possession and/or control of Merck, was  
22 distributed by Merck, and used by Plaintiff.

23 406. Merck is liable to Plaintiff for injuries caused by its failure, as described above, to  
24 provide adequate warnings or other clinically relevant information and data regarding Gardasil, the  
25 lack of efficacy and serious risks associated with Gardasil and its ingredients and adjuvants.

26 407. The defects in Merck's Gardasil vaccine were substantial and contributing factors in  
27 causing Plaintiff's injuries, and, but for Merck's misconduct and omissions and Gardasil's defects,  
28 including its defective labeling and false promotion, Plaintiff would not have sustained her injuries

1 which he has sustained to date, and would not have been exposed to the additional prospective risk  
2 and dangers that are associated with Gardasil.

3 408. Had Merck not engaged in the negligent and fraudulent conducted alleged herein and/or  
4 had Merck, via its labeling, advertisements, and promotions provided adequate and truthful warnings  
5 and properly disclosed and disseminated the true risks, limitations, and lack of efficacy associated  
6 with Gardasil to medical providers, patients, and the public, then upon information and belief,  
7 Plaintiff's medical providers would not have offered or recommended Gardasil to Plaintiff.  
8 Moreover, even if after Merck's dissemination of truthful information concerning the true risks and  
9 efficacy limitation of Gardasil, Plaintiff's medical providers had offered Gardasil, then upon  
10 information and belief, the providers would have heeded any warnings issued by Merck and relayed  
11 to Plaintiff and her mother the safety risks and efficacy limitations that Merck should have warned  
12 them about, but failed to do so. Had Plaintiff and her mother been informed of the true risks and  
13 efficacy limitation concerning Gardasil, either through her medical providers or through Merck's  
14 ubiquitous direct-to-consumer promotional marketing, then neither Plaintiff nor her mother would  
15 have consented to Plaintiff being injected with Gardasil.

16 409. As a proximate result of Merck's wrongful acts and omissions and its negligent and  
17 fraudulent testing, labeling, manufacturing, marketing and promotion of Gardasil, Plaintiff has  
18 suffered and continues to suffer severe and permanent physical injuries and associated symptomology  
19 and has suffered severe and permanent emotional injuries, including pain and suffering. Plaintiff also  
20 has a substantial fear of suffering additional and ongoing harms, including but not limited to now  
21 being at an increased risk of cancer and future symptoms and harms associated with her autoimmune  
22 disease and other injuries caused by Gardasil.

23 410. As a direct and proximate result of her Gardasil-induced injuries, Plaintiff has  
24 suffered and continues to suffer economic losses, including considerable financial expenses for  
25 medical care and treatment, and diminished income capacity, and he will continue to incur these  
26 losses and expenses in the future.

27 411. Merck's conduct, as described above, was oppressive, fraudulent, and malicious. .  
28 Merck regularly risks the lives of teenagers, including Plaintiff, with full knowledge of the limited

1 efficacy of Gardasil and the severe and sometimes fatal dangers of Gardasil. Merck has made  
2 conscious decisions to not warn or inform the unsuspecting public, including Plaintiff, her mother, and  
3 her medical providers. Merck's conduct, including its false promotion of Gardasil and its failure to  
4 issue appropriate warnings concerning the severe risks of Gardasil, created a substantial risk of  
5 significant harm to children, teenagers, and patients who were being injected with Gardasil, and  
6 therefore warrants an award of punitive damages.

7 412. WHEREFORE, Plaintiff requests that the Court enter judgment in her favor for  
8 compensatory and punitive damages, together with interest and costs herein incurred, and all such  
9 other and further relief as this Court deems just and proper. Plaintiff also demands a jury trial on the  
10 issues contained herein.

11 **COUNT THREE**

12 **STRICT LIABILITY MANUFACTURING DEFECT**

13 (Against Merck and DOES 1 through 25)

14 413. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set  
15 forth herein, and further alleges:

16 414. Plaintiff brings this strict liability claim against Merck and DOES 1 through 25 and  
17 each of them for manufacturing defect.

18 415. At all times relevant to this litigation, Merck engaged in the business of researching,  
19 testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting  
20 Gardasil, which is defective and unreasonably dangerous to consumers, including Plaintiff, because of  
21 manufacturing defects, which patients, including Plaintiff, her mother, and her medical providers did  
22 not expect.

23 416. Upon information and belief, the Gardasil vaccines injected into Plaintiff were defective  
24 and unreasonably dangerous because they failed to comply with manufacturing specifications required  
25 by the governing manufacturing protocols and also required by the regulatory agencies, including but  
26 not limited to the FDA, by among other things, containing ingredients and toxins that were not  
27 disclosed in the FDA-approved specifications and/or otherwise not disclosed in the package insert.

28 417. Upon information and belief, and as way of example, the Gardasil injected into Plaintiff

1 was defective and unreasonably dangerous because it failed to comply with the approved  
2 manufacturing specifications, by containing dangerous and undisclosed HPV L1-DNA fragments, and  
3 these DNA fragments could act as a Toll-Like Receptor 9 (TLR9) agonist, further adjuvanting the  
4 vaccine and making it more potent and dangerous than intended.

5 418. Upon information and belief, and as way of example, the Gardasil injected into Plaintiff  
6 was defective and unreasonably dangerous because it failed to comply with the approved  
7 manufacturing specifications, by containing dangerous and undisclosed ingredients and neurotoxins,  
8 including but not limited to, phenylmethylsulfonyl fluoride (PMSF), a toxic nerve agent that is not  
9 intended for human consumption or injection.

