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**Motion for pro hac vice admission to be filed*

SUSAN A. POZNANOVICH,

Plaintiff,

vs.

ASTRAZENECA PHARMACEUTICALS LP, ASTRAZENECA LP, ASTRA USA, INC., KBI SUB INC., ZENECA, INC., ASTRA USA HOLDINGS CORPORATION, ASTRAZENECA, AB, ASTRAZENECA, PLC, and ASTRAZENECA, UK LIMITED,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, ~~HUNTERDON~~
COUNTY

L-396-11

Civil Action

COMPLAINT AND JURY DEMAND

Plaintiff, SUSAN A. POZNANOVICH (alternatively referred to as "Plaintiff"), residing in the state of Illinois, by and through her attorneys PARKER WAICHMAN ALONSO LLP, hereby sue defendants ASTRAZENECA PHARMACEUTICALS LP, ASTRAZENECA LP, ASTRA USA, INC., KBI SUB INC., ZENECA, INC., ASTRA USA HOLDINGS CORPORATION, ASTRAZENECA, AB, ASTRAZENECA, PLC, and ASTRAZENECA, UK LIMITED, (alternatively referred to as "DEFENDANTS"), and as and for her Complaint alleges, upon information and belief and based on the investigation to date of counsel, as follows:

JURISDICTION AND VENUE

1. This is an action for damages that exceeds the jurisdictional limits of the Court.

2. Venue in this action properly lies in Hunterdon County pursuant to Defendant KBI Sub, Inc.'s principal place of business is in New Jersey located at 1 Merck Drive, Whitehouse Station, NJ

3. This suit is brought under the New Jersey Products Liability Act, N.J.S.A. 2A:58C-1, et seq. ("Products Liability Act"), the New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9, et seq., ("Punitive Damages Act") and the common law of the State of New Jersey and the State of Illinois to recover damages and other relief, including the costs of suit and reasonable attorneys' and expert fees, for the injuries the Plaintiff has sustained as a result of the DEFENDANTS' negligent and wrongful conduct in connection with the design, development, manufacture, testing, packaging, promoting, marketing, distributing, labeling, and/or sale of PRILOSEC and NEXIUM.

PLAINTIFF

4. Plaintiff SUSAN A. POZNANOVICH is a natural person and a resident of the State of Illinois who used PRILOSEC and NEXIUM from at least 1995 through 2010.

5. Plaintiff SUSAN A. POZNANOVICH was injured as a result of her use of PRILOSEC and NEXIUM, and therefore seeks compensatory damages, punitive damages, ascertainable economic losses, treble damages, attorneys' fees, reimbursement of cost of obtaining PRILOSEC and NEXIUM, reimbursement for all past, present, and future health and medical care costs related to PRILOSEC and NEXIUM per quod and derivative damages.

DEFENDANTS

6. Upon information and belief, Defendant AstraZeneca Pharmaceuticals LP is a Delaware limited partnership doing business in the States of New Jersey and Illinois.

7. Defendant AstraZeneca Pharmaceuticals LP is the United States Subsidiary of

AstraZeneca PLC, and was created as a result of the union of Zeneca Pharmaceuticals and Astra Pharmaceuticals LP in the United States after the 1999 merger of the two entities.

8. Defendant AstraZeneca Pharmaceuticals LP's principal place of business is in Delaware at the following address: 1800 Concord Pike, PO Box 15437, Wilmington, DE 19850.

9. Upon information and belief, Defendant AstraZeneca Pharmaceuticals LP's general and limited partners are: AstraZeneca AB, a Swedish corporation with its principal place of business in Sweden; Zeneca, Inc., a Delaware corporation with its principal place of business in Delaware; Astra USA Inc., a New York corporation with its principal place of business in Delaware; and AstraUS Holdings Corporation, a Delaware corporation with its principal place of business in Delaware.

10. Therefore, Defendant AstraZeneca Pharmaceuticals LP is a citizen of Delaware, New York and Sweden.

11. Defendant AstraZeneca LP is a Delaware limited partnership, and upon information and belief, is doing business in the States of New Jersey and Illinois.

12. Defendant AstraZeneca LP's principal place of business is in Delaware at 1800 Concord Pike, PO Box 15437, Wilmington, DE 19850.

13. Upon information and belief, Defendant AstraZeneca LP's general partner is AstraZeneca Pharmaceuticals LP, which as stated above is a citizen of Delaware, New York, and Sweden.

14. Upon information and belief, Defendant AstraZeneca LP's sole limited partner is KBI Sub Inc., which is incorporated in the State of Delaware and its principal place of business is in New Jersey.

15. Therefore, Defendant AstraZeneca LP is a citizen of Delaware, New York, New

Jersey and Sweden.

16. Defendant Astra USA, Inc. is a New York corporation duly organized and existing under the laws of the State of New York.

