

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

INTRODUCTION..... 5

PARTIES AND VENUE 5

GENERAL ALLEGATIONS 7

 I. “History Doesn’t Repeat Itself, But It Often Rhymes” – Mark Twain 7

 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..... 9

 A. Overview of the Human Papillomavirus 10

 B. Overview of the Gardasil Vaccine and Its Fast-Tracked Approval 11

 C. Merck Engaged in Disease Mongering and False Advertising to Enhance Gardasil Sales 15

 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 19

 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..... 20

 G. The Gardasil Vaccines Contain Numerous Hazardous Ingredients, Including At Least One Ingredient Merck Failed to Disclose to Regulators and the Public 23

 i. Gardasil Contains A Toxic Aluminum Adjuvant..... 23

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

 iii. Gardasil Contains Borax..... 25

 iv. Gardasil Contains Polysorbate 80 25

 v. Gardasil Contains Genetically Modified Yeast 26

 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 26

 i. Small Clinical Trials..... 28

 ii. Merck Used a Highly Toxic “Placebo” to Mask Gardasil Injuries 28

1 iii. Merck Used Exclusionary Criteria to Further Conceal Gardasil Risks..... 30

2 iv. Merck Deceived Regulators and The Public by Classifying Many Serious Adverse

3 Events, Which Afflicted Nearly Half of All Study Participants, As Coincidences . 31

4 v. Merck Manipulated the Study Protocols to Block Participants and Researchers from

5 Reporting Injuries and Designed the Studies to Mask Any Long-Term Adverse

6 Events 32

7 vi. Merck Deceived Regulators and the Public About Its Pivotal Gardasil Clinical Trial

8 (Protocol 018)..... 33

9 I. Contrary to Merck’s Representations, Gardasil May Actually Cause and Increase the

10 Risk of Cervical and Other Cancers 35

11 J. Merck has Concealed the Fact that Gardasil Induces and Increases the Risk of

12 Autoimmune Diseases, Including But Not Limited to, POTS, OI and Other Associated

13 Injuries Such as Dysautonomia and Fibromyalgia..... 38

14 K. Merck has Concealed the Fact that Gardasil Increases the Risk of Fertility Problems.. 43

15 L. There were an Increase Number of Deaths in the Gardasil Studies 44

16 M. Post-Marketing Injuries -- The Raft of Injuries Seen in Merck’s Clinical Trials Has

17 Now Become A Population-Wide Chronic Disease Epidemic 45

18 N. The Gardasil Vaccines’ Harms Are Not Limited to the United States, Rather the

19 Vaccines Have Injured Patients All Over the World..... 47

20 i. In Light of Gardasil’s Serious and Debilitating Adverse Events, the Japanese

21 Government Rescinded Its Recommendation that Girls Receive Gardasil..... 47

22 ii. Denmark Has Opened Specialized Clinics Specifically Focused on Treating

23 Gardasil-Induced Injuries, Including Gardasil-Induced Autoimmune Diseases 48

24 iii. Gardasil-Induced Adverse Events Caused the Government in Colombia to Conclude

25 that Gardasil Would No Longer Be Mandatory 49

26 iv. India Halts Gardasil Trials and Accuses Merck of Corruption After the Death of

27 Several Young Girls Who were Participants in the Trial 49

28 O. Merck’s Fraud Has Paid Off Handsomely Resulting in Over \$3 Billion in Gardasil Sales

 Annually 50

 III. Julia Balasco Sustained Autoimmune Disease, Including Postural Orthostatic Tachycardia

 Syndrome (“POTS”), Orthostatic Intolerance, Dysautonomia and Other Serious Injuries,

 Including but Not Limited to, Fibromyalgia, as A Result of Her Two Gardasil Injections..... 51

 A. Gardasil and Its Ingredients Caused Balasco’s Autoimmune Disease and Other Related

 Injuries and Has Resulted in Her Suffering From Severe, Debilitating and Painful

 Chronic Ailments..... 51

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

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, *After the Storm* 54

CAUSES OF ACTION 55

COUNT ONE NEGLIGENCE..... 55

COUNT TWO STRICT LIABILITY (FAILURE TO WARN)..... 62

COUNT THREE STRICT LIABILITY (MANUFACTURING DEFECT) 66

COUNT FOUR BREACH OF EXPRESS WARRANTY 69

COUNT FIVE COMMON LAW FRAUD 72

COUNT SIX VIOLATION OF RHODE ISLAND’S DECEPTIVE TRADE PRACTICES ACT 79

PRAYER FOR RELIEF 81

DEMAND FOR JURY TRIAL..... 82

1 COMES NOW plaintiff, JULIA BALASCO, who by and through counsel Baum Hedlund
2 Aristei & Goldman, PC, Robert F. Kennedy, Jr., and Hultquist Law, P.C., alleges against defendants
3 MERCK & CO., INC., and MERCK, SHARP AND DOHME CORPORATION, and each of them, as
4 follows:

5 **INTRODUCTION**

6 1. This common-law products liability, negligence, strict liability, breach of warranty and
7 fraud action arises out of serious and debilitating autoimmune injuries and resulting sequelae that
8 plaintiff, Julia Balasco (“Balasco”), sustained as a result of receiving multiple injections of the
9 Gardasil vaccine, which was designed, manufactured, labeled, and promoted by defendants Merck &
10 Co., Inc., and Merck, Sharp and Dohme Corporation (collectively “Merck”).

11 **PARTIES AND VENUE**

12 2. Plaintiff, Julia Balasco, is an adult and a resident and citizen of the Rhode Island.

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

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

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

19 6. At all times herein mentioned, each defendant was the agent, servant, partner, aider and
20 abettor, co-conspirator and/or joint venturer of the other defendants named herein and was at all times
21 operating and acting within the purpose and scope of said agency, service, employment, partnership,
22 conspiracy and/or joint venture and rendered substantial assistance and encouragement to the other
23 defendants, knowing that their collective conduct constituted a breach of duty owed to Balasco.

24 7. At all times herein mentioned, defendants were fully informed of the actions of their
25 agents and employees, and thereafter no officer, director or managing agent of defendants repudiated
26 those actions, which failure to repudiate constituted adoption and approval of said actions and all
27 defendants and each of them, thereby ratified those actions.

28 8. There exists and, at all times herein mentioned there existed, a unity of interest in

1 ownership between the named defendants, such that any individuality and separateness between the
2 defendants has ceased and these defendants are the alter-ego of each other and exerted control over
3 each other. Adherence to the fiction of the separate existence of these two named defendants as
4 entities distinct from each other will permit an abuse of the corporate privilege and would sanction a
5 fraud and/or would promote injustice.

6 9. At all times herein mentioned, the two Merck defendants were engaged in the business
7 of, or were successors in interest to, entities engaged in the business of researching, designing,
8 formulating, compounding, testing, manufacturing, producing, processing, assembling, inspecting,
9 distributing, marketing, labeling, promoting, packaging, prescribing and/or advertising for sale, and
10 selling products for use by patients such as Balasco, her parents and her medical providers. As such,
11 the two Merck defendants are each individually, as well as jointly and severally, liable to Balasco for
12 her damages.

13 10. The harm caused to Balasco resulted from the conduct of one or various combinations
14 of the two Merck defendants, and through no fault of Balasco. There may be uncertainty as to which
15 one or which combination of the two Merck defendants caused the harm. The two Merck defendants
16 have superior knowledge and information on the subject of which one or which combination of the
17 two defendants caused Balasco's injuries. Thus, the burden of proof should be upon each of the two
18 Merck defendants to prove that the defendant has not caused the harms Balasco has suffered. As
19 previously stated, the two named Merck defendants shall hereinafter and throughout this Complaint
20 be collectively referred to as "Merck."

21 11. Merck is the designer, manufacturer, labeler and promoter of the Gardasil and Gardasil-
22 9 vaccines, which are purported to be "cervical cancer vaccines" by preventing a handful of the
23 hundreds of strains of the Human Papillomavirus ("HPV"). Merck regularly conducts and transacts
24 business in Rhode Island and has promoted Gardasil to consumers, patients, hospitals, physicians,
25 nurses and medical professionals, including but not limited to Balasco, her parents and the medical
26 facility and medical professionals who prescribed and/or injected Balasco with Gardasil. This Court
27 has personal jurisdiction over Merck because defendants have sufficient minimum contacts with
28 Rhode Island to render the exercise of jurisdiction by this Court proper.

1 OF MEDICINE 1193 (2006); Aaron S. Kesselheim et al., *Role of Litigation in Defining Drug Risks*, 17
2 JAMA 308 (2007); Harlan M. Krumholz et al., *What We Have Learnt From Vioxx*, 334 BRITISH MED.
3 J. 120 (2007).

4 18. The British Medical Journal reported that internal documents and communications
5 obtained from Merck during litigation revealed that Merck scientists internally acknowledged the
6 existence of Vioxx's risks very early on: "Since the early development of [Vioxx], some scientists at
7 Merck were concerned that the drug might adversely affect the cardiovascular system ... In internal
8 emails made public through litigation, Merck officials sought to soften the academic authors'
9 interpretation [of the data]. The academic authors changed the manuscript at Merck's request [to
10 make less of the apparent risk] ..." Harlan M. Krumholz et al., *What We Have Learnt From Vioxx*,
11 334 BRITISH MED. J. 120 (2007). And, despite Merck's knowledge of the risk, Merck never
12 conducted the necessary studies designed to evaluate cardiovascular risk. *Id.*

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

23 20. It was also revealed and reported that, in order to control the public narrative that Vioxx
24 was safe and risk free, "Merck issued a relentless series of publications...complemented by numerous
25 papers in peer-reviewed medical literature by Merck employees and their consultants. The company
26 sponsored countless continuing medical 'education' symposiums at national meetings in an effort to
27 debunk the concern about adverse cardiovascular effects." Eric J. Topol, *Failing the Public Health –*
28 *Rofecoxib, Merck, and the FDA*, 351 NEW ENGLAND JOURNAL OF MEDICINE 1707 (2004). In addition,

1 Merck “selectively targeted doctors who raised questions about [Vioxx], going so far as pressuring
2 some of them through department chairs.” Harlan M. Krumholz et al., *What We Have Learnt From*
3 *Vioxx*, 334 BRITISH MED. J. 120 (2007). Dr. Topol, Chairman of the Department of Cardiovascular
4 Medicine at the Cleveland Clinic, commented: “Sadly, it is clear to me that Merck’s commercial
5 interest in [Vioxx] sales exceeded its concern about the drug’s potential cardiovascular toxicity.” Eric
6 J. Topol, *Failing the Public Health – Rofecoxib, Merck, and the FDA*, 351 NEW ENGLAND JOURNAL
7 OF MEDICINE 1707 (2004).

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

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

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

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

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

26 25. As outlined herein, in researching, developing, and marketing its new Holy Grail,
27 Gardasil, Merck engaged in the same unscrupulous tactics it had so infamously engaged in with
28 Vioxx.

29 26. Certain Merck employees, scientists and executives involved in the Vioxx scandal were

1 also involved with Gardasil, and it appears they employed the very same methods of manipulating
2 science and obscuring risks as they did with Vioxx.

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

5 28. As discussed more fully below, whether Gardasil prevents cancer (not to mention
6 lifetime immunity), is unproven. In fact, it may be more likely to cause cancer in those previously
7 exposed to HPV than to prevent it.

8 29. Moreover, Merck knows and actively conceals the fact that Gardasil can cause a
9 constellation of serious adverse reactions and gruesome diseases, including autoimmune diseases, and
10 deaths in some recipients.

11 30. As a result of Merck’s fraud, Gardasil today is wreaking havoc on a substantial swath of
12 an entire generation of children and young adults on a worldwide scale.

13 **A. Overview of the Human Papillomavirus**

14 31. Human Papillomavirus (“HPV”) is a viral infection that is passed between people
15 through skin-to-skin contact. There are more than 200 strains of HPV, and of those, more than 40
16 strains can be passed through sexual contact.

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

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

24 34. Approximately 12 to 18 of the over 200 strains of HPV are believed to be associated
25 with cervical cancer.

26 35. Not every HPV infection puts one at risk for cervical cancer. Only persistent HPV
27 infections – not short-term or transient infections or sequential infections with different HPV types –
28 in a limited number of cases with certain strains of the virus may cause the development of

1 precancerous lesions. These precancerous lesions are typically diagnosed through Pap smears and then
2 removed through medical procedures. However, when undiagnosed, they may in some cases progress
3 to cervical cancer in some women. Other risk factors, such as smoking, are also associated with
4 cervical cancer. *See* Antonio C. de Freitas et al., *Susceptibility to cervical cancer: An Overview*, 126
5 GYNCOLOGIC ONCOLOGY 305 (August 2012). Infection with certain types of HPV are also
6 associated with other diseases, such as genital warts.

7 36. Public health officials have long recommended the Pap test (also known as Pap Smear),
8 which detects abnormalities in cervical tissue, as the most effective frontline public health response to
9 the disease.

10 37. Since its introduction, cervical cancer screening through the Pap test has reduced the
11 rates of cervical cancer in developed countries by up to 80%. *Id.*

12 38. Incidences of cervical cancer have been declining dramatically worldwide as countries
13 have implemented Pap screening programs.

14 39. New cases of cervical cancer in the U.S. affect approximately 0.8% of women in their
15 lifetime. <https://seer.cancer.gov/statfacts/html/cervix.html>. For those who are diagnosed, cervical
16 cancer is largely treatable, with a five-year survival rate of over 90% when the cancer is caught early.
17 *See* Antonio C. de Freitas et al., *Susceptibility to cervical cancer: An Overview*, 126 GYNCOLOGIC
18 ONCOLOGY 305 (August 2012)

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

23 **B. Overview of the Gardasil Vaccine and Its Fast-Track Approval**

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

28 42. Under Food and Drug Administration ("FDA") requirements, to obtain approval for

1 marketing a vaccine, the manufacturer must conduct studies to test the effectiveness and safety of the
2 vaccine. Once FDA approval is obtained, the manufacturer has a duty to perform further scientific
3 and medical investigation as those of a reasonably prudent manufacturer and to engage in any
4 necessary post-marketing pharmacovigilance related to the product.