10 419. At all times relevant to this litigation, Merck's Gardasil products reached the intended  
11 consumers, handlers, and users or other persons coming into contact with these products throughout  
12 the United States, including Plaintiff, without substantial change in their condition as designed,  
13 manufactured, sold, distributed, labeled, and marketed by Merck.

14 420. Plaintiff was injected with Gardasil in its intended or reasonably foreseeable manner  
15 without knowledge of its dangerous and inefficacious characteristics.

16 421. Plaintiff and her medical providers could not reasonably have discovered the defects,  
17 including the manufacturing defects, and risks associated with Gardasil before or at the time of her  
18 injections. Plaintiff relied upon the skill, superior knowledge, and judgment of Merck.

19 422. Merck is liable to Plaintiff for injuries caused as a result of its manufacturing defects.

20 423. The defects in Merck's Gardasil vaccine were substantial and contributing factors in  
21 causing Plaintiff's injuries, and, but for Merck's misconduct and omissions and Gardasil's defects,  
22 including but not limited to its manufacturing defects, Plaintiff would not have sustained the injuries  
23 he has sustained to date, and would not have been exposed to the additional prospective risk and  
24 dangers associated with Gardasil.

25 424. As a proximate result of Merck's wrongful acts and Gardasil's manufacturing defects,  
26 Plaintiff has suffered and continues to suffer severe and permanent physical injuries and associated  
27 symptomology and has suffered severe and permanent emotional injuries, including pain and  
28 suffering. Plaintiff also has a substantial fear of suffering additional and ongoing harms, including but

1 not limited to now being at an increased risk of cancer and future symptoms and harms associated  
2 with her autoimmune disease and other injuries caused by Gardasil.

3 425. As a direct and proximate result of her Gardasil-induced injuries, Plaintiff has  
4 suffered and continues to suffer economic losses, including considerable financial expenses for  
5 medical care and treatment, and diminished income capacity, and he will continue to incur these  
6 losses and expenses in the future.

7 426. Merck's conduct, as described above, was oppressive, fraudulent, and malicious.  
8 Merck regularly risks the lives of patients, including Plaintiff, with full knowledge of the limited  
9 efficacy of Gardasil and the severe and sometimes fatal dangers of Gardasil. Merck has made  
10 conscious decisions to not warn or inform the unsuspecting public, including Plaintiff and her medical  
11 providers. Merck's conduct, including its false promotion of Gardasil and its failure to issue  
12 appropriate warnings concerning the severe risks of Gardasil, created a substantial risk of significant  
13 harm to children and patients who were being injected with Gardasil, and therefore warrants an award  
14 of punitive damages.

15 427. WHEREFORE, Plaintiff requests that the Court enter judgment in her favor for  
16 compensatory and punitive damages, together with interest and costs herein incurred, and all such  
17 other and further relief as this Court deems just and proper. Plaintiff also demands a jury trial on the  
18 issues contained herein.

#### 19 **COUNT FOUR**

#### 20 **BREACH OF EXPRESS WARRANTY**

21 (Against Merck and DOES 1 through 25)

22 428. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set  
23 forth herein, and further alleges:

24 429. Merck and DOES 1 through 25 and each of them, engaged in the business of testing,  
25 researching, developing, designing, manufacturing, labeling, marketing, selling, distributing, and  
26 promoting Gardasil, which is defective and unreasonably dangerous to consumers, including Plaintiff.

27 430. At all times relevant to this litigation, Merck expressly represented and warranted  
28 through statements made in its Gardasil label, publications, television advertisements, billboards, print

1 advertisements, online advertisements and website, and other written materials intended for  
2 consumers, patients, parents of minor-aged patients, medical providers, and the general public, that  
3 Gardasil was safe and effective at preventing cancer. Merck advertised, labeled, marketed, and  
4 promoted Gardasil, representing the quality to consumers, patients, medical providers, and the public  
5 in such a way as to induce their purchase or use, thereby making an express warranty that Gardasil  
6 would conform to the representations.

7 431. These express representations included incomplete warnings and instructions that  
8 purport, but fail, to include the complete array of risks associated with Gardasil. Merck knew and/or  
9 should have known that the risks expressly included in Gardasil’s promotional material and labels did  
10 not and do not accurately or adequately set forth the risks of developing the serious injuries  
11 complained of herein. Nevertheless, Merck falsely and expressly represented that Gardasil was “safe”  
12 for use by individuals such as Plaintiff, and/or that Gardasil was “effective” in preventing cancer and  
13 that anyone who was vaccinated with Gardasil would be “one less” person with cancer.

14 432. The representations about Gardasil, as set forth herein, contained or constituted  
15 affirmations of fact or promises made by the seller to the buyer, which related to the goods and  
16 became part of the basis of the bargain, creating an express warranty that the goods would conform to  
17 the representations.