17. Upon information and belief, Defendant Astra USA, Inc., is doing business in the States of New Jersey and Illinois.

18. Upon information and belief, Defendant Astra USA, Inc.'s principal place of business is in Delaware.

21. Upon information and belief, Defendant Astra USA, Inc.'s last known address was 15 East 26th Street New York, NY.

22. Upon information and belief, Defendant Astra USA, Inc. is a limited partner of AstraZeneca Pharmaceuticals LP.

23. Therefore, Defendant Astra USA, Inc. is a citizen of the States of New York and Delaware.

24. Defendant KBI Sub, Inc. is incorporated in the State of Delaware and upon information and belief, its principal place of business is in New Jersey.

25. Upon information and belief, Defendant KBI Sub, Inc.'s last known address is located at 1 Merck Drive, Whitehouse Station, NJ.

26. Upon information and belief, Defendant KBI Sub, Inc. is doing business in the States New Jersey and Illinois.

27. Upon information and belief, Defendant KBI Sub Inc. is AstraZeneca LP's sole limited partner.

28. Therefore, Defendant KBI Sub Inc. is a citizen of the States of Delaware and New Jersey.

29. Defendant Zeneca, Inc. is a Delaware corporation with its principal place of business in Delaware.

30. Upon information and belief, Defendant Zeneca, Inc.'s principal place of business is located at 1800 Concord Pike, Wilmington, Delaware 19850.

32. Defendant Zeneca, Inc., upon information and belief is a general or limited partner of Defendant AstraZeneca Pharmaceuticals LP.

33. Therefore, Defendant Zeneca, Inc. is a citizen of the State of Delaware.

34. Upon information and belief, Defendant Zeneca, Inc., is doing business in the States of New Jersey and Illinois.

35. Defendant Astra USA Holdings Corporation is a Delaware corporation with its principal place of business in Delaware.

36. Defendant Astra USA Holdings Corporation, upon information and belief, is a general or limited partner of Defendant AstraZeneca Pharmaceuticals LP.

37. Therefore, Defendant Astra USA Holdings Corporation is a citizen of the State of Delaware and the State of New York.

38. Upon information and belief, Defendant Astra USA Holdings Corporation is doing business in the States of New Jersey and Illinois.

39. Defendant AstraZeneca AB, upon information and belief, is the general partner of AstraZeneca Pharmaceuticals LP, and is a foreign company with its principal place of business at SE-151 85, Sodertalj e, Sweden.

40. Therefore, Defendant AstraZeneca, AB, is a citizen of the State of Delaware.

43. Upon information and belief, Defendant AstraZeneca, AB, is doing business

in the States of New Jersey and Illinois.

44. Defendant AstraZeneca, PLC, is the ultimate parent company of all Defendants, and is a foreign company with its principal place of business at 15 Stanhope Gate, London, W1K 1LN, England, United Kingdom.

45. Upon information and belief, Defendant AstraZeneca, PLC, is doing business in the States of New Jersey and Illinois.

46. Defendant AstraZeneca UK Limited is a company incorporated under the laws of England and Wales and has a registered office in London, England.

47. Upon information and belief, Defendant AstraZeneca UK Limited, is doing business in the States of New Jersey and Illinois

FACTUAL ALLEGATIONS

48. PRILOSEC and NEXIUM are Defendants' largest-selling drugs and NEXIUM is the third largest-selling drug in the world. Between 1997 and 2002 Defendants sold over $26 billion dollars with of PRILOSEC. Defendants sold over $5.7 billion dollars worth of NEXIUM in 2005 and $5.2 billion dollars worth in 2008. Despite knowing PRILOSEC and NEXIUM cause bones to deteriorate and break, Defendants marketed and sold PRILOSEC and NEXIUM without warning consumers of the significant risks of bone deterioration and fractures.

49. DEFENDANTS, directly or through its agents, apparent agents, servants or employees designed, manufactured, marketed, advertised, distributed and sold PRILOSEC AND NEXIUM, for the treatment of heartburn, acid reflux, ulcers and inflammation of the esophagus, and other uses.

50. As a result of the defective nature of PRILOSEC AND NEXIUM, persons who were prescribed and ingested PRILOSEC AND NEXIUM for several years, including Plaintiff

SUSAN A. POZNANOVICH, have suffered and may continue to suffer severe and permanent injuries, including weakened or brittle bones and multiple fractures as a result of PRILOSEC AND NEXIUM usage.

51. DEFENDANTS concealed and continue to conceal their knowledge of PRILOSEC and NEXIUM's lack of long-term benefit and unreasonably dangerous risks from Plaintiff SUSAN A. POZNANOVICH, other consumers, and the medical community. Specifically, DEFENDANTS have yet to adequately inform consumers and the prescribing medical community about the well established risks of long-term PRILOSEC and NEXIUM use.