5 43. The FDA approved Gardasil on June 08, 2006, after granting Merck fast-track status
6 and speeding the approval process to a six-month period, leaving unanswered material questions
7 relating to its effectiveness and safety as well as when and to whom the Gardasil vaccine ought to be
8 administered.

9 44. Merck failed, during the preapproval processing period and thereafter, to disclose to the
10 FDA and/or the public, material facts and information relating to the effectiveness and safety of
11 Gardasil, as well as to whom the vaccine should or should not be administered.

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

16 46. In June 2006, after the FDA's fast-tracked review, Gardasil was approved for use in
17 females ages 9 through 26 for the purported prevention of cervical cancer and, almost immediately
18 thereafter, the Advisory Committee on Immunization Practices ("ACIP"), a committee within the
19 Centers for Disease Control ("CDC"), recommended Gardasil for routine vaccination of adolescent
20 girls ages 11 and 12 years old, but also allowing it to be administered to girls as young as 9 years old.

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

25 48. The FDA approved Gardasil 9 in December 2014 for use in girls ages 9 through 26 and
26 boys ages 9 through 15 for the purported prevention of cervical, vaginal, and anal cancers. Presently,
27 Gardasil 9 has been approved for and is being promoted by Merck to males and females who are
28 between 9 and 45 years of age, with an emphasis by Merck on marketing to pre-teen children and their

1 parents. With little evidence of efficacy, FDA also recently approved, on an accelerated basis,
2 Gardasil 9 for prevention of oropharyngeal and other head and neck cancers.

3 49. After the approval of the Gardasil 9 vaccine, the original Gardasil vaccine was phased
4 out of the US Market and the original Gardasil vaccine is no longer available for sale in the United
5 States.

6 50. According to data from the National Cancer Institute's ("NCI") Surveillance,
7 Epidemiology and End Results Program ("SEER"), the incidence of deaths from cervical cancer prior
8 to Gardasil's introduction in the United States had been steadily declining for years and, in 2006, was
9 2.4 per 100,000 women or approximately 1 in every 42,000 women. The currently available rate is
10 essentially unchanged, 2.2 per 100,000 women, based on data through 2017.

11 51. The median age of death from cervical cancer is 58, and teenage girls essentially have
12 zero risk of dying from cervical cancer.

13 52. Merck purchased fast-track review for Gardasil and Gardasil 9 under the Prescription
14 Drug User Fee Act (PDUFA). Fast-track is a process designed to facilitate the development, and
15 expedite the review of, drugs to treat serious conditions and fill an unmet medical need.

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

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

25 55. According to the FDA, whether a condition is "serious" depends on such factors as
26 "survival, day-to-day functioning, or the likelihood that the condition, if left untreated, will progress
27 from a less severe condition to a more serious one."

28 56. As previously discussed, over 90% of HPV infections and the majority of cervical

1 dysplasia resolve without intervention.

2 57. However, Merck presented misleading data to the FDA suggesting that CIN2 and CIN3
3 inexorably result in cancer.

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

6 59. Merck knows (and knew) that Gardasil and Gardasil 9 are far less effective than Pap
7 tests in preventing cervical cancer.

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

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

18 62. Julie Gerberding, then the Director of CDC, obligingly ushered the Gardasil vaccine
19 through CDC's regulatory process manifestly ignoring clear evidence that Gardasil's efficacy was
20 unproven and that the vaccine was potentially dangerous.

21 63. Merck, shortly thereafter, rewarded Gerberding by naming her President of Merck
22 Vaccines in 2010.

23 64. In addition to the revolving regulatory/industry door, wherein the Director of CDC who
24 approved the vaccine is subsequently employed by the manufacturer as a high-level executive to
25 oversee the commercial success of the vaccine she previously approved, it is also worth noting some
26 of the other conflicts of interest that exist within governmental agencies and with respect to their
27 employees. Scientists from the National Institute of Health (NIH), which is a division of the United
28 States Department of Health and Human Services (HHS), discovered a method of producing "virus-

1 like-particles” (VLPs) that made creation of the Gardasil vaccine possible. The NIH scientists’
2 method of producing VLPs was patented by the Office of Technology Transfer (OTT), which is part
3 of the NIH, and the licensing rights were sold to Merck (for manufacture of Gardasil). Not only does
4 the NIH (and, in effect, the HHS) receive royalties from sales of Gardasil, but the scientists whose
5 names appear on the vaccine patents can receive up to \$150,000 per year (in perpetuity).
6 Accordingly, the Gardasil patents have earned HHS, NIH and the scientists who invented the
7 technology millions of dollars in revenue.

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

14 **C. Merck Engaged in Disease Mongering and False Advertising to Enhance**
15 **Gardasil Sales**

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

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

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

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

28 70. Merck preceded its rollout of Gardasil with years of expensive disease awareness

1 marketing. Merck ran “Tell Someone” commercials, designed to strike fear in people about HPV and
2 cervical cancer – even ominously warning that you could have HPV and not know it. The
3 commercials could not mention Gardasil, which had not yet been approved by FDA, but did include
4 Merck’s logo and name. Critics of Merck’s pre-approval advertising and promotion called it
5 “deceptive and dishonest.” While Merck claims the promotion was part of public health education,
6 critics complained that this “education” was designed to sell Gardasil and build the market for the
7 vaccine. *See* Angela Zimm and Justin Blum, *Merck Promotes Cervical Cancer Shot by Publicizing*
8 *Viral Cause*, BLOOMBERG NEWS, May 26, 2006.

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

12 72. Merck also engaged in a relentless propaganda campaign aimed at frightening and
13 guiltning parents who failed to inoculate their children with Gardasil.

14 73. In addition to paid advertising, Merck worked with third parties to “seed” an obliging
15 media with terrifying stories about cervical cancer in preparation for Merck’s Gardasil launch.

16 74. Prior to the FDA’s 2006 approval of Gardasil, the mainstream media – under direction
17 of Merck and its agents – dutifully reported alarming cervical cancer stories, accompanied by the
18 promotion of an auspicious vaccine.

19 75. Merck intended its campaign to create fear and panic and a public consensus that “good
20 mothers vaccinate” their daughters with Gardasil. According to Merck propagandists, the only choice
21 was to “get the vaccine immediately” or “risk cervical cancer.”

22 76. Merck aggressively and fraudulently concealed the risks of the vaccine in broadcast
23 materials and in propaganda that it disseminated in the United States.

24 77. Merck sold and falsely promoted Gardasil knowing that, if consumers were fully
25 informed about Gardasil’s risks and dubious benefits, almost no one would have chosen to vaccinate.

26 78. Merck negligently and fraudulently deprived parents and children of their right to
27 informed consent.

28 79. One of Merck’s television campaigns, conducted in 2016, shamelessly used child actors

1 and actresses, implicitly dying of cancer, looking straight into the camera and asking their parents
2 whether or not they knew that the HPV vaccine could have protected them against the HPV virus that
3 caused them to develop their cancers. Each actor asked the following question: “Did you know?
4 Mom? Dad?” See “Mom, Dad, did you know?” commercial: [https://www.ispot.tv/ad/Ap1V/know-](https://www.ispot.tv/ad/Ap1V/know-hpv-hpv-vaccination)
5 [hpv-hpv-vaccination](https://www.ispot.tv/ad/Ap1V/know-hpv-hpv-vaccination). Merck spent \$41 million over two months on the campaign. The ads said
6 nothing about potential side effects. Merck also distributed pamphlets via U.S. mail to doctors ahead
7 of the ad’s release to encourage them to share it with their patients:



8
9
10
11
12
13
14
15
16
17 80. Merck’s fraudulent message was that cervical cancer was a real-life killer of young
18 women, notwithstanding the fact that the average age for development of cervical cancer is 50 years
19 old and, for cervical cancer, it is virtually nonexistent in women under age 20.

20 81. Other television marketing campaigns Merck launched (including advertising that
21 Balasco’s mother saw and relied upon in advance of consenting to her daughter’s Gardasil injection)
22 falsely proclaimed that Gardasil was a “cervical cancer vaccine” and that any young girl vaccinated
23 with Gardasil would become “one less” woman with cervical cancer. The “One Less” marketing
24 campaign portrayed Gardasil as if there was no question as to the vaccine’s efficacy in preventing
25 cervical cancer, and it disclosed none of Gardasil’s side effects.

26 82. Merck marketed Gardasil with the most aggressive campaign ever mounted to promote
27 any vaccine, spending more on Gardasil advertising than for any vaccine in history.

28 //

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

83. An ACIP recommendation of a vaccine, adopted by individual states, opens the door to mandates affecting as many as four million children annually.

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

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

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

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

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

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

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

1 91. WIG was one of dozens of “pay to play” lobby groups that Merck mobilized to push
2 HPV vaccine mandates.

3 92. Another group, the National Association of County and City Health Officials
4 (NACCHO), was also pushing HPV vaccine mandates in all 50 states.

5 93. To that end, Merck made large contributions to political campaigns and legislative
6 organizations. By February 2007, 24 states and the District of Columbia had introduced mandate
7 legislation.

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

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

13 96. Merck funneled almost \$92 million to Maryland’s Department of Health between 2012
14 and 2018 to promote Gardasil in Maryland schools, in a fraudulent campaign that paid school officials
15 to deliberately deceive children and parents into believing Gardasil was mandatory for school
16 attendance. Josh Mazer, *Maryland should be upfront about HPV vaccinations for children*, CAPITAL
17 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)
18 [20180814-story.html](https://www.capitalgazette.com/opinion/columns/ac-ce-column-mazer-20180814-story.html).

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

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

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

27 99. Among the allegedly independent organizations Merck recruited to push Gardasil were
28 the Immunization Coalition, the Allegheny County Board of Health, the Eye and Ear Foundation, the

1 Jewish Healthcare Foundation, the American Dental Association, the American College of
2 Obstetricians and Gynecologists, and the American Cancer Society.

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

6 100. Merck faced a daunting problem in convincing regulators, doctors, and the public to
7 accept the Gardasil vaccine.

8 101. Merck recommends the vaccine for girls aged 11-12 years old, to provide protection
9 against a disease that, in the United States, is not generally diagnosed until a median age of 50, and, in
10 those rare instances of death, the median age is 58.

11 102. There are no studies proving that Gardasil prevents cancer.

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

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

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

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

1 107. The Department of Health and Human Services (HHS), which oversees the FDA and
2 which also stood to make millions of dollars on the vaccine from patent royalties, allowed the use of
3 Merck's proposed surrogate endpoints.

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

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

8 110. At the time FDA approved the vaccine, Merck's research showed only that Gardasil
9 prevented certain lesions (the vast majority of which would have resolved on their own without
10 intervention) and genital warts – not cancer itself, and only for a few years.

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

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

17 113. Merck's marketers ignored this advice.

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

23 115. Merck's foundational theory that HPV alone causes cervical cancer, while dogmatically
24 asserted, is not proven.

25 116. Research indicates that cervical cancer is a multi-factor disease with persistent HPV
26 infections seeming to play a role, along with many other environmental and genetic factors, including
27 smoking cigarettes or exposure to other toxic smoke sources, long-term use of oral contraceptives,
28 nutritional deficiencies, multiple births (especially beginning at an early age), obesity, inflammation,

1 and other factors. Not all cervical cancer is associated with HPV types in the vaccines and not all
2 cervical cancer is associated with HPV at all.

3 117. Despite the lack of proof, Merck claimed that Gardasil could eliminate cervical cancer
4 and other HPV-associated cancers.

5 118. However, *Merck knows* that the Gardasil vaccines cannot eliminate all cervical cancer
6 or any other cancer that may be associated with HPV.

7 119. Even assuming the Gardasil vaccine is effective in preventing infection from the four to
8 nine vaccine-targeted HPV types, the results may be short term, not guaranteed, and ignore the 200 or
9 more other types of HPV not targeted by the vaccine, and some of which already have been associated
10 with cancer.

11 120. Even assuming these vaccine-targets are the types solely responsible for 100% of
12 cervical cancer – which they are not – the vaccines have not been followed long enough to prove that
13 Gardasil protects girls from cancers that would strike them forty years later.

14 121. Under Merck’s hypothetical theory, the reduction of pre-cancerous lesions should
15 translate to fewer cases of cervical cancer in thirty to forty years.

16 122. Cervical cancer takes decades to develop and there are no studies that prove the
17 Gardasil vaccines prevent cancer.

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

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

27 125. Gardasil has never been proven to prevent cervical or any other kind of cancer.

28 126. Yet Merck has marketed the Gardasil vaccines as if there is no question they are

1 preventative against cervical cancer. In reality, they are at best protective against only four to nine of
2 the over 200 strains of the human papillomavirus.

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

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

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

9 128. Aluminum is a potent neurotoxin that can result in very serious harm.

10 129. The original Gardasil vaccine contains 225 micrograms of AAHS and Gardasil 9
11 contains 500 micrograms of AAHS.

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

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

17 132. Peer-reviewed studies show that aluminum binds to non-vaccine proteins, including the
18 host’s own proteins, or to latent viruses, triggering autoimmune and other serious conditions. See
19 Darja Kanduc, *Peptide Cross-reactivity: The Original Sin of Vaccines*, 4 FRONTIERS IN BIOSCIENCE
20 1393 (June 2012).

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

27 //

28 //

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

1
2 134. Merck has repeatedly concealed or incorrectly identified Gardasil ingredients to the
3 FDA and the public.