18 433. Merck breached these warranties because, among other things, Gardasil is ineffective at  
19 preventing cancer, defective, dangerous, unfit for use, and is associated with a myriad of dangerous  
20 and undisclosed risks, including, but not limited to, the risk of autoimmune disease, POTS, SFN, OI,  
21 the risk of developing cervical cancer in woman (even though Merck promoted it as preventing  
22 cervical cancer), and the risk of fertility problems for young girls. Specifically, Merck breached the  
23 warranties in the following ways:

- 24 a) Representing to patients and the medical community, including Plaintiff, her  
25 mother and/or her medical providers that Gardasil is effective in preventing  
26 cancer, including cervical cancer, when Merck knew that contrary to these  
27 representations (i) no clinical studies were performed to test if Gardasil prevents  
28 cancer; (ii) the clinical studies confirmed that Gardasil is indeed ineffective

1 when used in patients who have previously been exposed to HPV, and that  
2 Gardasil actually increases the risk of cancer in a patient who has been  
3 previously exposed to HPV; and (iii) there are safer and more effective methods  
4 of monitoring for and attempting to prevent cervical cancer, including but not  
5 limited to regular testing, such as regular Pap smears for cervical cancer, and  
6 monitoring.

7 b) Representing to patients and the medical community, including Plaintiff, her  
8 mother, and her medical providers that Gardasil is safe, when in reality, Gardasil  
9 causes and presents serious risks of cancer, autoimmune disease, including but  
10 not limited to POTS, and other grave illnesses as outlined herein;

11 c) Engaging in false advertising and disease mongering by scaring parents and  
12 children into believing that cervical cancer is far more prevalent than it really is;  
13 that all cervical cancer was linked to HPV; that Gardasil prevented cervical  
14 cancer, when in reality none of these representations were true, as cervical  
15 cancer rates were declining in the United States due to Pap testing, and Gardasil  
16 has not been shown to prevent against all strains of HPV that are associated with  
17 cervical cancer, and indeed it has never been shown to prevent cervical cancer.

18 434. Merck had sole access to material facts concerning the nature of the risks and defects  
19 associated with Gardasil as expressly stated within its promotional material and labels, and Merck  
20 knew that patients and users such as Plaintiff could not have reasonably discovered the truth about the  
21 inefficacies and serious risks associated with Gardasil as alleged herein.

22 435. Plaintiff and her mother had no knowledge of the falsity or incompleteness of Merck's  
23 statements and representations concerning Gardasil.

24 436. Plaintiff's mother was exposed to the ubiquitous promotional material and  
25 representations Merck made in its direct-to-consumer advertisements and marketing materials  
26 concerning the safety and efficacy of Gardasil, including: that Gardasil prevents cervical cancer, and  
27 cervical cancer is prevalent (even though children rarely get cervical cancer and Pap tests are the best  
28 frontline defense in detecting and fighting cervical cancer); that "good mothers" vaccinate their

1 children and that Gardasil is perfectly safe. However, had Merck in these advertisements not engaged  
2 in disease mongering and deception, but instead had informed her the truth about the serious risks of  
3 Gardasil (as outlined in this Complaint) and its lack of efficacy, she would never have consented to  
4 her minor son being injected with Gardasil, nor would Plaintiff have consented to any of the Gardasil  
5 injections had he been adequately informed about the questionable efficacy and serious risks  
6 associated with Gardasil.

7 437. As a proximate result of Merck's wrongful acts and breaches of warranties concerning  
8 the safety and efficacy of Gardasil, Plaintiff has suffered and continues to suffer severe and permanent  
9 physical injuries and associated symptomology and has suffered severe and permanent emotional  
10 injuries, including pain and suffering. Plaintiff also has a substantial fear of suffering additional and  
11 ongoing harms, including but not limited to now being at an increased risk of cancer and future  
12 symptoms and harms associated with her autoimmune disease and other injuries caused by Gardasil.

13 438. As a direct and proximate result of her Gardasil-induced injuries, Plaintiff has  
14 suffered and continues to suffer economic losses, including considerable financial expenses for  
15 medical care and treatment, and diminished income capacity, and he will continue to incur these  
16 losses and expenses in the future.

17 439. Merck's conduct, as described above, was oppressive, fraudulent, and malicious.  
18 Merck regularly risks the lives of patients, including Plaintiff, with full knowledge of the limited  
19 efficacy of Gardasil and the severe and sometimes fatal dangers of Gardasil. Merck has made  
20 conscious decisions to not warn or inform the unsuspecting public, including Plaintiff and her medical  
21 providers. Merck's conduct, including its false promotion of Gardasil and its failure to issue  
22 appropriate warnings concerning the severe risks of Gardasil, created a substantial risk of significant  
23 harm to children and patients who were being injected with Gardasil, and therefore warrants an award  
24 of punitive damages.

25 440. WHEREFORE, Plaintiff requests that the Court enter judgment in her favor for  
26 compensatory and punitive damages, together with interest and costs herein incurred, and all such  
27 other and further relief as this Court deems just and proper. Plaintiff also demands a jury trial on the  
28 issues contained herein.

1 **COUNT FIVE**

2 **COMMON LAW FRAUD**

3 (Against Merck and DOES 1 through 25)

4 441. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set  
5 forth herein, and further alleges:

6 442. Merck and DOES 1 through 25 and each of them are the researcher, designer,  
7 manufacturer, labeler, and promoter of Gardasil.

8 443. Merck marketed Gardasil to and for the benefit of patients, including teenagers such as  
9 Plaintiff, her mother, and her medical providers.

10 444. Merck had a duty to deal honestly and truthfully with regulators, patients, consumers,  
11 and medical providers in its development, testing, marketing, promotion, and sale of Gardasil.

12 445. Merck's duty of care owed to patients and medical providers included providing  
13 accurate, complete, true, and correct information concerning the efficacy and risks of Gardasil in its  
14 direct-to-consumer advertisements, promotional material, and labeling.