52. DEFENDANTS failed to conduct adequate and sufficient post-marketing surveillance of PRILOSEC and NEXIUM after they began marketing, advertising, distributing and selling the drugs.

53. As a result of DEFENDANTS' actions and inactions, Plaintiff SUSAN A. POZNANOVICH was injured due to her ingestion of PRILOSEC and NEXIUM, which caused and will continue to cause Plaintiff various injuries and damages. Plaintiff SUSAN A. POZNANOVICH accordingly seeks compensatory damages, statutory damages, and punitive damages.

54. At all times DEFENDANTS were responsible for, or involved in, designing, manufacturing, marketing, advertising, distributing and/or selling PRILOSEC and NEXIUM.

55. In 1995, the United States Food and Drug Administration ("FDA") approved DEFENDANTS' compound omeprazole for various uses, including the treatment of heartburn, acid reflux, ulcers and inflammation of the esophagus. Omeprazole is marketed by DEFENDANTS as PRILOSEC.

56. In 2001, the United States Food and Drug Administration ("FDA") approved

DEFENDANTS' compound esomeprazole magnesium for various uses, including the treatment of heartburn, acid reflux, ulcers and inflammation of the esophagus. Esomeprazole magnesium is marketed by DEFENDANTS as NEXIUM.

57. PRILOSEC AND NEXIUM fall within a class of drugs known as proton pump inhibitors (PPI). PPI's are used for the treatment of heartburn, acid reflux, ulcers and inflammation of the esophagus, which works by reducing acid in the stomach. PRILOSEC and NEXIUM also, however, prevent calcium absorption which causes bone deterioration and eventual fractures.

58. Despite their knowledge of this dangerous side effect that can result from long-term PRILOSEC AND NEXIUM use, DEFENDANTS refused to warn patients, physicians and the medical community about the risks. DEFENDANTS continue to defend PRILOSEC and NEXIUM, mislead physicians and the public, and minimize unfavorable findings.

59. On March 22, 2011, the FDA issued a safety alert stating use of prescription PPIs, including PROLOSEC and NEXIUM, results in an increased risk of fractures. In May, 2010, the FDA mandated manufacturers of PPIs, including PRILOSEC and NEXIUM, begin to include safety information and warnings about the increased risk of osteoporosis and fractures associated with PPIs.

60. However, early studies found PPIs, by reducing hydrochloric acid in the stomach, interfere with the body's ability to absorb calcium, thus speeding up bone loss and leading to an increased number of fractures. In total, six studies have found the risk of fracture significantly increased for those patients over fifty (50) years of age who took a prescription-strength PPI, like PRILOSEC and NEXIUM, or who took any PPI regularly for more than one (1) year.

61. Consumers, including Plaintiff SUSAN A. POZNANOVICH, who have used

PRILOSEC AND NEXIUM for treatment of acid reflux, have several alternative safer products available to treat the conditions and have not been adequately warned about the significant risks and lack of benefits associated with long-term PRILOSEC and NEXIUM therapy.

62. DEFENDANTS knew of the significant risk of brittle bones and multiple fractures that could result from long-term PRILOSEC and NEXIUM use, but DEFENDANTS did not adequately and sufficiently warn consumers, including Plaintiff SUSAN A. POZNANOVICH, her physicians or the medical community.

63. DEFENDANTS, through their affirmative misrepresentations and omissions, actively concealed from Plaintiff SUSAN A. POZNANOVICH and her physicians the true and significant risks associated with long-term PRILOSEC and NEXIUM use.

64. As a result of DEFENDANTS' actions, Plaintiff SUSAN A. POZNANOVICH and her prescribing physicians were unaware, and could not have reasonably known or have learned through reasonable diligence, that Plaintiff SUSAN A. POZNANOVICH had been exposed to the risks identified in this Complaint, and that those risks were the direct and proximate result of DEFENDANTS' acts, omissions, and misrepresentations.

65. Plaintiff SUSAN A. POZNANOVICH was prescribed and began taking PRILOSEC in approximately 1995.

66. Plaintiff SUSAN A. POZNANOVICH used PRILOSEC and NEXIUM as prescribed and in a foreseeable manner consistently from 1995 through 2010.

67. On or about June 27, 2009, after taking PRILOSEC and NEXIUM for years, POZNANOVICH suffered multiple fractures of her right foot and, thereafter, in or around December 2009, POZNANOVICH suffered multiple fractures of her left foot. As a result of her injuries, POZNANOVICH still experiences severe pain in her feet.

68. As a direct result of being prescribed PRILOSEC and NEXIUM for years Plaintiff SUSAN A. POZNANOVICH has been permanently and severely injured, having suffered serious consequences from long-term PRILOSEC and NEXIUM use. Plaintiff SUSAN A. POZNANOVICH requires and will in the future require ongoing medical care and treatment.