4 135. Merck lied both to the FDA and the public about including a secret and potentially
5 hazardous ingredient, HPV LI-DNA fragments, in Gardasil. These DNA fragments could act as a
6 Toll-Like Receptor 9 (TLR9) agonist – further adjuvanting the vaccine and making it more potent.
7 Merck used this hidden adjuvant to prolong the immunological effects of the vaccine, but illegally
8 omitted it from its list of substances and ingredients in the vaccine.

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

13 137. On multiple occasions, Merck falsely represented to the FDA and others, including
14 regulators in other countries, that the Gardasil vaccine did not contain viral DNA, ignoring the DNA
15 fragments.

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

20 139. It is unlawful for vaccine manufacturers to use an experimental and undisclosed
21 adjuvant.

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

25 141. Tellingly, Merck entered into a business arrangement with Idera Pharmaceuticals in
26 2006 to explore DNA adjuvants to further develop and commercialize Idera's toll-like receptors in
27 Merck's vaccine program.

28 142. To this day, the Gardasil package inserts do not disclose that DNA fragments remain in

1 the vaccine.

2 143. Dr. Lee also found HPV DNA fragments from the Gardasil vaccine in post-mortem
3 spleen and blood samples taken from a young girl who died following the vaccine. *See Sin Hang Lee,*
4 *Detection of Human Papillomavirus L1 Gene DNA Fragments in Postmortem Blood and Spleen After*
5 *Gardasil Vaccination—A Case Report*, 3 *ADVANCES IN BIOSCIENCE AND BIOTECHNOLOGY* 1214
6 (December 2018)

7 144. Those fragments appear to have played a role in the teenager’s death.

8 145. The scientific literature suggests there are grave and little-understood risks attendant to
9 injecting DNA into the human body.

10 **iii. Gardasil Contains Borax**

11 146. Gardasil contains sodium borate (borax). Borax is a toxic chemical and may have long-
12 term toxic effects.

13 147. Merck has performed no studies to determine the impact of injecting borax into millions
14 of young children or adults.

15 148. Sodium borate is known to have adverse effects on male reproductive systems in rats,
16 mice, and dogs. Furthermore, borax causes increased fetal deaths, decreased fetal weight, and
17 increased fetal malformations in rats, mice, and rabbits.

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

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

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

24 **iv. Gardasil Contains Polysorbate 80**

25 152. Gardasil contains Polysorbate 80.

26 153. Polysorbate 80 crosses the blood-brain barrier.

27 154. Polysorbate 80 is used in drugs to open up the blood brain barrier in order to allow the
28 active ingredients in a drug to reach the brain and to elicit the intended response. It acts as an

1 emulsifier for molecules like AAHS and aluminum enabling those molecules to pass through resistive
2 cell membranes.

3 155. Polysorbate 80 is associated with many health injuries, including, anaphylaxis,
4 infertility and cardiac arrest.

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

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

10 157. Gardasil contains genetically modified yeast.

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

14 159. Study participants with yeast allergies were excluded from Gardasil clinical trials.

15 160. Merck has performed no studies to determine the safety of injecting yeast into millions
16 of children and young adults.

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

20 161. Merck engaged in wholesale fraud during its safety and efficacy clinical studies.

21 162. In order to obtain its Gardasil license, Merck designed its studies purposefully to
22 conceal adverse events and exaggerate efficacy.

23 163. Merck sold Gardasil to the public falsely claiming that pre-licensing safety tests proved
24 it to be effective and safe.

25 164. In fact, Merck's own pre-licensing studies showed Gardasil to be of doubtful efficacy
26 and dangerous.

27 165. The dishonesty in the clinical tests has led many physicians to recommend the
28 vaccination, under false assumptions.

166. The clinical trials clearly demonstrated that the risks of both Gardasil and Gardasil 9

1 vastly outweigh any proven or theoretical benefits.

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

5 168. Merck employed deceptive means to cover up injuries study group participants suffered.

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

14 170. Per the indexing study discussed above, Merck appears to have kept a number of its
15 clinical trial results secret. Moreover, it appears that Merck reported only those findings that support
16 its own agenda.

17 171. Three separate reviews of the Gardasil vaccine by the Cochrane Collaboration found
18 that the trial data were “largely inadequate.”

19 172. According to Dr. Tom Jefferson, “HPV [vaccine] harms have not been properly
20 studied.”

21 173. In 2019, numerous medical professionals published an article in the British Medical
22 Journal outlining the flaws and incomplete nature of the publications discussing Merck’s Gardasil
23 clinical trials. The authors issued a “call to action” for independent researchers to reanalyze or
24 “restore the reporting of multiple trials in Merck’s clinical development program for quadrivalent
25 human papillomavirus (HPV) vaccine (Gardasil) vaccine.” Peter Doshi et al., *Call to Action: RIAT
26 Restoration of Previously Unpublished Methodology in Gardasil Vaccine Trials*, 346 BRIT. MED. J.
27 2865 (2019). The authors explained that the highly influential publications of these studies, which
28 formed the basis of Gardasil’s FDA approval, “incompletely reported important methodological

1 details and inaccurately describe the formulation that the control arm received, necessitating
2 correction of the record.” *Id.* The authors explained that, while the publications claimed the clinical
3 trials of Gardasil were “placebo-controlled,” “participants in the control arm of these trials did not
4 receive an inert substance, such as saline injection. Instead, they received an injection containing
5 [AAHS], a proprietary adjuvant system that is used in Gardasil to boost immune response.” *Id.*

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

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

17 **i. Small Clinical Trials**

18 176. Although 9 to 12-year-olds are the primary target population for HPV vaccines, Merck
19 used only a small percentage of this age group in the clinical trials. Protocol 018 was the only
20 protocol comparing children receiving a vaccine to those who did not. In that study, Merck looked at
21 results of fewer than 1,000 children 12 and younger for a vaccine targeting billions of boys and girls
22 in that age group over time. In Protocol 018, 364 girls and 332 boys (696 children) were in the
23 vaccine cohort while 199 girls and 173 boys (372 children) received a non-aluminum control.

24 177. The small size of this trial means that it was incapable of ascertaining all injuries that
25 could occur as a result of the vaccine.

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

27 178. Instead of comparing health outcomes among volunteers in the Gardasil study group to
28 health outcomes among volunteers receiving an inert placebo, Merck purposefully used a highly toxic

1 placebo as a control in order to conceal Gardasil’s risks in all trials using comparators with the
2 exception of Protocol 018, where only 372 children received a non-saline placebo containing
3 everything in the vaccine except the adjuvant and antigen.

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

9 180. Merck deliberately used toxic “placebos” in the control group, in order to mask harms
10 caused by Gardasil to the study group.

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

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

15 183. Merck never safety tested AAHS before injecting it into thousands of girls and young
16 women in the control groups and the girls and young women were not told they could receive an
17 aluminum “placebo.” Merck told the girls that they would receive either the vaccine or a safe inert
18 placebo.

19 184. Merck violated rules and procedures governing clinical trials when it lied to the clinical
20 study volunteers, telling them that the placebo was an inert saline solution – when in reality the
21 placebo contained the highly neurotoxic aluminum adjuvant AAHS.

22 185. AAHS provoked terrible injuries and deaths in a number of the study participants when
23 Merck illegally dosed the control group volunteers with AAHS.

24 186. Since the injuries in the Gardasil group were replicated in the AAHS control group, this
25 scheme allowed Merck to falsely conclude that Gardasil’s safety profile was comparable to the
26 “placebo.”

27 187. The scheme worked and enabled Merck to secure FDA licensing.

28 188. Merck lied to FDA when it told public health officials that it had used a saline placebo

1 in Protocol 018.

2 189. There was no legitimate public health rationale for Merck’s failure to use a true saline
3 placebo control in the original Gardasil clinical trials. At that time, no other vaccine was yet licensed
4 for the four HPV strains Gardasil was intended to prevent.

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

7 **iii. Merck Used Exclusionary Criteria to Further Conceal Gardasil**
8 **Risks**

9 191. Merck also manipulated the Gardasil studies by excluding nearly half of the original
10 recruits to avoid revealing the effects of the vaccine on vulnerable populations.

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

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

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

19 195. Merck excluded anyone with serious medical conditions from the Gardasil clinical
20 trials, even though CDC recommends the Gardasil vaccine for everyone, regardless of whether or not
21 they suffer from a serious medical condition.

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

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

1 198. Instead of testing the vaccine on a population representative of the cross-section of
2 humans who would receive the approved vaccine, Merck selected robust, super-healthy trial
3 participants, who did not reflect the general population, in order to mask injurious effects on all the
4 vulnerable subgroups that now receive the vaccine. Therefore, the population tested in the clinical
5 trials was a much less vulnerable population than the population now receiving Gardasil.

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

9 199. Because Merck did not use a true placebo, determining which injuries were attributable
10 to the vaccine and which were attributable to unfortunate coincidence was entirely within the
11 discretion of Merck's paid researchers.

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

16 201. Merck's researchers systematically dismissed reports of serious adverse events from
17 49% of trial participants in order to mask the dangers of the vaccine.

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

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

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

28 205. Almost half (49%) of all trial participants, regardless of whether they received the
vaccine or Merck's toxic placebo, reported adverse events, including serious illnesses such as blood,

1 lymphatic, cardiac, gastrointestinal, immune, musculoskeletal, reproductive, neurological and
2 psychological conditions, chronic illnesses such as thyroiditis, arthritis and multiple sclerosis, and
3 conditions requiring surgeries. *See, e.g.,* Nancy B. Miller, *Clinical Review of Biologics License*
4 *Application for Human Papillomavirus 6, 11, 16, 18 LI Virus Like Particle Vaccine (S. cerevisiae)*
5 *(STN 125126 GARDASIL), manufactured by Merck, Inc.* at 393-94 (Table 302) (June 8, 2006).

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

8 206. Merck adopted multiple strategies to discourage test subjects from reporting injuries.

9 207. Merck provided Vaccination Report Cards to a limited number of trial participants. For
10 example, in Protocol 015, only approximately 10% of participants – all in the United States, despite
11 trial sites worldwide – received Vaccination Report Cards to memorialize reactions in the first few
12 days following injections.

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

17 209. Furthermore, Merck instructed those participants to record information for only 14 days
18 following the injection.

19 210. In this way, Merck foreclosed reporting injuries with longer incubation periods or
20 delayed diagnostic horizons.

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

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

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

1 214. Merck failed to provide the trial subjects a standardized questionnaire checklist of
2 symptoms, to document a comparison of pre- and post-inoculation symptoms.

3 215. To discourage its clinicians from reporting adverse events, Merck made the paperwork
4 reporting requirements for supervising clinicians, onerous and time-consuming, and refused to pay
5 investigators additional compensation for filling out the paperwork.

6 216. Thus, Merck disincentivized researchers from reviewing participants' medical records
7 even when the participant developed a "serious medical condition that meets the criteria for serious
8 adverse experiences" as described in the protocol.

9 217. Merck granted extraordinary discretion to its researchers to determine what constituted
10 a reportable adverse event, while incentivizing them to report nothing and to dismiss all injuries as
11 unrelated to the vaccine.

12 218. Merck used subpar, subjective data collection methods, relying on participants'
13 recollections and the biased viewpoints of its trial investigators.

14 219. Merck downplayed the incidence of serious injuries and used statistical gimmickry to
15 under-report entries.

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

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

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

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

3 223. When the FDA approved Gardasil, it described the Protocol 018 control as a “true
4 saline placebo.”

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

7 225. Merck told regulators that it gave a “saline placebo” to only one small group of
8 approximately 600 nine to fifteen-year-old children.

9 226. In fact, Merck did not give even this modest control group a true saline placebo, but
10 rather, they were given a shot containing “the carrier solution” – a witch’s brew of toxic substances
11 including polysorbate 80, sodium borate (borax), genetically modified yeast, L-histidine, and possibly
12 a fragmented DNA adjuvant.

13 227. The only components of Gardasil the control group did not receive were the HPV
14 antigens and the aluminum adjuvant.

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

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

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

1 girls in the carrier solution group reported autoimmune disease.

2 231. In order to further deceive the public and regulators, upon information and belief,
3 Merck cut the dose of aluminum adjuvant in half when it administered the vaccine to the nine to
4 fifteen-year-old children in its Protocol 018 study group.

5 232. As a result, this group showed significantly lower “new medical conditions” compared
6 to other protocols.

7 233. Upon information and belief, Merck pretended that the vaccinated children in the
8 Protocol 018 study group received the full dose adjuvant by obfuscating the change in formulation in
9 the description.

10 234. Upon information and belief, Merck had cut the adjuvant in half, knowing that this
11 would artificially and fraudulently lower the number of adverse events and create the illusion that the
12 vaccine was safe.

13 235. Upon information and belief, Merck lied about this fact to the FDA.

14 236. The data from that study therefore do not support the safety of the Gardasil formulation
15 since Merck was not testing Gardasil but a far less toxic formulation.

16 237. Upon information and belief, Merck was testing a product with only half the dose of
17 Gardasil’s most toxic component.

18 238. Upon information and belief, this is blatant scientific fraud, which continues to this day
19 because this is the study upon which current vaccine safety and long-term efficacy assurances are
20 based.

21 239. As set forth above, upon information and belief, Merck’s deception served its purpose:
22 Only 29% of the vaccinated children in Protocol 018 reported new illness, compared to an alarming
23 49.6% in the pooled group to receive the full dose adjuvant in the vaccine.

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

26 240. Gardasil’s label states, “Gardasil has not been evaluated for potential to cause
27 carcinogenicity or genotoxicity.” The Gardasil 9 label states: “GARDASIL9 has not been evaluated
28 for the potential to cause carcinogenicity, genotoxicity or impairment of male fertility.

