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7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 **IN RE: INCRETIN-BASED**
12 **THERAPIES PRODUCTS**
13 **LIABILITY LITIGATION**

MDL NO. 2452

Case No. 13-MD-2452

**DEFENDANT WOLTERS KLUWER
HEALTH, INC.'S MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

14 **THIS DOCUMENT RELATES**
15 **TO:**

Hon. Anthony J. Battaglia

16 Civil Action No.: 14-cv-00360-AJB-
17 MDD

Date: May 22, 2014

Time: 2:00 p.m.

Courtroom: 3B

18
19 *Danitta Rinder, Individually and as*
20 *Special Administrator for the Estate*
21 *of Gregg Rinder v. Merck Sharp &*
22 *Dohme Corp.; H.D. Smith Wholesale*
Drug Co.; Smith Medical LLC;
Wolters Kluwer Health, Inc., and
Wolters Kluwer United States Inc.

1 Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, defendant
2 Wolters Kluwer Health, Inc. (“WKH”) hereby moves to dismiss Plaintiff’s First
3 Amended Complaint. In support of its motion, and as set forth more fully in its
4 Memorandum filed contemporaneously herewith, WKH states as follows:
5

6 1. Plaintiff, Danitta Rinder, filed a First Amended Complaint (“FAC”)
7 alleging her deceased spouse suffered pancreatic cancer as a result of an adverse
8 reaction to the prescription drug Januvia.
9

10 2. The FAC suggests that three groups of defendants are responsible for
11 Plaintiff’s injuries:
12

13 (a) Merck Sharp & Dohme Corporation (“Merck”), the
14 manufacturer of Januvia;

15 (b) H.D. Smith Wholesale Drug Company and Smith Medical
16 Partners (together “H.D. Smith”), distributors of prescription
17 drugs; and

18 (c) WKH, a publisher of drug information databases, including the
19 generalized patient drug education monograph information
20 (“PEM”) identified by Plaintiffs as the basis for their claims, and
21 Wolters Kluwer United States Inc. (“WKUS”), a separate entity
22 from WKH that is not involved in publishing drug information,
23 let alone PEM information.

24 3. With respect to WKH, Plaintiff asserts claims for negligence, survival
25 and wrongful death. (*See* FAC at Counts 22-24.) This Court should dismiss with
26 prejudice each count asserted against WKH.
27
28

1 4. First, Plaintiffs' claims are not viable as a matter of law. WKH owed
2 Plaintiff no duty, and Plaintiff cannot show that WKH ever voluntarily undertook
3 any such duty.
4

5 5. Second, Plaintiff's claims should be dismissed because they failed to
6 allege sufficient facts to state a claim.
7

8 6. Third, Rinder's claims are barred by the applicable two-year statute of
9 limitations.
10

11 7. Finally, because Plaintiff's wrongful death and survival claims are
12 derivative of her flawed negligence claim, those claims also should also be
13 dismissed.
14

15 WHEREFORE, for all of the foregoing reasons, and as set forth in detail in
16 its supporting memorandum, Wolters Kluwer Health, Inc. respectfully requests that
17 this Honorable Court dismiss with prejudice Plaintiff's claims against it.
18 Alternatively, Defendant Wolters Kluwer Health, Inc. respectfully requests that this
19 Court enter judgment in their favor and against Plaintiffs on Counts 22-24 of the
20 FAC.
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Dated: March 19, 2014

Neal, Gerber & Eisenberg LLP

By: /s/ Karl R. Barnickol
Karl R. Barnickol
Tonya G. Newman
Attorney for Defendant
Wolters Kluwer United States Inc.

1 **CERTIFICATE OF SERVICE**

2
3 Karl R. Barnickol, an attorney, hereby certifies that he caused a copy of the
4 foregoing **Defendant Wolters Kluwer Health, Inc.’s Motion to Dismiss** to be
5 served on:

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via electronic filing using the United States District for the Southern District of California CM/ECF system which sent notification of such filing on the 19th day of March, 2014.

/s/ Karl R. Barnickol
Karl R. Barnickol

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