15 446. At all times relevant to this litigation, Merck knew or should have known of the hazards  
16 and dangers of Gardasil and specifically, the serious, debilitating, and potentially fatal adverse events  
17 associated with Gardasil, including but not limited to POTS, SFN, OI, systemic adverse events,  
18 autoimmune disease, increased risk of cancer, and death.

19 447. At all times relevant to this litigation, Merck knew or should have known that its poorly  
20 designed clinical trials and studies were insufficient to test the true long-term safety and efficacy of  
21 Gardasil.

22 448. At all times relevant to this litigation, Merck expressly represented through statements it  
23 made in its publications, ubiquitous television advertisements, billboards, print advertisements, online  
24 advertisements and website, and other written materials intended for consumers, patients, parents of  
25 minor-aged patients, medical providers, and the general public, that Gardasil was safe and effective at  
26 preventing cancer.

27 449. These express representations included incomplete warnings and instructions that  
28 purport, but fail, to include the complete array of risks associated with Gardasil. As way of example

1 Merck’s marketing material, including its “One Less” television and print advertisement campaign  
2 (including but not limited to Gardasil posters in medical facilities and doctors’ offices), which  
3 Plaintiff’s mother had been exposed to, stated that Gardasil was safe, that Gardasil was effective in  
4 preventing cancer, that Gardasil was a “cervical cancer vaccine,” and that any child who was  
5 vaccinated with Gardasil would lead to “one less” woman with cervical cancer. The only safety  
6 warnings Merck provided in these marketing materials was that a patient could get pain, swelling or  
7 redness at injection site, fever, and/or nausea.

8 450. The ubiquitous nature of these Gardasil commercials and the Gardasil marketing  
9 campaign gave the impression that cervical cancer was on the rise and more prevalent than it actually  
10 was, and that all good mothers vaccinate their children with the “cervical cancer vaccine.”

11 451. Merck knew or should have known that the risks expressly included in Gardasil’s  
12 promotional material and labels did not and do not accurately or adequately set forth the true and  
13 complete risks of developing the serious injuries that are associated with Gardasil, as previously  
14 alleged herein, and which include but are not limited to, POTS, OI, systemic adverse events,  
15 autoimmune disease, increased risk of cancer, and death.

16 452. The same promises of efficacy and limited and incomplete warnings Merck relayed in  
17 its direct-to-consumer advertising, were what Plaintiff’s medical providers relayed to her when they  
18 recommended Gardasil—i.e., that if Plaintiff got vaccinated with Gardasil it will prevent her from  
19 getting cervical cancer, and the only risks associated with Gardasil are temporary dizziness, soreness,  
20 redness, minor pain, and itching at the injection site.

21 453. Plaintiff’s mother had been exposed to Merck’s marketing material concerning  
22 Gardasil, including the aforementioned “One Less” marketing campaign and other print  
23 advertisements and posters at doctors’ offices, and the representations made by Merck therein that  
24 Gardasil is effective at preventing cervical cancer, that Gardasil is safe and that its only side-effects  
25 are essentially minor injection site pain and swelling and the possible onset of a fever or nausea. Prior  
26 to providing consent to inject Plaintiff with the Gardasil vaccine, Plaintiff and her mother were never  
27 informed by Merck, or anyone else, that Gardasil is linked to a host of serious debilitating and chronic  
28 adverse events including, autoimmune diseases (including, but not limited to, POTS, OI), increased

1 risk of cancer, and death.

2 454. Prior to providing consent to inject Plaintiff with the Gardasil vaccine, Plaintiff and her  
3 mother were never informed by Merck, or anyone else, that Merck had not conducted the proper  
4 testing necessary to demonstrate the efficacy and full safety of Gardasil.

5 455. Prior to providing consent to inject Plaintiff with the Gardasil vaccine, Plaintiff and her  
6 mother were never informed by Merck, or anyone else, that Merck had, as alleged herein, manipulated  
7 its clinical studies to mask and conceal the adverse events associated with Gardasil.

8 456. Prior to providing consent to inject Plaintiff with the Gardasil vaccine, Plaintiff and her  
9 mother were never informed by Merck, or anyone else, that the Gardasil clinical trials never  
10 established that Gardasil can prevent cervical cancer, even though Merck in its promotional material  
11 to which Plaintiff's mother had been exposed falsely represented that Gardasil was a "cervical cancer  
12 vaccine" and that a child who received Gardasil would result in "one less" woman getting cervical  
13 cancer.

14 457. Merck's representations were false, because in truth, Gardasil has not been proven to  
15 prevent cervical cancer and is associated with a myriad of dangerous and undisclosed risks, including,  
16 but not limited to, the risk of autoimmune disease, including POTS, OI, the increased risk of cancer,  
17 and other serious side effects. The false representations Merck made to the children, the parents of  
18 children, the medical community, including to Plaintiff and her mother, included:

- 19 a) that Gardasil is effective in preventing cervical cancer, when Merck knew that,  
20 contrary to these representations (i) no clinical studies were performed to test  
21 whether Gardasil prevents cancer; and (ii) the clinical studies confirmed that  
22 Gardasil is indeed ineffective when used in patients who have previously been  
23 exposed to HPV, and that Gardasil actually increases the risk of cervical cancer  
24 in any child or patient who has been previously exposed to HPV;
- 25 b) that Gardasil is safe, when in reality, Gardasil causes and presents severe risks  
26 of cancer (including cervical cancer, the very cancer it is promoted as  
27 preventing), fertility problems, autoimmune disease, including POTS, OI, and  
28 other grave illnesses;

1 c) false advertising and disease mongering by scaring parents into believing that  
2 cervical cancer was far more prevalent than it really was; that Gardasil  
3 prevented cervical cancer; and that Gardasil only had risks of injection site pain  
4 and fever, when in reality none of these representations were true as cervical  
5 cancer rates were declining in the United States due to Pap testing and Gardasil  
6 has not been shown to prevent cervical cancer, and indeed some studies  
7 demonstrated that it actually increased the risk of cervical cancer; and Gardasil  
8 was linked to a host of serious, chronic and sometimes fatal diseases, including  
9 autoimmune diseases, as previously outlined in this Complaint.