69. Plaintiff SUSAN A. POZNANOVICH, as a direct and proximate result of long-term PRILOSEC and NEXIUM use, suffered severe mental and physical pain and suffering and has and will sustain permanent injuries and emotional distress, along with economic loss due to medical expenses, and living related expenses due to her new lifestyle.

70. Plaintiff SUSAN A. POZNANOVICH would not have used PRILOSEC or NEXIUM had DEFENDANTS properly disclosed the risks associated with its long-term use.

COUNT 1
PRODUCT LIABILITY: NEGLIGENCE (N.J.S.A. 2A:58C-1 *et seq.*)

71. Plaintiff repeat, reiterate and reallege each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

72. DEFENDANTS owed Plaintiff, SUSAN A. POZNANOVICH, and other consumers, a duty to exercise reasonable care and when designing, manufacturing, marketing, advertising, distributing and selling PRILOSEC AND NEXIUM.

73. DEFENDANTS failed to exercise due care under the circumstances and therefore breached this duty by:

a. Failing to properly and thoroughly test PRILOSEC and NEXIUM before releasing the drug to market;

b. Failing to properly and thoroughly analyze the data resulting from the pre-marketing tests of PRILOSEC and NEXIUM;

c. Failing to conduct sufficient post-marketing testing and surveillance of PRILOSEC and NEXIUM;

d. Designing, manufacturing, marketing, advertising, distributing and selling PRILOSEC and NEXIUM to consumers, including Plaintiff, SUSAN A. POZNANOVICH without any adequate warning of the significant and dangerous risks of PRILOSEC and NEXIUM and without proper instructions to avoid the harm which could foreseeably occur as a result of using the drug;

e. Failing to exercise due care when advertising and promoting PRILOSEC and NEXIUM; and

f. Negligently continuing to manufacture, market, advertise, and distribute PRILOSEC and NEXIUM after DEFENDANTS knew or should have known of its adverse effects.

74. As a direct and proximate consequence of DEFENDANTS' actions, omissions and misrepresentations, Plaintiff SUSAN A. POZNANOVICH sustained significant and permanent injuries. In addition, Plaintiff SUSAN A. POZNANOVICH was required and will continue to require health care and services.

75. Plaintiff SUSAN A. POZNANOVICH has incurred and will continue to incur medical and related expenses.

76. Plaintiff SUSAN A. POZNANOVICH has also suffered and will continue to suffer diminished capacity for the enjoyment of life, a diminished quality of life, increased risk of premature death, aggravation of preexisting conditions and activation of latent conditions, and other losses and damages.

77. Plaintiff SUSAN A. POZNANOVICH's direct medical losses and costs include care for hospitalization, physician care, monitoring, treatment, medications and supplies. Plaintiff SUSAN A. POZNANOVICH has incurred and will continue to incur mental and physical pain and suffering and loss of wages and wage-earning capacity.

78. DEFENDANTS' conduct as described above was committed with knowing, conscious, wanton, willful and deliberate disregard for the value of human life and the rights and safety of consumers such as Plaintiff SUSAN A. POZNANOVICH, thereby entitling Plaintiff to punitive damages so as to punish DEFENDANTS and deter them from similar conduct in the future.

WHEREFORE, Plaintiff demands judgment against DEFENDANTS for compensatory, treble and punitive damages, together with interest, costs of suit, attorneys fees, and other such relief as the Court deems proper.

COUNT II
STRICT LIABILITY:DEFECTIVE DESIGN (N.J.S.A.2A:58C-1 et seq)

79. Plaintiff repeats, reiterates and realleges each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

80. At all times material to this action, the DEFENDANTS were responsible for designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling PRILOSEC and NEXIUM.

81. The subject products are defective and unreasonably dangerous to consumers.

82. PRILOSEC and NEXIUM are defective in their design or formulation in that they are not reasonably fit, suitable, or safe for their intended purpose and/or its foreseeable risks exceed the benefits associated with its design and formulation.

83. At all times material to this action, PRILOSEC and NEXIUM were expected to reach, and did reach, consumers in the State of New Jersey, the State of Illinois and throughout the United States, including Plaintiff SUSAN A. POZNANOVICH herein, without substantial change in the condition in which they were sold.