1 241. Peer-reviewed studies, including CDC's own studies, have suggested that the
2 suppression of the HPV strains targeted by the Gardasil vaccine may actually open the ecological
3 niche for replacement by more virulent strains. See Fangjian Guo et al., *Comparison of HPV*
4 *prevalence between HPV-vaccinated and non-vaccinated young adult women (20–26 years)*, 11
5 HUMAN VACCINES & IMMUNOTHERAPEUTICS 2337 (October 2015); Sonja Fischer et al., *Shift in*
6 *prevalence of HPV types in cervical cytology specimens in the era of HPV vaccinations*, 12
7 ONCOLOGY LETTERS 601 (2016); J. Lyons-Weiler, *Biased Cochrane Report Ignores Flaws in HPV*
8 *Vaccine Studies, and Studies of HPV Type Replacement*, (May 18, 2018). In other words, Gardasil
9 may increase the chances of getting cancer.

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

12 243. Merck concealed from the public data from its clinical trials indicating that the vaccines
13 enhance the risk of cervical cancers in many women.

14 244. Merck's study showed that women exposed to HPV before being vaccinated were
15 44.6% more likely to develop cancerous lesions compared to unvaccinated women, even within a few
16 years of receiving the vaccine.

17 245. In other words, Merck's studies suggest that its HPV vaccines may cause cancer in
18 women who have previously been exposed to HPV, particularly if they also have a current infection.

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

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

26 248. Some clinical trial participants have developed cancer, including cervical cancer.

27 249. Numerous women have reported a sudden appearance of exceptionally aggressive
28 cervical cancers following vaccination.

1 250. Cervical cancer rates are climbing rapidly in all the countries where Gardasil has a high
2 uptake.

3 251. An Alabama study shows that the counties with the highest Gardasil uptakes also had
4 the highest cervical cancer rates.

5 252. After the introduction of HPV Vaccine in Britain, cervical cancer rates among young
6 women aged 25 to 29 has risen 54%.

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

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

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

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

23 257. The cervical screening is more cost effective than vaccination alone or vaccination with
24 screening.

25 258. Therefore, Pap tests, which detect cervical tissue abnormalities, and HPV DNA testing
26 are the most effective frontline public health response to cervical health.

27 //

28 //

J. Merck has Concealed the Fact that Gardasil Induces and Increases the Risk of Autoimmune Diseases, Including But Not Limited to, POTS, OI and Other Associated Injuries Such as Dysautonomia and Fibromyalgia

259. Gardasil induces and increases the risk of autoimmune disease.

260. Gardasil has been linked to a myriad of autoimmune disorders, including but not limited, to: Guillain–Barré syndrome (GBS), postural orthostatic tachycardia syndrome (POTS), Orthostatic Intolerance (OI), chronic inflammatory demyelinating polyneuropathy (CDIP), small fiber neuropathy (SNF), systemic lupus erythematosus (SLE), immune thrombocytopenic purpura (ITP), multiple sclerosis (MS), acute disseminated encephalomyelitis (ADEM), antiphospholipid syndrome (APS), transverse myelitis, rheumatoid arthritis, interconnective tissue disorder, autoimmune pancreatitis (AIP) and autoimmune hepatitis.

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

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

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

264. Indeed, even in animal studies, it has been revealed that aluminum adjuvants can induce

1 autoimmune disease in tested animals. As way of example, in a series of studies conducted by Lluís
2 Luján, DVM, Ph.D., and his colleagues, it was revealed that sheep injected with aluminum-containing
3 adjuvants commonly come down with severe autoimmune diseases and other adverse reactions.

4 265. Specific to the Gardasil vaccines, which contain adjuvants, including, amorphous
5 aluminum hydroxyphosphate sulfate (AAHS) and the previously undisclosed HPV L1 gene DNA
6 fragments, a number of mechanisms of action have been outlined (as discussed *infra*) as to how
7 Gardasil induces autoimmune disease in select patients.

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

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

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

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

1 270. In addition to “molecular mimicry,” other mechanisms of action that explain how
2 Gardasil can induce autoimmune disease are “epitope spreading,” whereby invading Gardasil
3 antigens, including the toxic aluminum adjuvant, accelerate autoimmune process by location
4 activation of antigen presenting cells and “bystander activation” wherein antigens and the aluminum
5 adjuvants in the Gardasil vaccine activate pre-primed autoreactive T cells, which can initiate
6 autoimmune disease (bystander activation of autoreactive immune T cells), or where virus-specific T
7 cells initiate bystander activation resulting in the immune system killing uninfected and unintended
8 neighboring cells.

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

22 272. Medical research has determined that certain dysautonomia diseases such as POTS and
23 OI have an autoimmune etiology. Norepinephrine, a key neurotransmitter of the sympathetic (“fight
24 of flight”) system, exerts its mechanism of action by binding to receptors located in the smooth
25 muscle of the blood vessels and various organs, including the heart. These receptors include alpha-1,
26 alpha-2, beta-1, beta-2 and beta-3 receptors and, as a group, are generally known as the adrenergic
27 receptors. The adrenergic receptors, and other receptors, including but not limited to, the ganglionic
28 and muscarinic acetylcholine receptors are believed to be affected in certain cases of POTS and OI.

1 See e.g., Hongliang Li et al., *Autoimmune Basis for Postural Tachycardia Syndrome*, 3 J. AMERICAN
 2 HEART ASSOC. e000755 (2014); Artur Fedorowski et al., *Antiadrenergic Autoimmunity in Postural*
 3 *Tachycardia Syndrome*, 19 EUROPACE 1211 (2017); Mohammed Ruzieh et al., *The Role of*
 4 *Autoantibodies in the Syndromes of Orthostatic Intolerance: A Systematic Review*, 51 SCANDINAVIAN
 5 CARDIOVASCULAR J. 243 (2017); Shu-ichi Ikeda et al., *Autoantibodies Against Autonomic Nerve*
 6 *Receptors in Adolescent Japanese Girls after Immunization with Human Papillomavirus Vaccine*, 2
 7 ANNALS OF ARTHRITIS AND CLINICAL RHEUMATOLOGY 1014 (2019); William T. Gunning, *Postural*
 8 *Orthostatic Tachycardia Syndrome is Associated With Elevated G-Protein Coupled Receptor*
 9 *Autoantibodies*, 8 J. AMERICAN HEART ASSOC. e013602 (2019).

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

1 *Related Conditions*, CLINICAL AUTONOMIC RESEARCH (2019).

2 274. In a 2017 review, Drs. Tom Jefferson and Lars Jørgensen criticized the European
3 Medicines Agency (EMA) for turning a blind eye to the debilitating autoimmune injuries, including
4 CRPS and POTS that young women had suffered following vaccination with HPV vaccine. Tom
5 Jefferson et al., *Human Papillomavirus Vaccines, Complex Regional Pain Syndrome, Postural*
6 *Orthostatic Tachycardia Syndrome, and Autonomic Dysfunction – A Review of the Regulatory*
7 *Evidence from the European Medicines Agency*, 3 INDIAN J. OF MED. ETHICS 30 (Jan. – March 2017).

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

26 276. Likewise, in a recently released February 2020 peer-reviewed study, researchers who
27 analyzed the available clinical trial data for all HPV vaccines, which include the Gardasil vaccines and
28 another HPV vaccine currently only available in Europe, concluded that “HPV vaccines increased

1 serious nervous disorders.” Lars Jørgensen et al., *Benefits and Harms of the Human Papillomavirus*
2 *(HPV) Vaccines: Systemic Review with Meta-Analyses of Trial Data from Clinical Study Reports*, 9
3 SYSTEMATIC REVIEWS 43 (February 2020).

4 277. In addition, Jørgensen and his co-authors observed that, in reanalyzing the association
5 between HPV vaccines and one specific autoimmune disease, postural orthostatic tachycardia
6 syndrome (POTS), the HPV vaccines were associated with a nearly two-fold increased risk of POTS.
7 *Id.*

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

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

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

24 **K. Merck has Concealed the Fact that Gardasil Increases the Risk of Fertility**
25 **Problems**

26 281. Merck has never tested the impact of the Gardasil vaccines on human fertility.

27 282. Nevertheless, study volunteers reported devastating impacts on human fertility during
28 combined trials, offering substantial evidence that the vaccine may be causing widespread impacts on

1 human fertility, including increases in miscarriage, birth defects, premature ovarian failure and
2 premature menopause in girls and young women.

3 283. One of the serious adverse events now emerging in vaccinated girls, including teens, is
4 premature ovarian failure. *See, e.g.,* D. T. Little and H. R. Ward, *Adolescent Premature Ovarian*
5 *Insufficiency Following Human Papillomavirus Vaccination: A Case Series Seen in General Practice,*
6 *JOURNAL OF INVESTIGATIVE MEDICINE HIGH IMPACT, Case Reports 1-12 (Oct.-Dec. 2014);* D. T. Little
7 and H. R. Ward, *Premature ovarian failure 3 years after menarche in a 16-year-old girl following*
8 *human papillomavirus vaccination, BMJ CASE REPORTS (September 30, 2012).*

9 284. Premature ovarian failure can occur after aluminum destroys the maturation process of
10 the eggs in the ovaries.

11 285. Fertility has plummeted among American women following the 2006 mass introduction
12 of the Gardasil vaccine. This is most evident in teen pregnancy statistics where numbers have more
13 than halved since 2007.

14 286. The total fertility rate for the United States in 2017 continued to dip below what is
15 needed for the population to replace itself, according to a report by the National Center of Health
16 Statistics issued in January 2019, and the rate for women 15-44 fell another 2% between 2017 and
17 2018.

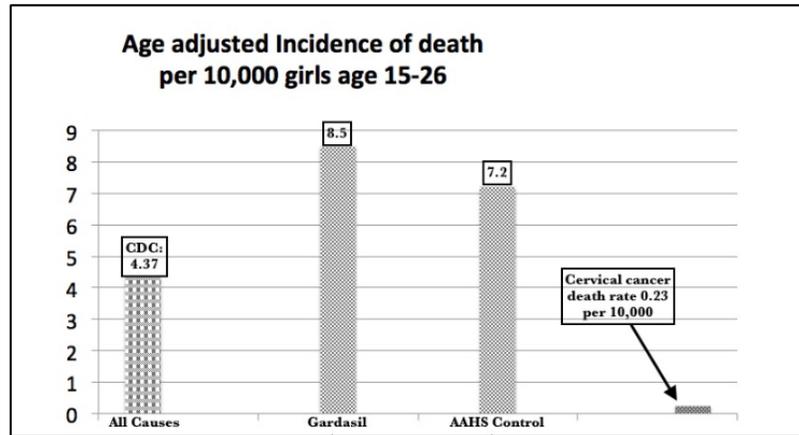
18 **L. There were an Increase Number of Deaths in the Gardasil Studies**

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

21 288. The average death rate in young women in the U.S. general population is 4.37 per
22 10,000. *See* Brady E. Hamilton et al., "Births: Provisional Data for 2016," *Vital Statistics Rapid*
23 *Release, Report No. 002, June 2017.*

24 289. The Gardasil pooled group had a death rate of 8.5 per 10,000, or almost double the
25 background rate in the U.S.

26
27
28



Background CDC rate 4.37 source: National Vital Statistics Report Vol. 53 2002 page 24.³⁷
 Gardasil rate 8.5: 10/11,778. AAHS control rate 7.2: 7/9,680³⁸
 Cervical cancer mortality: 2.3 per 100,000 source: National Cancer Institute SEER Cancer Statistics Review 2015³⁹

290. 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).

291. Merck dismissed all deaths as coincidences.

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

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

294. 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

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

296. Many Gardasil survivors will have lifelong handicaps.

297. 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, cervical cancer, sudden collapse, seizures, multiple sclerosis, strokes, heart palpitations, chronic

1 muscle pain, complex regional pain syndrome, and weakness.

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

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

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

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

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

21 303. Gardasil now has more reported injuries than any other vaccine.

22 304. As of December 2019, some 10% of the serious injuries reported to VAERS are
23 attributed to Gardasil and Gardasil 9.

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

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

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

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

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

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

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

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

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

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

27 313. Japanese researchers found that the adverse events rate of the HPV vaccine was as high
28 as 9%, and that pregnant women injected with the vaccine aborted or miscarried 30% of their babies.
See Ministry of Health, Labour and Welfare, Transcript "The Public Hearing on Adverse Events

1 following HPV vaccine in Japan,” February 26, 2014

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

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

7 316. Uptake rates for the vaccine in Japan are now under 1%, compared to 53.7% fully
8 vaccinated teenaged girls in the United States.

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

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

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

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

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

20 322. These were developments that Merck was extremely anxious to suppress.

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

26 **ii. Denmark Has Opened Specialized Clinics Specifically Focused on**
27 **Treating Gardasil-Induced Injuries, Including Gardasil-Induced**
28 **Autoimmune Diseases**

324. In March 2015, Denmark announced the opening of five new “HPV clinics” to treat

1 children injured by Gardasil vaccines. Over 1,300 cases flooded the HPV clinics shortly after
2 opening. See Zosia Chustecka, *Chronic Symptoms After HPV Vaccination: Danes Start Study*,
3 MEDSCAPE (November 13, 2015).

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

7 325. In Colombia, more than 800 girls in a single town of El Carmen de Bolivar reported
8 reactions ranging from fainting to dizziness and paralysis in March of 2014 following vaccination
9 with Gardasil.

10 326. With protests erupting across the country, the Colombian attorney general asked the
11 Constitutional Court to rule on a lower court ruling on the outcome of a case of an injured girl.

12 327. In 2017, in response to an unresolved case, Colombia's constitutional court, ruled that
13 the Colombian government could not infringe on the bodily integrity of its citizens. This decision
14 meant that the government could not consider the HPV vaccine to be mandatory.