10 458. These representations and other similar representations were made by Merck to the  
11 public, including to Plaintiff's mother, with the intent that parents would either seek out Gardasil from  
12 their medical providers or otherwise would provide their consent when they were offered Gardasil.

13 459. At the time they provided their consent to the Gardasil injection, Plaintiff and her  
14 mother were not aware of the falsity of Merck's aforementioned representations concerning the safety  
15 and efficacy of Gardasil.

16 460. Plaintiff's mother reasonably and justifiably relied upon the truth of the assurance made  
17 by Merck in its direct-to-consumer marketing concerning the efficacy and safety of Gardasil (which  
18 were also echoed by Plaintiff's medical providers), when she and Plaintiff provided their consent to  
19 Plaintiff being injected with the Gardasil vaccine.

20 461. Had Merck's advertisements and promotional material, which Merck targeted to  
21 teenagers and the parents of teenagers, and which Plaintiff's mother received and on which she relied,  
22 provided complete and truthful warnings and properly disclosed and disseminated the true risks,  
23 limitations, and lack of efficacy associated with Gardasil, then neither Plaintiff nor her mother would  
24 have consented to Plaintiff being injected with Gardasil.

25 462. Merck also engaged in a number of additional fraudulent activities that led to regulators,  
26 medical providers (upon information and belief, including but not limited Plaintiff's medical  
27 providers), and the general public (including directly and/or indirectly Plaintiff and her mother) to be  
28 duped into believing that Gardasil is safe and effective. These fraudulent acts are outlined in greater

1 detail in the preceding paragraphs of this Complaint, and included, among others:

- 2 d) Failing to test Gardasil against a true inert placebo and lying to the public that  
3 Gardasil was tested against a placebo, when in reality, all, or nearly all, studies  
4 used a toxic placebo that included the dangerous aluminum adjuvant AAHS.
- 5 e) Failing to conduct a sufficient number of studies for the targeted patient  
6 population which included pre-teen girls (and boys) between the ages of nine  
7 and 12.
- 8 f) Not using the commercial dosage (and instead using a lower dosage of the  
9 adjuvant and ingredients) in one of the key clinical trials, which was used to  
10 obtain licensing for the commercial dosage of Gardasil;
- 11 g) Using very restrictive exclusionary criteria in the clinical study patient  
12 population (including, for example, exclusion of anyone who had prior abnormal  
13 Pap tests, who had a history of immunological or nervous system disorders, or  
14 was allergic to aluminum or other ingredients), but then not revealing or  
15 warning about these exclusionary criteria in the label, and knowing that for most  
16 of these ingredients and allergies, there are limited resources for the public to  
17 test for such allergies in advance of being vaccinated;
- 18 h) Failing to disclose all of the ingredients in Gardasil, including but not limited to  
19 the fact that Gardasil contains dangerous HPV L1-DNA fragments and that  
20 these DNA fragments could act as a Toll-Like Receptor 9 (TLR9) agonist—  
21 further adjuvanting the vaccine and making it more potent and dangerous.

22 463. Merck engaged in the above mentioned fraudulent conduct as well as the additional  
23 fraudulent conduct detailed throughout this Complaint with the intent to enhance Gardasil's safety and  
24 efficacy profile and to conceal Gardasil's serious risks and efficacy shortcomings in order to secure  
25 regulatory approval and more importantly, so as to encourage physicians and medical providers to  
26 recommend Gardasil to patients and to prepare and encourage patients to request and consent to  
27 Gardasil injections.

28 464. Plaintiff and her mother could not reasonably have discovered the falsity of Merck's

1 representations, the fraudulent nature of Merck's conduct, and the defects and risks associated with  
2 Gardasil before or at the time of her injections. Plaintiff and her mother relied upon the skill, superior  
3 knowledge, and judgment of Merck, the manufacturer, labeler, and promoter of Gardasil, and they  
4 detrimentally relied upon Merck's fraudulent, false, and misleading statements, omissions, and  
5 conduct.

6 465. As a proximate result of Merck's fraudulent, false, and misleading statements,  
7 omissions, and conduct concerning the safety and efficacy of Gardasil, Plaintiff has suffered and  
8 continues to suffer severe and permanent physical injuries and associated symptomology, and has  
9 suffered severe and permanent emotional injuries, including pain and suffering. Plaintiff also has a  
10 substantial fear of suffering additional and ongoing harms, including but not limited to now being at  
11 an increased risk of cancer and future symptoms and harms associated with her autoimmune disease  
12 and other injuries caused by Gardasil.

13 466. As a direct and proximate result of her Gardasil-induced injuries, Plaintiff has  
14 suffered and continues to suffer economic losses, including considerable financial expenses for  
15 medical care and treatment, and diminished income capacity, and he will continue to incur these  
16 losses and expenses in the future.