84. At all times material to this action, PRILOSEC and NEXIUM were designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and/or sold by DEFENDANTS in a defective and unreasonably dangerous condition at the time they were placed in the stream of commerce in ways which include, but are not limited to, one or more of the following particulars:

a. When placed in the stream of commerce, PRILOSEC and NEXIUM contained unreasonably dangerous design defects and were not reasonably safe as intended to be used, subjecting Plaintiff SUSAN A. POZNANOVICH to risks that exceeded the benefits of the subject product, including but not limited to permanent personal injuries including, but not limited to, developing weakened or brittle bones, multiple fractures and other serious injuries and side effects;

b. When placed in the stream of commerce, PRILOSEC and NEXIUM were defective in design and formulation, making the use of PRILOSEC and NEXIUM more dangerous than an ordinary consumer would expect, and more dangerous than other risks associated with the other medications and similar drugs on the market to treat heartburn, acid reflux, ulcers and inflammation of the esophagus;

c. The subject products' design defects existed before they left the control of the DEFENDANTS;

d. PRILOSEC and NEXIUM were insufficiently tested;

e. PRILOSEC and NEXIUM caused harmful side effects that outweighed any potential utility; and

f. PRILOSEC and NEXIUM were not accompanied by adequate instructions and/or warnings to fully apprise consumers, including Plaintiff SUSAN A. POZNANOVICH herein, of the full nature and extent of the risks and side effects associated with its use, thereby rendering DEFENDANTS liable to Plaintiff, individually and collectively.

85. In addition, at the time the subject products left the control of the DEFENDANTS, there were practical and feasible alternative designs that would have prevented and/or significantly reduced the risk of Plaintiff's injuries without impairing the reasonably anticipated or intended function of the product. These safer alternative designs were economically and technologically feasible, and would have prevented or significantly reduced the risk of Plaintiff SUSAN A. POZNANOVICH's injuries without substantially impairing the product's utility.

86. As a direct and proximate consequence of DEFENDANTS' actions, omissions and misrepresentations, Plaintiff SUSAN A. POZNANOVICH sustained significant and permanent injuries. In addition, Plaintiff SUSAN A. POZNANOVICH required and will continue to require health care and services.

87. Plaintiff SUSAN A. POZNANOVICH has incurred and will continue to incur medical and related expenses. Plaintiff SUSAN A. POZNANOVICH has also suffered and will continue to suffer diminished capacity for the enjoyment of life, a diminished quality of life, increased risk of premature death, aggravation of preexisting conditions and activation of latent conditions, and other losses and damages. Plaintiff SUSAN A. POZNANOVICH's direct

medical losses and costs include care for hospitalization, physician care, monitoring, treatment, medications and supplies. Plaintiff SUSAN A. POZNANOVICH has incurred and will continue to incur mental and physical pain and suffering and loss of wages and wage-earning capacity.

88. DEFENDANTS' conduct as described above was committed with knowing, conscious, wanton, willful and deliberate disregard for the value of human life and the rights and safety of consumers such as Plaintiff SUSAN A. POZNANOVICH, thereby entitling Plaintiff to punitive damages so as to punish DEFENDANTS and deter them from similar conduct in the future.

WHEREFORE, Plaintiff demands judgment against DEFENDANTS for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

COUNT III

PRODUCT LIABILITY – MANUFACTURING DEFECT (N.J.S.A. 2A:58C-1 *et seq.*)

89. Plaintiff repeats, reiterates and realleges each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

90. At all times material to this action, DEFENDANTS were engaged in the business of designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling PRILOSEC and NEXIUM.

91. At all times material to this action, PRILOSEC and NEXIUM was expected to reach, and did reach, consumers in the State of New Jersey, the State of Illinois and throughout the United States, including Plaintiff SUSAN A. POZNANOVICH herein without substantial change in the condition in which they were sold.

92. At all times material to this action, PRILOSEC AND NEXIUM were designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and/or sold by DEFENDANTS in a defective and unreasonably dangerous condition at the time they were placed in the stream of commerce in ways which include, but are not limited to, one or more of the following particulars:

a. When placed in the stream of commerce, PRILOSEC AND NEXIUM contained manufacturing defects which rendered the subject product unreasonably dangerous;

b. The subject product's manufacturing defects occurred while the product was in the possession and control of the DEFENDANTS;

c. The subject product was not made in accordance with the DEFENDANTS' specifications or performance standards; and

d. The subject product's manufacturing defects existed before it left the control of the DEFENDANTS.

93. As a direct and proximate consequence of DEFENDANTS' actions, omissions and misrepresentations, Plaintiff SUSAN A. POZNANOVICH sustained significant and permanent injuries. In addition, Plaintiff SUSAN A. POZNANOVICH required and will continue to require health care and services. Plaintiff SUSAN A. POZNANOVICH has incurred and will continue to incur medical and related expenses. Plaintiff SUSAN A. POZNANOVICH has also suffered and will continue to suffer diminished capacity for the enjoyment of life, a diminished quality of life, increased risk of premature death, aggravation of preexisting conditions and activation of latent conditions, and other losses and damages. Plaintiff SUSAN A. POZNANOVICH's direct medical losses and costs include care for hospitalization, physician

care, monitoring, treatment, medications and supplies. Plaintiff SUSAN A. POZNANOVICH has incurred and will continue to incur mental and physical pain and suffering and loss of wages and wage-earning capacity.