15 **iv. India Halts Gardasil Trials and Accuses Merck of Corruption After**
16 **the Death of Several Young Girls Who were Participants in the Trial**

17 328. Seven girls died in the Gardasil trials in India coordinated by Merck and the Gates
18 Foundation. A report by the Indian Parliament accused the Gates Foundation and Merck of
19 conducting "a well-planned scheme to commercially exploit" the nation's poverty and powerlessness
20 and lack of education in rural India in order to push Gardasil. See 72nd Report on the *Alleged*
21 *Irregularities in the Conduct of Studies Using Human Papilloma Virus (HPV) Vaccine by Programme*
22 *for Appropriate Technology in Health (PATH) in India* (August 2013).

23 329. The report alleges that Merck (through PATH, to whom it supplied vaccines) and the
24 Gates Foundation resorted to subterfuge that jeopardized the health and well-being of thousands of
25 vulnerable Indian children. The parliamentary report makes clear that the clinical trials could not have
26 occurred without Merck corrupting India's leading health organizations. *Id.*

27 330. The Report accused PATH, which was in collaboration with Merck, of lying to illiterate
28 tribal girls to obtain informed consent, widespread forging of consent forms by Merck operatives,
offering financial inducements to participate, and providing grossly inadequate information about

1 potential risks. *Id.*

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

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

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

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

23 **O. Merck’s Fraud Has Paid Off Handsomely Resulting in Over \$3 Billion in**
24 **Gardasil Sales Annually**

25 335. Merck’s corruption and fraud in researching, testing, labeling, and promoting Gardasil
26 have paid off handsomely.

27 336. Presently, two doses of Gardasil 9 typically cost about \$450, plus the cost of two office
28 visits.

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

1 338. The HPV vaccine is the most expensive vaccine on the market.

2 339. Since approximately 1 in 42,000 American women die of cervical cancer annually, the
3 cost of avoiding a single death is over \$18 million, assuming the Gardasil vaccine is 100% effective.

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

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

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

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

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

12 **III. Julia Balasco Sustained Autoimmune Disease, Including Postural Orthostatic**
13 **Tachycardia Syndrome ("POTS"), Orthostatic Intolerance, Dysautonomia and**
14 **Other Serious Injuries, Including but Not Limited to, Fibromyalgia, as A Result of**
15 **Her Two Gardasil Injections**

16 **A. Gardasil and Its Ingredients Caused Balasco's Autoimmune Disease and Other**
17 **Related Injuries and Has Resulted in Her Suffering From Severe, Debilitating**
18 **and Painful Chronic Ailments**

19 345. Balasco was 13 years-old when she received her first shot of Gardasil on August 4,
20 2014 and her second Gardasil shot on October 16, 2014.

21 346. Balasco's mother, Michaela Balasco, agreed to her daughter receiving the Gardasil
22 injections after having been exposed to years of relentless online, in print and television marketing by
23 Merck, that Gardasil is very safe, that Gardasil prevents cancer and that good mothers must vaccinate
24 their teenage daughters with the Gardasil vaccine. Balasco's mother relied upon Merck's ubiquitous
25 representations concerning the safety and efficacy of the Gardasil vaccine, in consenting to her
26 daughter's Gardasil vaccination.

27 347. On August 4, 2014, during a routine physical examination as part of eligibility to be a
28 Pop Warner Cheerleader, Balasco's family doctor, Dr. Budio Thomas, in Barrington, Rhode Island,
recommended that Balasco receive the Gardasil vaccine, which he stated was a safe and effective
vaccine for preventing cervical cancer. In light of the doctor's recommendations, as well as Merck's

1 relentless marketing and advertising messages, to which Balasco's mother had been exposed
2 concerning the safety and efficacy of Gardasil, Balasco's mother, consented to her daughter being
3 injected with the "cervical cancer vaccine," Gardasil.

4 348. Prior to receiving her Gardasil injections, Balasco had no autoimmune diseases, no
5 autonomic issues and no orthostatis. She was a normal and healthy child, energetic, a good student
6 and had a resolute love for cheerleading.

7 349. Immediately following her initial Gardasil injections in August 2014, Balasco began
8 experiencing flu-like symptoms, including achiness, headache, nausea, and fever. Shortly thereafter
9 she began experiencing ear pressure, tinnitus, and headaches. After her second shot of Gardasil in
10 October 2014, Balasco again had the same transitory flu-like symptoms but continued to have more
11 frequent (almost daily) chronic headaches, ear pains and also started experiencing dizziness. She also
12 started to tire easily and experienced body aches and muscle weakness. Soon thereafter she began
13 experiencing migraines, postural dizziness, and vertigo.

14 350. In light of these post-Gardasil symptoms, Balasco's mother in consultation and with the
15 agreement of Balasco's doctor, did not consent to Balasco receiving a third shot of Gardasil.

16 351. As the months progressed, so did Balasco injuries. She was seen by multiple physicians
17 and specialist for her complaints which now included: pressure in her ears as if something is moving
18 inside her ear; lack of balance; tinnitus; vestibular migraines; dizziness; headaches; presyncope,
19 vasovagal syncope, nausea; vision issues; muscle weakness; joint pain; extreme fatigue; sleep
20 disturbance; gastrointestinal issues; diarrhea; lump in her breast (fibroadenoma); dermatographism
21 and hives.

22 352. As a result of her post-Gardasil symptoms, Balasco was unable to engage in normal
23 activities that a teenager would enjoy. She no longer could participate in cheerleading in the same
24 manner she used to prior to her Gardasil injections, her physical activities declined, she was constantly
25 tired, dizzy, fatigued or in pain, she missed a substantial amount of school and had to complete the
26 majority of her high school classes via on-line courses as she could not physically attend school in a
27 normal fashion due to her deteriorated medical condition.

28 353. Studies, including serum samples from November 2016, demonstrated that Balasco had

1 tested positive for the anti-alpha-1 adrenergic antibodies, anti-beta-2 adrenergic antibodies and the
2 anti-muscarinic cholinergic receptor 4 antibodies. The alpha-1 and beta-2 receptors are some of the
3 same receptors that play a role in POTS and OI and are linked to muscle and blood vessel contraction,
4 heart rate, heart excitability and the force of heart contraction, and as previously discussed, medical
5 research has demonstrated that certain POTS and OI patients have autoantibodies to these receptors
6 thus confirming the autoimmune etiology of these diseases. *See e.g.*, Hongliang Li et al.,
7 *Autoimmune Basis for Postural Tachycardia Syndrome*, 3 J. AMERICAN HEART ASSOC. e000755
8 (2014); Artur Fedorowski et al., *Antiadrenergic Autoimmunity in Postural Tachycardia Syndrome*, 19
9 EUROPACE 1211 (2017); Mohammed Ruzieh et al., *The Role of Autoantibodies in the Syndromes of*
10 *Orthostatic Intolerance: A Systematic Review*, 51 SCANDINAVIAN CARDIOVASCULAR J. 243 (2017);
11 Shu-ichi Ikeda et al., *Autoantibodies Against Autonomic Nerve Receptors in Adolescent Japanese*
12 *Girls after Immunization with Human Papillomavirus Vaccine*, 2 ANNALS OF ARTHRITIS AND
13 CLINICAL RHEUMATOLOGY 1014 (2019).

14 354. Based upon her chronic and severe post-Gardasil symptoms and adverse events as
15 outlined above and the tests performed by her medical provider, Balasco has been diagnosed with
16 various medical conditions, including but not limited to, fibromyalgia, orthostatic intolerance (“OI”)
17 and/or postural orthostatic tachycardia syndrome (POTS).

18 355. As previously discussed, the medical literature has documented other patients who, like
19 Balasco, have suffered serious autonomic dysfunctions, fibromyalgia-like symptoms and who
20 experienced the same side effects as those Balasco has suffered, and who were diagnosed with
21 Gardasil-induced autonomic diseases including POTS or OI, and other diagnoses such as
22 fibromyalgia. *See* Svetlana Blitshetyn, *Postural Tachycardia Syndrome After Vaccination with*
23 *Gardasil*, 17 EUROPEAN J. OF NEUROLOGY e52 (2010); Svetlana Blitshetyn, *Postural Tachycardia*
24 *Syndrome Following Human Papillomavirus Vaccination*, 21 EUROPEAN J. OF NEUROLOGY 135
25 (2014); Tomomi Kinoshita et al., *Peripheral Sympathetic Nerve Dysfunction in Adolescent Japanese*
26 *Girls Following Immunization With Human Papillomavirus Vaccine*, 53 INTERNAL MEDICINE 2185
27 (2014); Louise S. Brinth et al., *Orthostatic Intolerance and Postural Tachycardia Syndrome As*
28 *Suspected Adverse Effects of Vaccination Against Human Papilloma Virus*, 33 VACCINE 2602 (2015);

1 Manuel Martinez-Lavin et al., *HPV Vaccination Syndrome. A Questionnaire Based Study*, 34 J.
 2 CLINICAL RHEUMATOLOGY 1981 (2015); Louise S. Brinth et al., *Is Chronic Fatigue*
 3 *Syndrome/Myalgic Encephalomyelitis a Relevant Diagnosis in Patients with Suspected Side Effects to*
 4 *Human Papilloma Virus Vaccine*, 1 INT. J. OF VACCINE & VACCINATION 3 (2015); Jill R. Schofield et
 5 al., *Autoimmunity, Autonomic Neuropathy, and HPV Vaccination, A Vulnerable Subpopulation*,
 6 CLINICAL PEDIATRICS (2017); Rebecca E. Chandler et al., *Current Safety Concerns With Human*
 7 *Papillomavirus Vaccine: A Cluster Analysis of Reports in VigiBase*, 40 DRUG SAFETY 81 (2017);
 8 Svetlana Blitshetyn et al., *Autonomic Dysfunction and HPV Immunization An Overview*,
 9 IMMUNOLOGIC RESEARCH (2018); and Svetlana Blitshetyn, *Human Papilloma Virus (HPV) Vaccine*
 10 *Safety Concerning POTS, CRPS and Related Conditions*, CLINICAL AUTONOMIC RESEARCH (2019);
 11 Lars Jørgensen et al., *Benefits and Harms of the Human Papillomavirus (HPV) Vaccines: Systemic*
 12 *Review with Meta-Analyses of Trial Data from Clinical Study Reports*, 9 SYSTEMATIC REVIEWS 43
 13 (February 2020).

14 356. Balasco contends that her two injections of Gardasil, individually or in combination,
 15 caused her to develop serious and debilitating autoimmune disease, including but not limited to POTS,
 16 OI, as well as a constellation of adverse symptoms, complications, injuries such as fibromyalgia, and
 17 other adverse events, many of which are alleged herein and all of which were caused by Gardasil or
 18 otherwise linked to her Gardasil-induced autoimmune disorder.

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

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

1 358. Title 42, Section 300aa-16 (c) further states: “If a petition is filed under section 300aa-
2 11 of this title for a vaccine-related injury or death, limitations of actions under State law shall be
3 stayed with respect to a civil action brought for such injury or death for the period beginning on the
4 date the Petition is filed and ending on the date...an election is made under section 300aa-21(a) of this
5 title to file the civil action ...” *See* 42 U.S.C. §§ 300aa–16(c).

6 359. In full compliance with the aforementioned federal law, Balasco, while still a minor,
7 duly filed her petition with the U.S. Court of Federal Claims seeking compensation for her Gardasil
8 vaccine-related injuries under the National Vaccine Injury Compensation Program. A judgement
9 thereon was rendered on or about March 17, 2020 and Balasco duly filed her election to file a civil
10 action on April 13, 2020.

11 360. Having complied with National Vaccine Injury Compensation Program administrative
12 procedure and having duly filed her election to proceed with a civil action, Balasco hereby timely
13 initiates the instant action against Merck, the manufacturer, designer and promoter of the Gardasil
14 vaccines which caused her debilitating injuries, including her autoimmune disease. Through this civil
15 action, Balasco seeks to hold Merck accountable for its negligent, reckless, and fraudulent conduct
16 and she seeks full compensation from Merck for the physical and emotional injuries and harms she
17 sustained as a result of Gardasil. Moreover, by engaging in conduct that Merck knew was unsafe and
18 likely to injure patients and by placing Gardasil’s profits ahead of patient safety, Merck has engaged
19 in the same fraudulent and evil conduct it engaged in with respect to Vioxx. Balasco, therefore,
20 requests that exemplary damages be assessed against Merck, so as to, once again, attempt to deter
21 Merck and other would-be defendants from engaging in similar reprehensible conduct.

22 **CAUSES OF ACTION**

23 **COUNT ONE**

24 **NEGLIGENCE**

25 361. Balasco incorporates by reference all other paragraphs of this Complaint as if fully set
26 forth herein and further alleges:

27 362. Merck is the researcher, designer, manufacturer, labeler, and promoter of the Gardasil
28 and the subsequent Gardasil 9 vaccines.

1 363. Merck marketed Gardasil to patients, including pre-teen girls such as Balasco, her
2 parents and her medical providers.

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

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

13 366. At all times relevant to this litigation, Merck knew or, in the exercise of reasonable care,
14 should have known of the hazards and dangers of Gardasil and specifically, the serious, debilitating
15 and potentially fatal adverse events associated with Gardasil, including but not limited to autoimmune
16 diseases (including, but not limited to, POTS and OI), fibromyalgia, fertility complications, increased
17 risk of cancer (including cervical cancer, which was the very cancer it was promoted as preventing)
18 and death.

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

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

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

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

8 371. Merck failed to appropriately and adequately test the safety and efficacy of Gardasil and
9 its individual ingredients and adjuvants.

10 372. Despite the ability and means to investigate, study, and test its products and to provide
11 adequate warnings, Merck has failed to do so. Indeed, Merck has wrongfully concealed information
12 and has further made false and/or misleading statements concerning the safety and efficacy of
13 Gardasil.