17 467. Merck's conduct, as described above, was oppressive, fraudulent, and malicious.  
18 Merck regularly risks the lives of patients, including Plaintiff, with full knowledge of the limited  
19 efficacy of Gardasil and the severe and sometimes fatal dangers of Gardasil. Merck has made  
20 conscious decisions to not warn or inform the unsuspecting public, including Plaintiff and her medical  
21 providers. Merck's conduct, including its false promotion of Gardasil and its failure to issue  
22 appropriate warnings concerning the severe risks of Gardasil, created a substantial risk of significant  
23 harm to children and patients who were being injected with Gardasil, and therefore warrants an award  
24 of punitive damages.

25 468. WHEREFORE, Plaintiff requests that the Court enter judgment in her favor for  
26 compensatory and punitive damages, together with interest and costs herein incurred, and all such  
27 other and further relief as this Court deems just and proper. Plaintiff also demands a jury trial on the  
28 issues contained herein.

1 **COUNT SIX**

2 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

3 (Against Merck and DOES 1 through 25)

4 469. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set  
5 forth herein, and further alleges:

6 470. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, et  
7 seq., protects both consumers and competitors by promoting fair competition in commercial markets  
8 for goods and services. California's Unfair Competition Law is interpreted broadly and provides a  
9 cause of action for any unlawful, unfair, or fraudulent business act or practice. Any unlawful, unfair,  
10 or fraudulent business practice that causes injury to consumers falls within the ambit of California's  
11 Unfair Competition Law.

12 471. Merck engaged in substantial advertising and marketing of Gardasil within the State of  
13 California.

14 472. Because of Merck's unlawful, fraudulent, and unfair business practices, Plaintiff and  
15 her mother were misled into purchasing and consenting to the Gardasil injections.

16 473. As set forth in the preceding paragraphs, Defendants has engaged in the unlawful  
17 business practice of misleading Plaintiff regarding the Gardasil vaccines' true safety. Defendants'  
18 deceptive and unlawful marketing practices have violated numerous California laws, including, inter  
19 alia: Cal. Civ. Code §§ 1709, et seq. (fraudulent deceit); Cal. Civ. Code §§ 1571, et seq. (fraud); Cal.  
20 U. Com. Code §§ 2313-15 (breach of express warranty); Cal. Bus. & Prof. Code §§ 17500, et seq.  
21 (false advertising and marketing); and Cal. Civ. Code §§ 1750, et seq. (violations of California's  
22 Consumer Legal Remedies Act).

23 474. Merck widely advertised and promoted Gardasil as a safe and effective vaccine that had  
24 no serious side effects.

25 475. Yet, contrary to its above referenced false claims concerning the safety and efficacy of  
26 Gardasil, Merck knew, or should have known, that Gardasil was ineffective, unreasonably dangerous  
27 and defective, and had a propensity to cause serious and life-threatening side effects, including but not  
28 limited to autoimmune diseases and other grave injuries as outlined in this Complaint.

1 476. The false, deceptive, and misleading actions, statements, and representations made by  
2 Merck, as alleged in this Complaint, are unlawful, fraudulent, and unfair business practices and acts  
3 within the meaning of the UCL. *See e.g.*, Cal. Bus. & Prof. Code §§ 17200 et seq.

4 477. Merck's concealment of the autoimmune risks and other adverse events outlined in this  
5 Complaint was a material omission that consumers, patients, parents, and prescribing healthcare  
6 professionals should have known about prior to purchasing, consenting to injection of, or prescribing  
7 Gardasil.

8 478. Merck's concealment of the lack of efficacy and false representations concerning the  
9 efficacy of Gardasil in preventing cancer was a material false representation and omission that  
10 consumers, patients, parents, and prescribing healthcare professionals should have known about prior  
11 to purchasing, consenting to injection of, or prescribing Gardasil.

12 479. Merck had sole access to material facts concerning the nature of the risks and defects  
13 associated with Gardasil as expressly stated within its promotional material and labels, and Merck  
14 knew that patients and users such as Plaintiff, her mother, and her medical providers could not have  
15 reasonably discovered the truth about the inefficacies and serious risks associated with Gardasil as  
16 alleged herein.

17 480. Plaintiff and her mother had no knowledge of the falsity or incompleteness of Merck's  
18 statements and representations concerning Gardasil.

19 481. Plaintiff's mother reasonably and justifiably relied upon the truth of the assurance made  
20 by Merck in its direct-to-consumer marketing concerning the efficacy and safety of Gardasil (which  
21 were also echoed by Plaintiff's medical providers), when she and Plaintiff provided their consent to  
22 Plaintiff being injected with the Gardasil vaccine.

23 482. Had Merck's advertisements and promotional material, which Merck targeted to  
24 teenagers and the parents of teenagers, and which Plaintiff's mother received and on which she relied,  
25 provided complete and truthful warnings and properly disclosed and disseminated the true risks,  
26 limitations, and lack of efficacy associated with Gardasil, then neither Plaintiff nor her mother would  
27 have consented to Plaintiff being injected with Gardasil.

28 483. As a direct and proximate result of Merck's unlawful, fraudulent, and unfair business

1 practices, Plaintiff has sustained injuries and economic damages as outlined herein, including but not  
2 limited to, agreeing to being injected with Gardasil, which upon information and belief, costs more  
3 than \$100 per vile.

4 484. As a result of Merck's violation of the UCL, Plaintiff seeks an order of this Court  
5 enjoining Merck from continuing these unlawful, fraudulent, and unfair practices and awarding  
6 Plaintiff remedies, including but not limited to disgorgement of Merck's profits, restitution, fees, and  
7 all other remedies available under law.