94. DEFENDANTS' conduct as described above was committed with knowing, conscious, wanton, willful and deliberate disregard for the value of human life and the rights and safety of consumers such as Plaintiff SUSAN A. POZNANOVICH, thereby entitling Plaintiff to punitive damages so as to punish DEFENDANTS and deter them from similar conduct in the future.

WHEREFORE, Plaintiff demands judgment against DEFENDANTS for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

COUNT IV
PRODUCT LIABILITY - FAILURE TO WARN (N.J.S.A. 2A:58C-1 *et seq.*)

95. Plaintiff repeats, reiterates and realleges each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

96. PRILOSEC AND NEXIUM were defective and unreasonably dangerous when they left the possession of the DEFENDANTS in that they contained warnings insufficient to alert consumers, including Plaintiff SUSAN A. POZNANOVICH herein, of the dangerous risks and reactions associated with the subject product, including but not limited to its propensity to permanent physical injuries including, but not limited to, developing weakened or brittle bones, multiple fractures, and other serious injuries and side effects, notwithstanding the DEFENDANTS' knowledge of an increased risk of these injuries and side effects over other forms treatment for heartburn, acid reflux, ulcers and inflammation of the esophagus.

97. Plaintiff SUSAN A. POZNANOVICH was prescribed and used the subject products for its intended purpose.

98. Plaintiff SUSAN A. POZNANOVICH could not have discovered any defect in the subject products through the exercise of reasonable care.

99. The DEFENDANTS, as manufacturers and/or distributors of the subject prescription products, are held to the level of knowledge of an expert in the field.

100. DEFENDANTS, as manufacturer and/or distributor of the subject prescription products, are the Reference Listed Drug Company and the New Drug Application Holder and are held to a level of knowledge of an expert in the field.

101. The warnings that were given by the DEFENDANTS were not accurate, clear and/or were ambiguous.

102. The warnings that were given by the DEFENDANTS failed to properly warn physicians of the increased risks of permanent physical injuries including, but not limited to, developing weakened or brittle bones, multiple fractures, and other serious injuries and side effects.

103. Plaintiff, SUSAN A. POZNANOVICH, individually and through her prescribing physician, reasonably relied upon the skill, superior knowledge and judgment of the DEFENDANTS.

104. The DEFENDANTS had a continuing duty to warn Plaintiff SUSAN A. POZNANOVICH of the dangers associated with the subject products.

105. Had Plaintiff SUSAN A. POZNANOVICH received adequate warnings regarding the risks of the subject products, she would not have used them.

106. As a direct and proximate consequence of DEFENDANTS' actions, omissions and misrepresentations, Plaintiff SUSAN A. POZNANOVICH sustained significant and permanent injuries. In addition, Plaintiff SUSAN A. POZNANOVICH required and will continue to require health care and services. Plaintiff SUSAN A. POZNANOVICH has incurred and will continue to incur medical and related expenses. Plaintiff SUSAN A. POZNANOVICH has also suffered and will continue to suffer diminished capacity for the enjoyment of life, a diminished quality of life, increased risk of premature death, aggravation of preexisting conditions and activation of latent conditions, and other losses and damages. Plaintiff SUSAN A. POZNANOVICH's direct medical losses and costs include care for hospitalization, physician care, monitoring, treatment, medications and supplies. Plaintiff SUSAN A. POZNANOVICH has incurred and will continue to incur mental and physical pain and suffering and loss of wages and wage-earning capacity.

107. DEFENDANTS' conduct as described above was committed with knowing, conscious, wanton, willful and deliberate disregard for the value of human life and the rights and safety of consumers such as Plaintiff SUSAN A. POZNANOVICH, thereby entitling Plaintiff to punitive damages so as to punish DEFENDANTS and deter them from similar conduct in the future.

WHEREFORE, Plaintiff demands judgment against DEFENDANTS for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

COUNT V
BREACH OF EXPRESS WARRANTY

108. Plaintiff repeats, reiterates and realleges each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

109. DEFENDANTS expressly represented to Plaintiff SUSAN A. POZNANOVICH, other consumers, and the medical community that PRILOSEC and NEXIUM were safe and fit for its intended purposes, were of merchantable quality, did not produce any dangerous side effects, and had been adequately tested.

110. PRILOSEC AND NEXIUM do not conform to DEFENDANTS' express representations because they are not safe, have numerous and serious side effects and causes severe and permanent injuries including, but not limited to, developing weakened or brittle bones, multiple fractures, and other serious injuries and side effects.

111. At all relevant times PRILOSEC AND NEXIUM did not perform as safely as an ordinary consumer would expect, when used as intended or in a reasonably foreseeable manner.

112. Plaintiff SUSAN A. POZNANOVICH, other consumers, and the medical community relied upon DEFENDANTS' express warranties.