14 373. Merck's negligence is outlined in detail in this Complaint and included, among others:

- 15 a) Manufacturing, producing, promoting, creating, researching, labeling, selling,
16 and/or distributing Gardasil without thorough and adequate pre-and post-market
17 testing and studies;
- 18 b) Manufacturing, producing, promoting, researching, labeling, selling, and/or
19 distributing Gardasil while negligently and intentionally concealing and failing
20 to accurately and adequately disclose the results of the trials, tests, and studies of
21 Gardasil, and, consequently, the lack of efficacy and risk of serious harm
22 associated with Gardasil;
- 23 c) Failing to undertake sufficient studies and conduct necessary tests to determine
24 the safety of the ingredients and/or adjuvants contained within Gardasil, and the
25 propensity of these ingredients to render Gardasil toxic, increase the toxicity of
26 Gardasil, whether these ingredients are carcinogenic or associated with
27 autoimmune diseases and other injures;
- 28

- 1 d) Negligently designing and conducting its clinical trials so as to prevent the
2 clinical trials from revealing the true risks, including but not limited to, long
3 terms risks and risks of autoimmune diseases associated with Gardasil;
- 4 e) Negligently designing and conducting its clinical trials so as to mask the true
5 risks, including but not limited to, long terms risks and risks of autoimmune
6 diseases and cancers associated with Gardasil;
- 7 f) Failing to test Gardasil against a true inert placebo and lying to the public that
8 Gardasil was tested against a placebo, when in reality, all, or nearly all, studies
9 used a toxic placebo that included the aluminum adjuvant AAHS;
- 10 g) Failing to have a sufficient number of studies for the targeted patient population
11 which included pre-teen girls (and boys) between the ages of 9 and 12;
- 12 h) Not using the commercial dosage (and instead using a lower dosage of the
13 adjuvant and ingredients) in one of the key clinical trials used to obtain licensing
14 for the commercial dosage of Gardasil;
- 15 i) Using restrictive exclusionary criteria in the clinical study patient population
16 (including for example excluding anyone who had prior abnormal Pap tests, who
17 had a history of immunological or nervous system disorders or was allergic to
18 aluminum or other ingredients), but then not revealing or warning about these
19 exclusionary criteria in the label and knowing that, for most of these ingredients
20 and allergies, there are limited resources for the public to test for such allergies
21 in advance of being vaccinated;
- 22 j) Negligently designing and conducting its trials so as to create the illusion of
23 efficacy when in reality the Gardasil Vaccines *have not* been shown to be
24 effective against preventing cervical cancer;
- 25 k) Failing to use reasonable and prudent care in the research, manufacture, labeling
26 and development of Gardasil so as to avoid the risk of serious harm associated
27 with the prevalent use of Gardasil;
- 28 l) Failing to provide adequate instructions, guidelines, warnings, and safety

1 precautions to those persons who Merck could reasonably foresee would use
2 and/or be exposed to Gardasil;

3 m) Failing to disclose to Balasco, her parents, her medical providers and to the
4 general public that Gardasil is ineffective when used in patients who have
5 previously been exposed to HPV, and also failing to disclose that Gardasil
6 actually increases the risk of cervical cancer, including in any child or patient
7 who has previously been exposed to HPV;

8 n) Failing to disclose to Balasco, her parents, her medical providers and to the
9 general public that use of and exposure to Gardasil presents severe risks of
10 cancer (including cervical cancer, the very cancer it is promoted as preventing),
11 fertility problems, autoimmune diseases and other grave illnesses as alleged
12 herein;

13 o) Failing to disclose to Balasco, her parents, her medical providers and to the
14 general public that use of and exposure to Gardasil presents severe risks of
15 triggering and increasing the risk of various autoimmune diseases, including but
16 not limited to POTS and OI;

17 p) Failing to disclose to Balasco, her parents, her medical providers and to the
18 general public that, contrary to Merck's promotion of the vaccine, Gardasil has
19 not been shown to be effective at preventing cervical cancer and that the safest
20 and most effective means of monitoring and combating cervical cancer is
21 regular testing, including Pap tests;

22 q) Representing that Gardasil was safe and effective for its intended use when, in
23 fact, Merck knew or should have known the vaccine was not safe and not
24 effective for its intended use;

25 r) Falsely advertising, marketing, and recommending the use of Gardasil, while
26 concealing and failing to disclose or warn of the dangers Merck knew to be
27 associated with or caused by the use of Gardasil;

28 s) Falsely promoting Gardasil as preventing cervical cancer when Merck knows

1 that it has not done any studies to demonstrate that Gardasil prevents cervical
2 cancer and, indeed, its clinical studies revealed that Gardasil actually increases
3 the risk of cervical cancer;

4 t) Engaging in false advertising and disease mongering by scaring parents and
5 children into believing that cervical cancer is far more prevalent than it really is;
6 that all cervical cancer was linked to HPV; that Gardasil prevented cervical
7 cancer, when in reality none of these representations were true as cervical cancer
8 rates were declining in the United States due to Pap testing and Gardasil has not
9 been shown to prevent against all strains of HPV that are associated with
10 cervical cancer and, indeed, it has never been shown to prevent cervical cancer;

11 u) Failing to disclose all of the ingredients in Gardasil, including but not limited to
12 the fact that Gardasil contains dangerous HPV L1-DNA fragments and that
13 these DNA fragments could act as a Toll-Like Receptor 9 (TLR9) agonist –
14 further adjuvanting the vaccine and making it more potent and dangerous;

15 v) Declining to make any changes to Gardasil’s labeling or other promotional
16 materials that would alert consumers and the general public of the true risks and
17 defects of Gardasil;

18 w) Systemically suppressing or downplaying contrary evidence about the risks,
19 incidence, and prevalence of the side effects of the Gardasil Vaccines by, inter
20 alia, orchestrating the retraction of peer-reviewed and published studies and
21 vilifying and attempting to ruin the careers of any scientists who openly question
22 Gardasil’s safety and efficacy.

23 374. Merck knew and/or should have known that it was foreseeable that patients, such as
24 Balasco, would suffer injuries as a result of Merck’s failure to exercise ordinary care in the
25 manufacturing, marketing, labeling, distribution, and sale of Gardasil.

26 375. Balasco and her parents, and upon information and belief, her medical providers, did
27 not know the true nature and extent of the injuries that could result from the intended use of and/or
28 exposure to Gardasil or its adjuvants and ingredients.

1 376. Merck's negligence was the proximate cause of the injuries, harm, and economic losses
2 that Balasco suffered, and will continue to suffer, as described herein.

3 377. 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 with
6 Gardasil to medical providers, patients and the public, then upon information and belief, Balasco's
7 medical providers would not have offered or recommended Gardasil to Balasco. Moreover, even if
8 after Merck's dissemination of truthful information concerning the true risks and efficacy limitation of
9 Gardasil, Balasco's medical providers had offered Gardasil, then upon information and belief, the
10 providers would have heeded any warnings issued by Merck and relayed to Balasco and her mother
11 the safety risks and efficacy limitations that Merck should have warned them about, but failed to do
12 so. Had Balasco and her mother been informed of the true risks and efficacy limitation concerning
13 Gardasil, either through her medical providers or through Merck's ubiquitous direct-to-consumer
14 promotional marketing, on which Balasco's mother relied, then neither Balasco nor her mother would
15 have consented to Balasco being injected with Gardasil.

16 378. 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, Balasco has
18 suffered and continues to suffer severe and permanent physical injuries, including her autoimmune
19 disease and associated symptomology and has suffered severe and permanent emotional injuries,
20 including pain and suffering. Balasco also has a substantial fear of suffering additional and ongoing
21 harms, including but not limited to now being at an increased risk of cancer, fertility problems and
22 future symptoms and harms associated with her autoimmune disease as a result of her exposure to
23 Gardasil.

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

28 380. Merck's conduct, as described above, was aggravated, outrageous and evil. Merck

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

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

12 **COUNT TWO**

13 **STRICT LIABILITY**

14 **(FAILURE TO WARN)**

15 382. Balasco incorporates by reference all other paragraphs of this Complaint as if fully set
16 forth herein, and further alleges:

17 383. Balasco brings this strict liability claim against Merck for failure to warn.

18 384. 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 Balasco, because it
21 does not contain adequate warnings or instructions concerning the dangerous characteristics of
22 Gardasil and its ingredients and adjuvants. These actions were under the ultimate control and
23 supervision of Merck.

24 385. Merck researched, developed, designed, tested, manufactured, inspected, labeled,
25 distributed, marketed, promoted, sold, and otherwise released into the stream of commerce Gardasil,
26 and in the course of same, directly advertised or marketed the vaccine to consumers and end users,
27 including Balasco, her parents and medical providers, and Merck therefore had a duty to warn of the
28 risks associated with the reasonably foreseeable uses of Gardasil and a duty to instruct on the proper,

1 safe use of these products.

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

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

11 388. At all times relevant to this litigation, Merck failed to properly investigate, study,
12 research, test, manufacture, label or promote Gardasil. Merck also failed to minimize the dangers to
13 children, patients, and consumers of Gardasil products and to those who would foreseeably use or be
14 harmed by Gardasil, including Balasco.

15 389. Despite the fact that Merck knew or should have known that Gardasil posed a grave and
16 unreasonable risk of harm (including but not limited to increased risk of autoimmune disease,
17 including POTS, OI, increased risks of cervical cancer, fibromyalgia, and fertility problems), it failed
18 to warn of the risks associated with Gardasil. The dangerous propensities of Gardasil and the
19 carcinogenic characteristics and autoimmune-inducing characteristics of Gardasil, as described in this
20 Complaint, were known to Merck, or scientifically knowable to Merck through appropriate research
21 and testing by known methods, at the time it distributed, supplied, or sold Gardasil, and not known to
22 end users and consumers, such as Balasco, her parents and medical providers.

23 390. Merck knew or should have known that Gardasil and its ingredients and adjuvants
24 created significant risks of serious bodily harm to children and patients, as alleged herein, and Merck
25 failed to adequately warn patients, parents, medical providers and reasonably foreseeable users of the
26 risks and lack of efficacy of Gardasil. Merck has wrongfully concealed information concerning
27 Gardasil's dangerous nature and lack of efficacy and has further made false and misleading statements
28 concerning the safety and efficacy of Gardasil.

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

5 391. Balasco was injected with Gardasil in its intended or reasonably foreseeable manner
6 without knowledge of its unreasonable dangerous and inefficacious characteristics.

7 392. Balasco could not have reasonably discovered the defects and risks associated with
8 Gardasil before or at the time of her injections. Balasco and her parents relied upon the skill, superior
9 knowledge, and judgment of Merck.

10 393. Merck knew or should have known that the warnings disseminated with Gardasil were
11 inadequate, and failed to communicate adequate information concerning the true risks and lack of
12 efficacy of Gardasil and failed to communicate warnings and instructions that were appropriate and
13 adequate to render the products safe for their ordinary, intended, and reasonably foreseeable uses,
14 including injection in pre-teen girls.

15 394. The information that Merck did provide or communicate failed to contain relevant
16 warnings, hazards, and precautions that would have enabled patients, parents of patients and the
17 medical providers of patients to properly utilize, recommend or consent to the utilization of Gardasil.
18 Instead, Merck disseminated information that was inaccurate, false, and misleading and which failed
19 to communicate accurately or adequately the lack of efficacy, comparative severity, duration, and
20 extent of the serious risk of injuries associated Gardasil; continued to aggressively promote the
21 efficacy and safety of its products, even after it knew or should have known of Gardasil's
22 unreasonable risks and lack of efficacy; and concealed, downplayed, or otherwise suppressed, through
23 aggressive marketing and promotion, any information or research about the risks, defects and dangers
24 of Gardasil.

25 395. To this day, Merck has failed to adequately and accurately warn of the true risks of
26 Balasco's injuries, including but not limited to, fibromyalgia, and autoimmune diseases, including
27 POTS and OI, associated with the use of and exposure to Gardasil, and has failed to warn of the
28 additional risks that Balasco is now exposed to, including, but not limited to, the increased risk of

1 cancer, fertility problems and other potential side effects and ailments.

2 396. As a result of Merck's failure to warn and false promotion, Gardasil is and was
3 defective and unreasonably dangerous when it left the possession and/or control of Merck, was
4 distributed by Merck, and used by Balasco.

5 397. Merck is liable to Balasco for injuries caused by its failure, as described above, to
6 provide adequate warnings or other clinically relevant information and data regarding Gardasil, the
7 lack of efficacy and serious risks associated with Gardasil and its ingredients and adjuvants.

8 398. The defects in Merck's Gardasil vaccine were substantial and contributing factors in
9 causing Balasco's injuries, and, but for Merck's misconduct and omissions and Gardasil's defects,
10 including its defective labeling and false promotion, Balasco would not have sustained her injuries
11 which she has sustained to date, and would not have been exposed to the additional prospective risk
12 and dangers that are associated with Gardasil.

13 399. Had Merck via its labeling, advertisements and promotions provided adequate and
14 truthful warnings and properly disclosed and disseminated the true risks, limitations and lack of
15 efficacy associated with Gardasil to medical providers, patients and the public, then upon information
16 and belief, Balasco's medical providers would not have offered or recommended Gardasil to Balasco.
17 Moreover, even if after Merck's dissemination of truthful information concerning the true risks and
18 efficacy limitation of Gardasil, Balasco's medical providers had offered Gardasil, then upon
19 information and belief, the providers would have heeded any warnings issued by Merck and relayed to
20 Balasco and her mother the safety risks and efficacy limitations that Merck should have warned them
21 about, but failed to do so. Had Balasco and her mother been informed of the true risks and efficacy
22 limitation concerning Gardasil, either by her medical providers or via Merck's ubiquitous direct-to-
23 consumer promotional marketing, on which her mother relied, then neither Balasco nor her mother
24 would have consented to Balasco being injected with Gardasil.