8 485. WHEREFORE, Plaintiff requests that the Court enter judgment in her favor for  
9 restitution, disgorgement of Merck's ill-gotten profits, punitive damages, and all other permissible  
10 monetary relief, together with interest, costs herein incurred, attorney fees pursuant to California Code  
11 of Civil Procedure Section 1021.5, and all such other and further relief as this Court deems just and  
12 proper. Plaintiff also requests that the Court issue an injunction prohibiting Merck from continuing its  
13 false advertising and unlawful acts and practices concerning Gardasil and to grant any other  
14 preliminary or permanent equitable relief as deemed appropriate.

15 **COUNT SEVEN**

16 **MEDICAL MALPRACTICE**

17 (Against MemorialCare Defendants and DOES 26 through 50)

18 486. Plaintiff incorporates by reference Paragraphs 1 through 371 and Paragraphs 499  
19 through 515 in this Complaint as if fully set forth herein and further alleges:

20 487. At all times herein mentioned Defendants MemorialCare Medical Group, Gina Posner,  
21 M.D., Julie Fallon, M.D., Does 26 through 50, and each of them (collectively "MemorialCare  
22 Defendants"), provided and/or are now providers of hospital, medical, and other health care services  
23 for Plaintiff. Such services included the negligent and wrongful act in the administration of two  
24 Gardasil injections that Plaintiff received on August 17, 2012 and October 21, 2014, coupled with  
25 continuous rendering thereafter of medical treatment, care, and related services for disease process  
26 suffered by Plaintiff due to the severe adverse medical reactions following the first and second  
27 injections of the Gardasil vaccines.

28 488. MemorialCare Defendants' negligent and wrongful acts include and incorporate their

1 negligent failure to timely and properly diagnose that Plaintiff had sustained a Gardasil adverse  
2 reaction following her August 17, 2012 Gardasil injection, and in lieu of properly diagnosing the  
3 adverse reaction, the MemorialCare Defendants, including but not limited to Julie Fallon, M.D.,  
4 negligently proceeded to administer a second Gardasil injection on October 21, 2014 to a patient who  
5 had exhibited and was at the time still suffering from the adverse reactions caused by her previous  
6 Gardasil injection. This negligent administration of the second Gardasil injection further exasperated  
7 Plaintiff's injuries and disease process.

8 489. Additionally, the MemorialCare Defendants' negligent and wrongful acts incorporate  
9 their negligent failure to medically diagnose the nature and cause of Plaintiff's underlying  
10 immunological disease processes.

11 490. Plaintiff is informed and believes, and upon such information and belief, alleges that the  
12 MemorialCare Defendants negligently relied upon facts and information provided to them by Merck  
13 with respect to the effectiveness, safety, and the need for the administration of the Gardasil vaccines  
14 and in advising Plaintiff that she be administered the Gardasil vaccines.

15 491. In soliciting Plaintiff's consent for Gardasil, the MemorialCare Defendants informed  
16 Plaintiff that Gardasil was safe and that if she was injected with Gardasil it would prevent Plaintiff  
17 from getting cervical cancer. The only risks that were disclosed to Plaintiff were that she may  
18 experience dizziness after her injection.

19 492. In rendering the foregoing medical advice, the MemorialCare Defendants negligently  
20 failed to provide Plaintiff with material facts and information as to the effectiveness, safety, and need  
21 for the administration of the Gardasil vaccinations and in particular as to the specific risk/benefit and  
22 quantitative risks, including but not limited to the serious autoimmune risks and lack of efficacy  
23 associated with the Gardasil vaccine as previously outlined in this Complaint.

24 493. Truthful and accurate information concerning the safety and efficacy of a vaccine is  
25 reasonably required by patients when considering and deciding whether or not under their individual  
26 and personal circumstances they or their child should be vaccinated with Gardasil.

27 494. As a result of the MemorialCare Defendants' negligent failure to provide accurate  
28 information concerning the safety and efficacy of the Gardasil vaccine, Plaintiff was deprived of her

1 right to make informed consent. Had Plaintiff or her mother been informed of the true risks  
2 associated with Gardasil, including but not limited to the autoimmune risks and the lack of Gardasil's  
3 proven efficacy in preventing cancer, they would have rejected the Gardasil vaccinations.

4 495. As a proximate result of the negligently prescribed and administered Gardasil  
5 injections, Plaintiff has suffered and continues to suffer severe and permanent physical injuries and  
6 associated symptomology, and has suffered severe and permanent emotional injuries, including pain  
7 and suffering. Plaintiff also has a substantial fear of suffering additional and ongoing harms,  
8 including but not limited to future symptoms and harms associated with her autoimmune disease and  
9 other injuries caused by Gardasil.

10 496. As a direct and proximate result of her Gardasil-induced injuries, Plaintiff has  
11 suffered and continues to suffer economic losses, including considerable financial expenses for  
12 medical care and treatment, and diminished income capacity, and he will continue to incur these  
13 losses and expenses in the future.

14 497. WHEREFORE, Plaintiff requests that the Court enter judgment in her favor for  
15 compensatory damages, together with interest and costs herein incurred, and all such other and further  
16 relief as this Court deems just and proper. Plaintiff also demands a jury trial on the issues contained  
17 herein.

