

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

**IN RE: BENICAR (OLMESARTAN)
PRODUCTS LIABILITY LITIGATION**

MDL No. 2606

Honorable Robert B. Kugler,
District Court Judge

This document relates to:
Linda Weatherford

Honorable Joel Schneider,
Magistrate Judge

SHORT FORM COMPLAINT

Plaintiff(s) file(s) this *Short Form Complaint and Demand for Jury Trial* against Defendants named below by and through the undersigned counsel. Plaintiff(s) incorporate(s) by reference the allegations contained in the *Plaintiffs' Master Long Form Complaint and Jury Demand in In re: Benicar (Olmесartan) Products Liability Litigation*, MDL 2606 in the United States District for the District of New Jersey, Camden Vicinage. Plaintiff(s) file this Short Form Complaint as permitted by Case Management Order No. 6 of this Court.

In addition to those causes of action contained in *Plaintiffs' Master Long Form Complaint and Jury Demand*, where certain claims require specific pleading and/or amendments, Plaintiff(s) shall add and include them herein.

IDENTIFICATION OF PARTIES

Identification of Plaintiff(s)

1. Name and residence of the individual injured due use of *olmesartan* product(s): Linda Weatherford, 207 Parker St., Apt. 10, Omaha, TX 75571

2. Plaintiff(s) is/are a citizen of Omaha, TX

3. Consortium Claim(s): The following individual(s) allege damages for loss of consortium: Not Applicable

4. Survival and/or Wrongful Death Claims:

a. Name and residence of Decedent Plaintiff when he/she suffered *olmesartan* products(s) related injuries and/or death: Not Applicable

5. Plaintiff/Decedent was born on: 1/9/1948

6. Plaintiff filing this case in a representative capacity as the Not Applicable of the _____

having been duly appointed as the _____ by the _____ Court of _____

Plaintiff(s) claims damages as a result of:

- injury to herself/himself
- injury to the person represented
- wrongful death
- survivorship action
- economic loss
- loss of services
- loss of consortium

Identification of Defendants

7. Plaintiff(s)/Decedent Plaintiff(s) is/are suing the following Defendant(s)

(please check all that apply):

Daiichi Sankyo Defendants:

- Daiichi Sankyo, Inc.
- Daiichi Sankyo U.S. Holdings, Inc.
- Daiichi Sankyo Co., Ltd.

Forest Defendants:

- Forest Laboratories, LLC, f/k/a Forest Laboratories, Inc.
- Forest Pharmaceuticals, Inc.
- Forest Research Institute, Inc.

Additional Defendants:

Other Defendant(s) (please specify): _____

JURISDICTION AND VENUE

Jurisdiction:

8. Jurisdiction in this Short Form Complaint is based on:

Diversity of Citizenship

Other (As set forth below, the basis of any additional ground

for jurisdiction must be plead in sufficient detail as required by the applicable Federal Rules of Civil Procedure) **CMO 4 allowing for direct filing in this court.**

Venue:

9. District Court and Division in which remand trial is proper and where you might have other filed this Short Form Complaint absent the direct filing order by this Court:

United States District Court for the Eastern District of Texas

CASE SPECIFIC FACTS

10. Plaintiff(s) currently reside(s) in (City, State):

Omaha, TX

11. At the time of Plaintiff's/Decedent's *olmesartan* product(s) injury, Plaintiff/Decedent resided in (City, State):

Omaha, TX

12. Plaintiff/Decedent began using *olmesartan* product(s) as prescribed and indicated on or about the following date: **August 2005**.

13. Plaintiff/Decedent was prescribed and used the following *olmesartan* products:

- BENICAR®
- BENICAR HCT®
- AZOR®
- TRIBENZOR®

14. As a result of ingesting *olmesartan* products, Plaintiff/Decedent suffered personal and economic injur(ies), including, but not limited to, the following:

Chronic and Severe Diarrhea; Diverticulitis; Olmesartan Associated Enteropathy;

Severe Mental and/or Physical Pain; Economic Loss; Psychological Damage;

Need for Medical Monitoring; Lost Earnings and Earning Capacity;

Past Present and Future Medical Expenses;

Impairment; pain and suffering; emotional distress; loss of enjoyment of life; all noneconomic damages available and established by the evidence; and all damages claimed in the prayer for relief portion of the Master Long Form Complaint.

CAUSES OF ACTION

15. Plaintiff(s) hereby adopt(s) and incorporate(s) by reference the *Master Long Form Complaint and Jury Demand* as if fully set forth herein.

16. The following claims and allegations asserted in the *Master Long Form Complaint and Jury Demand* are herein adopted by the Plaintiff(s):

- Count I: Products Liability – Design Defect (Strict Liability)
- Count II: Products Liability – Failure to Warn (Strict Liability)
- Count III: Gross Negligence
- Count IV: Negligence
- Count V: Negligence *per se*
- Count VI: Negligent Design
- Count VII: Negligent Misrepresentation
- Count VIII: Fraudulent Concealment
- Count IX: Constructive Fraud
- Count X: Fraud
- Count XI: Breach of Express Warranties
- Count XII: Breach of Implied Warranties
- Count XIII: Unjust Enrichment
- Count XIV: Violation of Consumer Protection Law of the State of **Texas**_____.
- Count XV: Loss of Consortium
- Count XVI: Wrongful Death

Count XVII: Survival Action

Count XVIII: Punitive Damages

Furthermore, Plaintiff(s) assert(s) the following additional

theories and/or State Causes of Action against Defendant(s) identified in paragraph (4) above. If Plaintiff(s) include(s) additional theories of recovery, to the extent that they require specificity in pleadings, the specific facts and allegations supporting these theories must be pled by Plaintiff(s) in a manner complying with the requirements of the Federal Rules of Civil Procedure.

WHEREFORE, Plaintiff(s) pray(s) for relief and judgment against Defendants of compensatory damages, punitive damages, interests, costs of suit, and such further relief as the Court deems equitable and just, and as set forth in the *Master Long Form Complaint and Jury Demand* as appropriate.

JURY DEMAND

Plaintiff(s) hereby demand a trial by jury as to all claims in this action.

Dated: **11/11/2015** _____

Respectfully Submitted by,

/s/ David C. DeGreeff
Thomas Cartmell, MO 45366
Jeff Kuntz, MO 52371
David DeGreeff, MO 55019
Wagstaff & Cartmell, LLP
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Counsel for the Plaintiff(s)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Linda Weatherford

(b) County of Residence of First Listed Plaintiff Morris County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) David C. DeGreeff, Jeff Kuntz, Thomas Cartmell Wagstaff & Cartmell, LLP 4740 Grand Ave., Suite 300 Kansas City, MO 64112

DEFENDANTS

Daiichi Sankyo, Inc., Daiichi Sankyo, US Holdings, Inc., Daiichi Sankyo, Co. Ltd. Forest Laboratories, LLC, f/k/a Forest Laboratories, Inc., Forest Pharmaceuticals, Inc., Forest Research Institute, Inc.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC 1332 diversity

Brief description of cause: Personal injury arising from plaintiff's ingestion of drugs manufactured by defendants

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 75,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Robert B. Kugler DOCKET NUMBER MDL 2606

DATE 11/11/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ David C. DeGreeff

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.