25 400. As a proximate result of Merck's wrongful acts and omissions and its defective labeling
26 and false promotion concerning the safety and efficacy of Gardasil, Balasco has suffered and
27 continues to suffer severe and permanent physical injuries, including, but not limited to, her
28 autoimmune disease and associated symptomology and has suffered severe and permanent emotional

1 injuries, including pain and suffering. Balasco also has a substantial fear of suffering additional and
2 ongoing harms, including but not limited to now being at an increased risk of cancer, fertility
3 problems and future symptoms and harms associated with her autoimmune disease as a result of her
4 exposure to Gardasil.

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

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

17 403. WHEREFORE, Balasco requests that the Court enter judgment in her favor for
18 compensatory and punitive damages, together with interest, costs herein incurred, attorney's fees, and
19 all such other and further relief as this Court deems just and proper. Balasco also demands a jury trial
20 on the issues contained herein.

21 **COUNT THREE**

22 **STRICT LIABILITY**

23 **(MANUFACTURING DEFECT)**

24 404. Balasco incorporates by reference all other paragraphs of this Complaint as if fully set
25 forth herein, and further alleges:

26 405. Balasco brings this strict liability claim against Merck for manufacturing defect.

27 406. At all times relevant to this litigation, Merck engaged in the business of researching,
28 testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting

1 Gardasil, which is defective and unreasonably dangerous to consumers, including Balasco, because of
2 manufacturing defects, which patients, including Balasco, her parents and her medical providers did
3 not expect.

4 407. Upon information and belief, the Gardasil vaccines injected into Balasco were defective
5 and unreasonably dangerous because they failed to comply with manufacturing specifications required
6 by the governing manufacturing protocols and also required by the regulatory agencies, including but
7 not limited to the FDA, by among other things, containing ingredients and toxins that were not
8 disclosed in the FDA-approved specifications and/or otherwise not disclosed in the package insert.

9 408. Upon information and belief, and as way of example, the Gardasil injected into Balasco
10 was defective and unreasonably dangerous because it failed to comply with the approved
11 manufacturing specifications, by containing dangerous and undisclosed HPV L1-DNA fragments, and
12 these DNA fragments could act as a Toll-Like Receptor 9 (TLR9) agonist, further adjuvanting the
13 vaccine and making it more potent and dangerous than intended.

14 409. Upon information and belief, and as way of example, the Gardasil injected into Balasco
15 was defective and unreasonably dangerous because it failed to comply with the approved
16 manufacturing specifications, by containing dangerous and undisclosed ingredients and neurotoxins,
17 including but not limited to, phenylmethylsulfonyl fluoride (PMSF), a toxic nerve agent that is not
18 intended for human consumption or injection.

19 410. 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 Balasco, without substantial change in their condition as designed,
22 manufactured, sold, distributed, labeled, and marketed by Merck.

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

25 412. Balasco, her parents and her medical providers could not reasonably have discovered
26 the defects, including the manufacturing defects, and risks associated with Gardasil before or at the
27 time of her injections. Balasco and her parents relied upon the skill, superior knowledge, and
28 judgment of Merck.

1 413. Merck is liable to Balasco for injuries caused as a result of its manufacturing defects.

2 414. The defects in Merck's Gardasil vaccine were substantial and contributing factors in
3 causing Balasco's injuries, and, but for Merck's misconduct and omissions and Gardasil's defects,
4 including but not limited to its manufacturing defects, Balasco would not have sustained the injuries
5 she has sustained to date, and would not have been exposed to the additional prospective risk and
6 dangers associated with Gardasil.

7 415. As a proximate result of Merck's wrongful acts and omissions and Gardasil's
8 manufacturing defects, Balasco has suffered and continues to suffer severe and permanent physical
9 injuries, including her autoimmune disease and associated symptomology and has suffered severe and
10 permanent emotional injuries, including pain and suffering. Balasco also has a substantial fear of
11 suffering additional and ongoing harms, including but not limited to now being at an increased risk of
12 cancer, fertility problems and future symptoms and harms associated with her autoimmune disease as
13 a result of her exposure to Gardasil.

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

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

26 418. WHEREFORE, Balasco requests that the Court enter judgment in her favor for
27 compensatory and punitive damages, together with interest, costs herein incurred, attorney's fees, and
28

1 all such other and further relief as this Court deems just and proper. Balasco also demands a jury trial
2 on the issues contained herein.

3 **COUNT FOUR**

4 **BREACH OF EXPRESS WARRANTY**

5 419. Balasco incorporates by reference all other paragraphs of this Complaint as if fully set
6 forth herein, and further alleges:

7 420. Merck engaged in the business of testing, researching, developing, designing,
8 manufacturing, labeling, marketing, selling, distributing, and promoting Gardasil, which is defective
9 and unreasonably dangerous to consumers, including Balasco.

10 421. At all times relevant to this litigation, Merck expressly represented and warranted
11 through statements made in its Gardasil label, publications, television advertisements, billboards, print
12 advertisements, online advertisements and website, and other written materials intended for
13 consumers, patients, parents of minor-aged patients, medical providers and the general public, that
14 Gardasil was safe and effective at preventing cancer. Merck advertised, labeled, marketed, and
15 promoted Gardasil, representing the quality to consumers, patients, medical providers and the public
16 in such a way as to induce their purchase or use, thereby making an express warranty that Gardasil
17 would conform to the representations.

18 422. These express representations included incomplete warnings and instructions that
19 purport, but fail, to include the complete array of risks associated with Gardasil. Merck knew and/or
20 should have known that the risks expressly included in Gardasil's promotional material and labels did
21 not and do not accurately or adequately set forth the risks of developing the serious injuries
22 complained of herein. Nevertheless, Merck falsely and expressly represented that Gardasil was "safe"
23 for use by individuals such as Balasco, and/or that Gardasil was "effective" in preventing cervical
24 cancer and that any young girl who was vaccinated with Gardasil would be "one less" woman with
25 cervical cancer.

26 423. The representations about Gardasil, as set forth herein, contained or constituted
27 affirmations of fact or promises made by the seller to the buyer, which related to the goods and
28

1 became part of the basis of the bargain, creating an express warranty that the goods would conform to
2 the representations.

3 424. Merck breached these warranties because, among other things, Gardasil is ineffective at
4 preventing cervical cancer, defective, dangerous, unfit for use, and is associated with a myriad of
5 dangerous and undisclosed risks, including, but not limited to, the risk of autoimmune disease,
6 including POTS, the risk of developing cervical cancer (even though Merck promoted it as
7 preventing cervical cancer), OI, fibromyalgia and the risk of fertility problems for young girls.

8 Specifically, Merck breached the warranties in the following ways:

- 9 a) Representing to patients and the medical community, including Balasco, her
10 parents and her medical providers that Gardasil is effective in preventing
11 cervical cancer, when Merck knew that contrary to these representations (i) no
12 clinical studies were performed to test if Gardasil prevents cervical cancer; (ii)
13 the clinical studies confirmed that Gardasil is indeed ineffective when used in
14 patients who have previously been exposed to HPV, and that Gardasil actually
15 increases the risk of cervical cancer in any child or patient who has been
16 previously exposed to HPV; and (iii) there are safer and more effective methods
17 of monitoring for and attempting to prevent cervical cancer, including but not
18 limited to regular testing, such as regular Pap smears.
- 19 b) Representing to patients and the medical community, including Balasco, her
20 parents and her medical providers that Gardasil is safe, when in reality, Gardasil
21 causes and presents serious risks of cancer (including cervical cancer, the very
22 cancer it is promoted as preventing), fertility problems, autoimmune disease,
23 including but not limited to POTS, and other grave illnesses;
- 24 c) Engaging in false advertising and disease mongering by scaring parents and
25 children into believing that cervical cancer is far more prevalent than it really is;
26 that all cervical cancer was linked to HPV; that Gardasil prevented cervical
27 cancer, when in reality none of these representations were true as cervical cancer
28 rates were declining in the United States due to Pap testing and Gardasil has not

1 been shown to prevent against all strains of HPV that are associated with
2 cervical cancer and indeed it has never been shown to prevent cervical cancer.

3 425. Merck had sole access to material facts concerning the nature of the risks and defects
4 associated with Gardasil as expressly stated within its promotional material and labels, and Merck
5 knew that patients and users such as Balasco, her parents and her medical providers could not have
6 reasonably discovered the truth about the inefficacies and serious risks associated with Gardasil as
7 alleged herein.

8 426. Balasco and her parents had no knowledge of the falsity or incompleteness of Merck's
9 statements and representations concerning Gardasil.

10 427. Balasco's mother was exposed to and relied upon the ubiquitous promotional material
11 and representations Merck made in its direct-to-consumer advertisements and marketing materials
12 concerning the safety and efficacy of Gardasil, including: that Gardasil prevents cervical cancer and
13 cervical cancer is prevalent (even though children rarely get cervical cancer and Pap tests are the best
14 frontline defense in detecting and fighting cervical cancer); that "good mothers" vaccinate their
15 children and that Gardasil is perfectly safe; that, if her daughter received the Gardasil vaccine, her
16 daughter would become "one less" woman with cervical cancer; however, had Merck in these
17 advertisements not engaged in disease mongering and deception, but instead had informed her the
18 truth about the serious risks of Gardasil (as outlined in this Complaint) and its lack of efficacy, she
19 would never have consented to her minor daughter being injected with Gardasil.

20 428. As a proximate result of Merck's wrongful acts and omissions and its breaches of
21 warranties concerning the safety and efficacy of Gardasil, Balasco has suffered and continues to suffer
22 severe and permanent physical injuries, including her autoimmune disease and associated
23 symptomology and has suffered severe and permanent emotional injuries, including pain and
24 suffering. Balasco also has a substantial fear of suffering additional and ongoing harms, including but
25 not limited now to being at an increased risk of cancer, fertility problems and future symptoms and
26 harms associated with her autoimmune disease as a result of her exposure to Gardasil.

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

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

3 430. Merck's conduct, as described above, was aggravated, outrageous and evil. Merck
4 regularly risks the lives of children, including Balasco, with full knowledge of the limited efficacy of
5 Gardasil and the severe and sometimes fatal dangers of Gardasil. Merck has made conscious
6 decisions to not warn, or inform the unsuspecting public, including Balasco, her parents and her
7 medical providers. Merck's conduct, including its false promotion and false warranties concerning
8 the safety and efficacy of Gardasil and its failure to issue appropriate warnings concerning the severe
9 risks of Gardasil, created a substantial risk of significant harm to children and patients who were being
10 injected with Gardasil, and therefore warrants an award of punitive damages.

11 431. WHEREFORE, Balasco requests that the Court enter judgment in her favor for
12 compensatory and punitive damages, together with interest, costs herein incurred, attorney's fees, and
13 all such other and further relief as this Court deems just and proper. Balasco also demands a jury trial
14 on the issues contained herein.

15 **COUNT FIVE**

16 **COMMON LAW FRAUD**

17 432. Balasco incorporates by reference all other paragraphs of this Complaint as if fully set
18 forth herein, and further alleges:

19 433. Merck is the researcher, designer, manufacturer, labeler, and promoter of Gardasil.

20 434. Merck marketed Gardasil to and for the benefit of patients, including pre-teen girls such
21 as Balasco, her parents and her medical providers.

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

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

27 437. At all times relevant to this litigation, Merck knew or should have known of the hazards
28 and dangers of Gardasil and specifically, the serious, debilitating and potentially fatal adverse events

1 associated with Gardasil, including but not limited to autoimmune diseases (including, but not limited
2 to, POTS), fibromyalgia, OI, fertility complications, increased risk of cancer (including cervical
3 cancer, which was the very cancer it was promoted as preventing) and death.

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

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

12 440. These express representations included incomplete warnings and instructions that
13 purport, but fail, to include the complete array of risks associated with Gardasil. As way of example
14 Merck's marketing material, including its "One Less" television and print advertisement campaign
15 (including but not limited to Gardasil posters in medical facilities and doctors' offices), which
16 Balasco's mother saw and on which she relied, stated that Gardasil was safe for young girls, that
17 Gardasil was effective in preventing cervical cancer, that Gardasil was a "cervical cancer vaccine"
18 and that any young girl who was vaccinated with Gardasil would be "one less" woman with cervical
19 cancer. The only safety warnings Merck provided in these marketing materials was that a patient
20 could get pain, swelling or redness at injection site, fever, and/or nausea.

21 441. The ubiquitous nature of these Gardasil commercials and the Gardasil marketing
22 campaign gave the impression that cervical cancer was on the rise and more prevalent than it actually
23 was, and that all good mothers vaccinate their daughters with the "cervical cancer vaccine." The
24 marketing was indeed designed to make mothers feel guilty if they did not vaccinate their children.
25 One such Gardasil print campaign Merck ran stated in colorful bold and all caps letters: "Your
26 daughter can't possibly know the importance of a cervical cancer vaccine, but thankfully, she has her
27 mother." And, another print campaign in similar bold and all caps letters proclaimed: "The power to
28 help prevent cervical cancer is in your hands and on your daughter's arm."

1 442. Merck knew or should have known that the risks expressly included in Gardasil’s
2 promotional material and labels did not and do not accurately or adequately set forth the true and
3 complete risks of developing the serious injuries that are associated with Gardasil, as previously
4 alleged herein, and which include but are not limited to, autoimmune diseases (including, but not
5 limited to, POTS), fibromyalgia, OI, fertility complications, increased risk of cancer (including
6 cervical cancer, which was the very cancer it was promoted as preventing) and death.

7 443. The same promises of efficacy and limited and incomplete warnings Merck relayed in
8 its direct-to-consumer advertising, were what Balasco’s medical providers relayed to her when they
9 recommended Gardasil – i.e., that Gardasil prevents cervical cancer and the only risks associated with
10 Gardasil are soreness, redness, swelling and itching at the injection site and that a fever may develop.