## 18 **COUNT EIGHT**

### 19 **BATTERY**

20 (Against MemorialCare Defendants and DOES 26 through 50)

21 498. Plaintiff incorporates by reference Paragraphs 1 through 371 and 487 through 498 of  
22 this Complaint as if fully set forth herein and further alleges:

23 499. The administration and injection of each of the two Gardasil injections by the  
24 MemorialCare Defendants was without the informed consent of Plaintiff and constitutes a battery  
25 against Plaintiff.

26 500. Plaintiff did not consent to an ineffective vaccine that contains all of the undisclosed  
27 serious and debilitating side effects, including but not limited to the autoimmune causing side effects  
28 outlined in this Complaint, being injected into her body.



1 reasonably careful medical provider and fiduciary would have acted under the same circumstances.

2           508. MemorialCare Defendants breached their fiduciary duty to Plaintiff by failing to  
3 provide Plaintiff with full and complete information concerning the lack of efficacy and serious and  
4 disabling adverse events associated with the Gardasil vaccine.

5           509. MemorialCare Defendants breached their fiduciary duty to Plaintiff by providing  
6 misleading and false information to Plaintiff concerning the efficacy and safety profile of Gardasil by  
7 falsely stating that Gardasil would prevent Plaintiff from getting cervical cancer and that Gardasil is  
8 perfectly safe with no side-effects other than minor and temporary dizziness. When in reality, as  
9 outlined previously in this Complaint, Gardasil has not been proven to prevent cervical cancer (or any  
10 cancer) and Gardasil is linked to a number of serious, disabling and chronic diseases, including but  
11 not limited to autoimmune disease, POTS, OI, and a host of other diseases, which Plaintiff eventually  
12 sustained.

13           510. MemorialCare Defendants breached their fiduciary duty to Plaintiff by failing to  
14 properly diagnose and inform Plaintiff that she was suffering from a Gardasil induced side effect as a  
15 result of her second Gardasil injection, and in lieu of making a proper diagnosis, her medical provider  
16 Dr. Fallon, chose to prescribe and administer a second dosage of Gardasil which further exacerbated  
17 Plaintiff's injuries.

18           511. MemorialCare Defendants breached their fiduciary duty to Plaintiff by failing to  
19 properly and timely diagnose her Gardasil induced injuries and failing to timely and properly refer her  
20 to specialists.

21           512. As a proximate result of the MemorialCare Defendants' breach of fiduciary duties,  
22 Plaintiff has suffered and continues to suffer severe and permanent physical injuries and associated  
23 symptomology, and has suffered severe and permanent emotional injuries, including pain and  
24 suffering. Plaintiff also has a substantial fear of suffering additional and ongoing harms, including but  
25 not limited to future symptoms and harms associated with her autoimmune disease and other injuries  
26 caused by Gardasil.

27           513. As a direct and proximate result of her Gardasil-induced injuries, Plaintiff has  
28 suffered and continues to suffer economic losses, including considerable financial expenses for

1 medical care and treatment, and diminished income capacity, and he will continue to incur these  
2 losses and expenses in the future.

3 514. WHEREFORE, Plaintiff requests that the Court enter judgment in her favor for  
4 compensatory damages, together with interest and costs herein incurred, and all such other and further  
5 relief as this Court deems just and proper. Plaintiff also demands a jury trial on the issues contained  
6 herein.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff requests that the Court enter judgment in her favor and against all  
9 Defendants as to all causes of action, and awarding as follows:

- 10 A. For compensatory damages, in an amount exceeding this Court's jurisdictional  
11 minimum and to be proven at trial;
- 12 B. For economic and non-economic damages in an amount to be proven at trial;
- 13 C. For medical, incidental, hospital, psychological, and other expenses in an amount to be  
14 proven at trial;
- 15 D. For loss of earnings and earnings capacity, in an amount to be proven at trial;
- 16 E. For an award of pre-judgment and post-judgment interest as provided by law;
- 17 F. For exemplary and punitive damages against Merck;
- 18 G. For preliminary and/or permanent injunctive relief against Merck;
- 19 H. For an award providing for payment of reasonable fees, court costs, and other litigation  
20 expenses as permitted by law;
- 21 I. For such other and further relief as this Honorable Court may deem just and proper.

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff, Kayla Carrillo, hereby demands a jury trial on all of her claims, causes of action, and  
24 issues that are triable by jury.

25 Dated: February 2, 2021

**BAUM, HEDLUND, ARISTEI, & GOLDMAN, P.C.**

26 By: 

27 Bijan Esfandiari  
[besfandiari@baumhedlundlaw.com](mailto:besfandiari@baumhedlundlaw.com)  
28 Michael L. Baum  
[mbaum@baumhedlundlaw.com](mailto:mbaum@baumhedlundlaw.com)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Nicole K.H. Maldonado  
[nmaldonado@baumhedlundlaw.com](mailto:nmaldonado@baumhedlundlaw.com)  
Monique Alarcon  
[malarcon@baumhedlundlaw.com](mailto:malarcon@baumhedlundlaw.com)  
10940 Wilshire Blvd., 17th Floor  
Los Angeles, CA 90024  
Telephone: (310) 207-3233  
Facsimile: (310) 820-7444

**Robert F. Kennedy, Jr.** (*Pro Hac Vice* to be filed)  
[robert.kennedyjr@childrenshealthdefense.org](mailto:robert.kennedyjr@childrenshealthdefense.org)  
Children's Health Defense  
1227 N Peachtree Parkway  
Suite 202  
Peachtree City, GA 30269  
Telephone: (845) 481-2622

*Attorneys for Plaintiff*