113. As a direct and proximate consequence of DEFENDANTS' actions, omissions and misrepresentations, Plaintiff SUSAN A. POZNANOVICH sustained significant and permanent injuries. In addition, Plaintiff SUSAN A. POZNANOVICH required and will continue to require health care and services. Plaintiff SUSAN A. POZNANOVICH has incurred and will continue to incur medical and related expenses. Plaintiff SUSAN A. POZNANOVICH has also suffered and will continue to suffer diminished capacity for the enjoyment of life, a diminished quality of life, increased risk of premature death, aggravation of preexisting conditions and activation of latent conditions, and other losses and damages. Plaintiff SUSAN

A. POZNANOVICH's direct medical losses and costs include care for hospitalization, physician care, monitoring, treatment, medications and supplies. Plaintiff SUSAN A. POZNANOVICH has incurred and will continue to incur mental and physical pain and suffering and loss of wages and wage-earning capacity.

114. DEFENDANTS' conduct as described above was committed with knowing, conscious, wanton, willful and deliberate disregard for the value of human life and the rights and safety of consumers such as Plaintiff SUSAN A. POZNANOVICH, thereby entitling Plaintiff to punitive damages so as to punish DEFENDANTS and deter them from similar conduct in the future.

WHEREFORE, Plaintiff demands judgment against DEFENDANTS for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

COUNT VI
PRODUCT LIABILITY: BREACH OF IMPLIED WARRANTY
(N.J.S.A. 2A:58C-1 *et seq.*)

115. Plaintiff repeats, reiterates and realleges each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

116. DEFENDANTS manufactured, distributed, advertised, promoted and sold PRILOSEC and NEXIUM.

117. At all relevant times, DEFENDANTS knew of the use for which PRILOSEC and NEXIUM were intended and impliedly warranted the product to be of merchantable quality and safe and fit for such use.

118. DEFENDANTS were aware that consumers, including Plaintiff SUSAN A. POZNANOVICH would use PRILOSEC and NEXIUM for treatment of heartburn, acid reflux, ulcers and inflammation of the esophagus and for other off-label purposes.

119. Plaintiff SUSAN A. POZNANOVICH and the medical community reasonably relied upon the judgment and sensibility of DEFENDANTS to sell PRILOSEC and NEXIUM only if it was indeed of merchantable quality and safe and fit for its intended use.

120. DEFENDANTS breached its implied warranty to consumers, including Plaintiff SUSAN A. POZNANOVICH as PRILOSEC and NEXIUM were not of merchantable quality or safe and fit for its intended use.

121. Consumers, including Plaintiff SUSAN A. POZNANOVICH and the medical community, reasonably relied upon DEFENDANTS' implied warranty for PRILOSEC and NEXIUM.

122. PRILOSEC and NEXIUM reached consumers, including Plaintiff SUSAN A. POZNANOVICH, without substantial change in their condition in which they were manufactured and sold by DEFENDANTS.

123. As a direct and proximate result of DEFENDANTS' actions, Plaintiff SUSAN A. POZNANOVICH sustained serious, significant and permanent injuries. In addition, Plaintiff SUSAN A. POZNANOVICH required and will continue to require healthcare and services as a result of her injury. Plaintiff SUSAN A. POZNANOVICH has incurred and will continue to incur medical and related expenses as a result of her injury. Plaintiff SUSAN A. POZNANOVICH also has suffered and will continue to suffer diminished capacity for the enjoyment of life, a diminished quality of life, increased risk of premature death, aggravation of preexisting conditions and activation of latent conditions, and other losses and damages.

Plaintiff SUSAN A. POZNANOVICH's direct medical losses and costs include care for hospitalization, physician care, monitoring, treatment, medications, and supplies. Plaintiff SUSAN A. POZNANOVICH has incurred and will continue to incur mental and physical pain and suffering and loss of wages and wage-earning capacity.

124. DEFENDANTS' conduct as described above was committed with knowing, conscious, wanton, willful, and deliberate disregard for the value of human life and the rights and safety of consumers such as plaintiff SUSAN A. POZNANOVICH, thereby entitling Plaintiff to punitive damages so as to punish DEFENDANTS and deter it from similar conduct in the future.

WHEREFORE, Plaintiff demands judgment against DEFENDANTS for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

COUNT VII
NEGLIGENT MISREPRESTATION

125. Plaintiff repeats, reiterates and realleges each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

126. DEFENDANTS had and continue to have a duty to represent to the medical and healthcare community, to Plaintiff SUSAN A. POZNANOVICH, and to the public in general, that said product PRILOSEC and NEXIUM had been tested and found to be safe and effective for use in treating heartburn, acid reflux, ulcers and inflammation of the esophagus.

127. DEFENDANTS had and continue to have a duty to the medical and healthcare community, to the Plaintiff SUSAN A. POZNANOVICH, and to the public in general to market, manufacture, distribute, and/or sell its drug PRILOSEC and NEXIUM with appropriate and/or adequate information and/or warnings.