11 444. Balasco’s mother had been exposed to Merck’s marketing material concerning Gardasil,
12 including the aforementioned “One Less” marketing campaign and other print advertisements and
13 posters at doctors’ offices, and the representations made by Merck therein that Gardasil is effective at
14 preventing cervical cancer, that Gardasil is safe and that its only side-effects are essentially minor
15 injection site pain and swelling and the possible onset of a fever or nausea. Prior to providing consent
16 to inject Balasco with the Gardasil vaccine, Balasco and her mother were never informed by Merck,
17 or anyone else, that Gardasil is linked to a host of serious debilitating and chronic adverse events
18 including, autoimmune diseases (including, but not limited to, POTS), fibromyalgia, fertility
19 complications, increased risk of cancer (including cervical cancer, which was the very cancer it was
20 promoted as preventing) and death.

21 445. Prior to providing consent to inject Balasco with the Gardasil vaccine, Balasco and her
22 mother were never informed by Merck, or anyone else, that Merck had not conducted the proper
23 testing necessary to demonstrate the efficacy and full safety of Gardasil.

24 446. Prior to providing consent to inject Balasco with the Gardasil vaccine, Balasco and her
25 mother were never informed by Merck, or anyone else, that Merck had, as alleged herein, manipulated
26 its clinical studies to mask and conceal the adverse events associated with Gardasil.

27 447. Prior to providing consent to inject Balasco with the Gardasil vaccine, Balasco and her
28 mother were never informed by Merck, or anyone else, that the Gardasil clinical trials never

1 established that Gardasil can prevent cervical cancer, even though Merck in its promotional material
2 to Balasco's mother falsely represented that Gardasil was a "cervical cancer vaccine" and that a child
3 who received Gardasil would become "one less" woman to get cervical cancer.

4 448. Merck's representations were false, because in truth, Gardasil has not been proven to
5 prevent cervical cancer and is associated with a myriad of dangerous and undisclosed risks, including,
6 but not limited to, the risk of autoimmune disease, including POTS, fibromyalgia, OI, the risk of
7 developing cervical cancer (even though Merck falsely promoted Gardasil as preventing cervical
8 cancer) and the risk of fertility problems for young girls. The false representations Merck made to the
9 children, the parents of children, the medical community, including to Balasco and her mother,
10 included:

- 11 a) that Gardasil is effective in preventing cervical cancer for all young girls, when
12 Merck knew that, contrary to these representations (i) no clinical studies were
13 performed to test whether Gardasil prevents cervical cancer; and (ii) the clinical
14 studies confirmed that Gardasil is indeed ineffective when used in patients who
15 have previously been exposed to HPV, and that Gardasil actually increases the
16 risk of cervical cancer in any child or patient who has been previously exposed
17 to HPV;
- 18 b) that Gardasil is safe, when in reality, Gardasil causes and presents severe risks
19 of cancer (including cervical cancer, the very cancer it is promoted as
20 preventing), fertility problems, autoimmune disease, including POTS, OI and
21 other grave illnesses;
- 22 c) false advertising and disease mongering by scaring parents (including Balasco's
23 mother) into believing that cervical cancer was far more prevalent than it really
24 was; that Gardasil prevented cervical cancer; and that Gardasil only had risks of
25 injection site pain and fever, when in reality none of these representations were
26 true as cervical cancer rates were declining in the United States due to Pap
27 testing and Gardasil has not been shown to prevent cervical cancer and indeed
28 some studies demonstrated that it actually increased the risk of cervical cancer;

1 and Gardasil was linked to a host of serious, chronic and sometimes fatal
2 diseases, including autoimmune diseases, as previously outlined in this
3 Complaint.

4 449. These representations and other similar representations were made by Merck to the
5 public, including to Balasco and her mother, with the intent that girls and mothers of young girls
6 would either seek out Gardasil from their medical providers or otherwise would provide their consent
7 when they were offered Gardasil.

8 450. At the time they provided their consent to the Gardasil injection, Balasco and her
9 mother were not aware of the falsity of Merck's aforementioned representations concerning the safety
10 and efficacy of Gardasil.

11 451. Balasco's mother reasonably and justifiably relied upon the truth of the assurance made
12 by Merck in its direct to consumer marketing concerning the efficacy and safety of Gardasil (which
13 were also echoed by Balasco's medical providers), when she provided her consent to have her
14 daughter, Julia Balasco, injected with the Gardasil vaccine.

15 452. Had Merck's advertisements and promotional material, which Merck targeted to young
16 girls and the parents of young girls, and which Balasco's mother received and on which she relied,
17 provided complete and truthful warnings and properly disclosed and disseminated the true risks,
18 limitations and lack of efficacy associated with Gardasil, then neither Balasco nor her mother would
19 have consented to Balasco being injected with Gardasil.

20 453. Merck also engaged in a number of additional fraudulent activities that led to regulators,
21 medical providers (upon information and belief, including but not limited Balasco's medical
22 providers), and the general public (including directly and/or indirectly Balasco and her mother) into
23 being duped believing that Gardasil is safe and effective. These fraudulent acts are outlined in greater
24 detail in the preceding paragraphs of this Complaint, and included, among others:

25 d) Failing to test Gardasil against a true inert placebo and lying to the public that
26 Gardasil was tested against a placebo, when in reality, all, or nearly all, studies
27 used a toxic placebo that included the dangerous aluminum adjuvant AAHS.
28

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

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

24 455. Balasco and her mother could not reasonably have discovered the falsity of Merck's
25 representations, the fraudulent nature of Merck's conduct and the defects and risks associated with
26 Gardasil before or at the time of her injections. Balasco and her parents relied upon the skill, superior
27 knowledge, and judgment of Merck, the manufacturer, labeler, and promoter of Gardasil and they
28

1 detrimentally relied upon Merck's fraudulent, false, and misleading statements, omissions, and
2 conduct.

3 456. As a proximate result of Merck's fraudulent, false, and misleading statements,
4 omissions, and conduct concerning the safety and efficacy of Gardasil, Balasco has suffered and
5 continues to suffer severe and permanent physical injuries, including autoimmune disease and
6 associated symptomology and has suffered severe and permanent emotional injuries, including pain
7 and suffering. Balasco also has a substantial fear of suffering additional and ongoing harms, including
8 but not limited to now being at an increased risk of cancer, fertility problems and future symptoms
9 and harms associated with her autoimmune disease as a result of her exposure to Gardasil.

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

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

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

COUNT SIX

VIOLATION OF RHODE ISLAND’S DECEPTIVE TRADE PRACTICES ACT

1
2
3 460. Balasco incorporates by reference all other paragraphs of this Complaint as if fully set
4 forth herein, and further alleges:

5 461. Balasco is a “person” within the meaning of the Rhode Island Deceptive Trade
6 Practices Act (DTPA). *See* 6 R.I. Gen. Laws Ann. § 6-13.1-1, et seq.

7 462. Merck widely advertised and promoted Gardasil as a safe and effective vaccine that had
8 no serious side effects.

9 463. Yet, contrary to its above referenced false claims concerning the safety and efficacy of
10 Gardasil, Merck knew, or should have known, that Gardasil was ineffective, unreasonably dangerous
11 and defective, and had a propensity to cause serious and life-threatening side effects, including but not
12 limited to autoimmune diseases and other grave injuries.

13 464. The false, deceptive, and misleading actions, statements, and representations made by
14 Merck, as alleged in this Complaint, are unlawful practices and acts within the meaning of the DTPA.
15 *See e.g.*, 6 R.I. Gen. Laws Ann. § 6-13.1-1(6); and § 6-13.1-2.

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

21 466. Balasco and her parents had no knowledge of the falsity or incompleteness of Merck’s
22 statements and representations concerning Gardasil.

23 467. Balasco’s mother was exposed to and relied upon the ubiquitous promotional material
24 and representations Merck made in its direct-to-consumer advertisements and marketing materials
25 concerning the safety and efficacy of Gardasil, including: that Gardasil prevents cervical cancer and
26 cervical cancer is prevalent (even though children rarely get cervical cancer and Pap tests are the best
27 frontline defense in detecting and fighting cervical cancer); that “good mothers” vaccinate their
28 children and that Gardasil is perfectly safe; that, if her daughter received the Gardasil vaccine, her

1 daughter would become “one less” woman with cervical cancer; however, had Merck in these
2 advertisements not engaged in disease mongering and deception, but instead had informed her the
3 truth about the serious risks of Gardasil (as outlined in this Complaint) and its lack of efficacy, she
4 would never have consented to her minor daughter being injected with Gardasil

5 468. Balasco and her parents relied upon the skill, superior knowledge, and judgment of
6 Merck, the manufacturer, labeler, and promoter of Gardasil and they detrimentally relied upon
7 Merck’s fraudulent, false, and misleading statements, omissions, and conduct.

8 469. Had Merck, via its labeling, advertisements and promotions provided adequate and
9 truthful warnings and properly disclosed and disseminated the true risks, limitations and lack of
10 efficacy associated with Gardasil to medical providers, patients and the public, then upon information
11 and belief, Balasco’s medical providers would not have offered or recommended Gardasil to Balasco.
12 Moreover, even if after Merck’s dissemination of truthful information concerning Gardasil’s true risks
13 and efficacy limitations, Balasco’s medical providers had offered Gardasil, then upon information and
14 belief, the providers would have heeded any warnings issued by Merck and relayed to Balasco and her
15 mother the safety risks and efficacy limitations that Merck should have warned them about, but failed
16 to do so. Had Balasco and her mother been informed of Gardasil’s true risks and efficacy limitations,
17 either by her medical providers or via Merck’s ubiquitous direct-to-consumer promotional marketing,
18 on which Balasco’s mother relied, then neither Balasco nor her mother would have consented to
19 Balasco being injected with Gardasil.

20 470. As a proximate result of Merck’s fraudulent, false, and misleading statements,
21 omissions, and conduct concerning the safety and efficacy of Gardasil, Balasco has suffered and
22 continues to suffer severe and permanent physical injuries, including autoimmune disease and
23 associated symptomology and has suffered severe and permanent emotional injuries, including pain
24 and suffering. Balasco also has a substantial fear of suffering additional and ongoing harms, including
25 but not limited to now being at an increased risk of cancer, fertility problems and future symptoms
26 and harms associated with her autoimmune disease as a result of her exposure to Gardasil.

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

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

3 472. Merck's conduct, as described above, was aggravated, outrageous and evil. Merck
4 regularly risks the lives of children, including Balasco, with full knowledge of the limited efficacy of
5 Gardasil and the severe and sometimes fatal dangers of Gardasil. Merck has made conscious
6 decisions to not warn, or inform the unsuspecting public, including Balasco, her parents and her
7 medical providers. Merck's conduct, including its false promotion of Gardasil and its failure to issue
8 appropriate warnings concerning the severe risks of Gardasil, created a substantial risk of significant
9 harm to children and patients who were being injected with Gardasil, and therefore warrants an award
10 of punitive damages.

11 473. WHEREFORE, Balasco requests that the Court enter judgment in her favor for
12 compensatory, actual, statutory, and/or punitive damages, together with interest, costs herein incurred,
13 attorney's fees, and all such other and further relief as this Court deems just and proper. Balasco also
14 requests that the Court issue an injunction prohibiting Merck from continuing its false advertising and
15 unlawful acts and practices concerning Gardasil and to grant any other preliminary or permanent
16 equitable relief as deemed appropriate. Balasco also demands a jury trial on all jury triable issues
17 contained herein.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, Julia Balasco, requests that the Court enter judgment in her favor
20 and against Merck & Co., Inc., and Merck, Sharp and Dohme Corporation (collectively "Merck") as
21 to all causes of action, and awarding as follows:

- 22 A. For compensatory damages, in an amount exceeding this Court's jurisdictional
23 minimum and to be proven at trial;
- 24 B. For economic and non-economic damages in an amount to be proven at trial;
- 25 C. For medical, incidental, hospital, psychological and other expenses in an amount to be
26 proven at trial;
- 27 D. For loss of earnings and earnings capacity, in an amount to be proven at trial;
- 28 E. For an award of pre-judgment and post-judgment interest as provided by law;

- 1 F. For exemplary and punitive damages against Merck;
2 G. For preliminary and/or permanent injunctive relief;
3 H. For an award providing for payment of reasonable attorneys' fees, court costs, and other
4 litigation expenses as permitted by law;
5 I. For such other and further relief as this Honorable Court may deem just and proper.

6 **DEMAND FOR JURY TRIAL**

7 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff, Julia Balasco, hereby
8 demands a jury trial on *all* of her claims, causes of action and issues that are triable by jury.

9
10 Dated: August 18, 2020

HULTQUIST LAW, P.C.

11
12 By: /s/ Christopher E. Hultquist
13 Christopher E. Hultquist
hultquistlaw@gmail.com
14 56 Pine Street, Suite 200
Providence, Rhode Island 02903
15 Telephone: (401) 383-6650
Facsimile: (401) 274-2780

16 Bijan Esfandiari (*Pro Hac Vice* to be filed)
besfandiari@baumhedlundlaw.com
17 Michael L. Baum (*Pro Hac Vice* to be filed)
mbaum@baumhedlundlaw.com
18 Nicole K.H. Maldonado (*Pro Hac Vice* to be filed)
nmaldonado@baumhedlundlaw.com
19 **BAUM, HEDLUND, ARISTEI, & GOLDMAN,**
P.C.
20 10940 Wilshire Blvd., 17th Floor
21 Los Angeles, CA 90024
22 Telephone: (310) 207-3233
23 Facsimile: (310) 820-7444

24 **Robert F. Kennedy, Jr.** (*Pro Hac Vice* to be filed)
robert.kennedyjr@childrenshealthdefense.org
25 Children's Health Defense
26 1227 N Peachtree Parkway
Suite 202
27 Peachtree City, GA 30269
Telephone: (845) 481-2622

28 *Attorneys for Plaintiff*