

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF CALIFORNIA

3 THIS DOCUMENT APPLIES TO  
4 PLAINTIFF(S): VALERIE CAPITO-  
5 MUNDY, INDIVIDUALLY AND AS THE  
6 PERSONAL REPRESENTATIVE FOR  
7 THE ESTATE OF RICHARD MUNDY,  
8 DECEASED,

9 Plaintiffs,

10 v.

11  AMYLIN PHARMACEUTICALS, LLC,  
12  ELI LILLY AND COMPANY,  
13  MERCK SHARP & DOHME CORP.,  
14  NOVO NORDISK INC.,

15 (Check all the above that apply)

16 Defendants

**Pertains To Civil Action No.:**  
3:13-CV-2365-AJB-MDD

In Re: Incretin-Based Therapies  
Products Liability Litigation

**MDL NO. 2452**

**FIRST AMENDED SHORT  
FORM COMPLAINT FOR  
DAMAGES**

Case No.: 13md2452 AJB(MDD)

17 **FIRST AMENDED SHORT FORM COMPLAINT FOR DAMAGES**

18 COMES NOW the Plaintiff(s) named herein, and for First Amended  
19 Complaint against the Defendants named herein, incorporates and fully adopts the  
20 Master Form Complaint (the "Master Complaint") in MDL No. 2452 by reference.  
21 Plaintiff(s) further shows the Court as follows:

22 **JURISDICTION AND VENUE**

23 1. Jurisdiction in this Complaint is based on:

24  Diversity of Citizenship

25  Other (As set forth below, the basis of any additional ground for  
26 jurisdiction must be pleaded in sufficient detail as required by the  
27 applicable Federal Rules of Civil Procedure):

28 2. District Court and Division in which you might have otherwise filed

1 absent the direct filing order entered by this Court: District Court for the Middle  
2 District of Florida.

3 3. Plaintiff(s) further adopts the allegations contained in the following  
4 paragraphs of the Jurisdiction and Venue section of the Master Complaint:

5  Paragraph 10;

6  Paragraph 11;

7  Paragraph 12;

8  Paragraph 13;

9  Paragraph 14;

10  Paragraph 15; and/or

11  Other allegations as to jurisdiction and venue (Plead in sufficient detail in  
12 numbered paragraphs (numbered to begin with 3(a)) as required by the  
13 applicable Federal Rules of Civil Procedure): \_\_\_\_\_  
14 \_\_\_\_\_.

15 PLAINTIFF/INJURED PARTY INFORMATION

16 4. Injured/Deceased Party's Name: (the "Injured Party"). Richard Mundy.

17 5. Any injury (or injuries) suffered by the Injured Party in addition to  
18 those injuries related to the Injured Party's Pancreatic Cancer, which is alleged to  
19 have been caused by the drug(s) ingested as set forth below (put "None" if  
20 applicable): N/A.

21 6. Injured Party's spouse or other party making loss of consortium claim:  
22 Valerie Capito-Mundy.

23 7. Other Plaintiff(s) and capacity, if Injured Party is deceased or  
24 otherwise incapacitated (i.e., administrator, executor, guardian, representative,  
25 conservator, successor in interest): Valerie Capito-Mundy, Personal Representative.

26 8. City(ies) and State(s) of residence of Injured Party at time of ingestion  
27 of the Drug(s): Ormond Beach, FL.

28 9. City and State of residence of Injured Party at time of pancreatic

1 cancer diagnosis (if different from above): N/A.

2 10. City and State of residence of Injured Party at time of diagnosis of  
3 other Injury(ies) alleged in Paragraph 5 (if different from above): N/A.

4 11. If applicable, City and State of current residence of Injured Party (if  
5 different from above): N/A.

6 12. If applicable, City and State of residence of Injured Party at time of  
7 death (if different from above): N/A.

8 13. If applicable, City and State of current residence of each Plaintiff,  
9 including any Consortium and or other Plaintiff(s) (i.e., administrator, executor,  
10 guardian, representative, conservator, successor in interest): Ormond Beach, FL.

11 14. Check box(es) of product(s) (the "Drugs") for which you are making  
12 claims in this Complaint:

13  Byetta. Dates of use: \_\_\_\_\_.

14  Bydureon. Dates of use: \_\_\_\_\_.

15  Januvia. Dates of use: Approximately 6/21/07 to 5/7/10.

16  Janumet. Dates of use: \_\_\_\_\_.

17  Victoza. Dates of use: \_\_\_\_\_.

18 15. Date of pancreatic cancer diagnosis: Approximately May 21, 2012.

19 16. If applicable, date of other injuries alleged in Paragraph 5: N/A.

20 17. If applicable, date of death: June 10, 2014.

21 DEFENDANTS NAMED HEREIN

22 (Check Defendants against whom Complaint is made)

23  Amylin Pharmaceuticals, LLC

24  Eli Lilly and Company

25  Merck Sharp & Dohme Corp.

26  Novo Nordisk Inc.

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

CAUSES OF ACTION

(Counts in the Master Complaint brought by Plaintiff(s))

- Count I – Strict Liability – Failure to Warn
- Count II – Strict Liability – Design Defect
- Count III – Negligence
- Count IV – Breach of Implied Warranty
- Count V – Breach of Express Warranty
- Count VI – Punitive Damages
- Count VII – Loss of Consortium
- Count VIII – Wrongful Death
- Count IX – Survival Action
- Other Count(s): \_\_\_\_\_

Plead factual and legal basis for any Other Count(s) in separately numbered Paragraphs (beginning with Paragraph 18) that provide sufficient information and detail to comply with the applicable Federal Rules of Civil Procedure.

\_\_\_\_\_  
\_\_\_\_\_.

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

PRAYER FOR RELIEF AND, AS APPLICABLE,  
PRAYER FOR RELIEF FOR SURVIVAL AND WRONGFUL DEATH

WHEREFORE, Plaintiff(s) pray(s) for relief as set forth in the Master  
Complaint filed in MDL No. 2452.

JURY DEMAND

Plaintiff(s) hereby  demands  **does not** demand a trial by jury on all  
issues so triable.

Dated: September 15, 2015

RESPECTFULLY SUBMITTED,

/s/ Jacob W. Plattenberger  
Steven D. Davis, CA Bar # 249633  
Jacob W. Plattenberger, IL Bar # 6297431  
(Admitted *Pro Hac Vice*)  
Tor A. Hoerman, IL Bar # 6229439  
(Admitted *Pro Hac Vice*)  
TORHOERMAN LAW LLC  
101 W. Vandalia, Suite 350  
Edwardsville, IL 62025  
Phone: (618) 656-4400  
Fax: (618) 656-4401  
*Attorneys for Plaintiffs*