128. The representations made by DEFENDANTS were, in fact, false.

129. DEFENDANTS failed to exercise ordinary care in their representations of PRILOSEC and NEXIUM while involved in its manufacture, sale, testing, quality assurance, quality control, and/or distribution of said product into interstate commerce in that DEFENDANTS negligently misrepresented PRILOSEC and NEXIUM's high risk of unreasonable, dangerous side effects.

130. DEFENDANTS breached their duty to represent the serious side effects of PRILOSEC AND NEXIUM to the medical and healthcare community, to Plaintiff SUSAN A. POZNANOVICH, and to the public in general.

131. As a result of the negligent misrepresentations of DEFENDANTS set forth hereinabove, said DEFENDANTS knew and was aware or should have known and been aware that the drug had been insufficiently tested, that it was not been tested, that it lacked adequate warnings, and/or that it created a high risk of unreasonable, dangerous side effects, including but not limited to developing weakened or brittle bones, multiple fractures, and other serious injuries and side effects of PRILOSEC and NEXIUM specifically.

132. As a direct and proximate consequence of DEFENDANTS' actions, omissions and misrepresentations, Plaintiff SUSAN A. POZNANOVICH sustained significant and permanent injuries. In addition, Plaintiff SUSAN A. POZNANOVICH required and will continue to require health care and services. Plaintiff SUSAN A. POZNANOVICH has incurred and will continue to incur medical and related expenses. Plaintiff SUSAN A. POZNANOVICH has also suffered and will continue to suffer diminished capacity for the enjoyment of life, a diminished quality of life, increased risk of premature death, aggravation of preexisting conditions and activation of latent conditions, and other losses and damages. Plaintiff SUSAN

A. POZNANOVICH's direct medical losses and costs include care for hospitalization, physician care, monitoring, treatment, medications and supplies. Plaintiff SUSAN A. POZNANOVICH has incurred and will continue to incur mental and physical pain and suffering and loss of wages and wage-earning capacity.

133. DEFENDANTS' conduct as described above was committed with knowing, conscious, wanton, willful and deliberate disregard for the value of human life and the rights and safety of consumers such as Plaintiff SUSAN A. POZNANOVICH, thereby entitling Plaintiff to punitive damages so as to punish DEFENDANTS and deter them from similar conduct in the future.

WHEREFORE, Plaintiff demands judgment against DEFENDANTS for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

COUNT VIII
FRAUDULENT CONCEALMENT

134. Plaintiff repeats, reiterates and realleges each and every allegation of this Complaint contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully set forth herein.

135. As set forth herein, and pending discovery, DEFENDANTS fraudulently concealed from the Plaintiff SUSAN A. POZNANOVICH's physicians and Plaintiff SUSAN A. POZNANOVICH that PRILOSEC and NEXIUM was dangerous and not as effective for its purpose as represented, and imposed greater risks than disclosed.

136. DEFENDANTS as the manufacturer of ethical drugs were under a duty to timely disclose adequate warnings and information to the medical profession, Plaintiff SUSAN A. POZNANOVICH's prescribers and Plaintiff SUSAN A. POZNANOVICH under laws requiring

them not to engage in false and deceptive trade practices, and because DEFENDANTS were experts in the field, they are under a continuous duty to keep abreast of scientific developments touching on PRILOSEC AND NEXIUM and to know the true state of the facts about the dangerous and defective nature of PRILOSEC AND NEXIUM.

137. DEFENDANTS had actual knowledge gained from research and adverse event reports and constructive knowledge from scientific literature and other means of communication to know of the true risks of Plaintiff SUSAN A. POZNANOVICH's use of PRILOSEC and NEXIUM. This medical information was fraudulently concealed from Plaintiff SUSAN A. POZNANOVICH's physicians and Plaintiff SUSAN A. POZNANOVICH.

138. These intentional representations suppressed and/or concealed material facts, including but not limited to:

a. suppressing and/or mischaracterizing the known risks to health and effectiveness;

b. failing to timely and fully disclose the results of tests and studies on the risks to health and effectiveness;

c. failing to disseminate adequate warnings which would disclose the nature and extent of the side effects of the subject product, the risks to health and effectiveness;

d. failing to disclose that adequate and/or standard and/or generally accepted standards for pre-clinical testing had not been done;

e. failing to disclose that adequate and/or standard and/or generally accepted standards for post-marketing testing had not been done;

f. failing to disclose that alternative products and methods available posed less risks than PRILOSEC and NEXIUM and were at least effective;

g. failing to conduct adequate tests and studies on the product prior to marketing and making representations as set forth in this Complaint;

h. failing to reveal the full nature and extent of the known risks and hazards associated with PRILOSEC and NEXIUM; and