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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 IN RE: INCRETIN-BASED THERAPIES) MDL Case No.13md24520AJB (MDD)
PRODUCTS LIABILITY,)

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13
14 ***This Document Pertains to:***

15 KATHLEEN ANAPOLSKY; MICHELLE)
ANAPOLSKY; and SHAWNA)
16 TERPSTRA,)

17 Plaintiffs,)

18 vs.)

19 AMYLIN PHARMACEUTICALS, INC.;)
AMYLIN PHARMAECUTICALS, LLC;)
20 ELI LILLY AND COMPANY; RALEY'S)
dba BEL AIR NO. 514; and DOES 1)
21 through 50, inclusive,)

22 Defendants.)
23

Case No. 3:15-cv-00607-AJB-MDD

**DEFENDANT RALEY'S ANSWER
TO PLAINTIFFS' COMPLAINT
FOR DAMAGES**

DEMAND FOR JURY TRIAL

24 Defendant Raley's d/b/a Bel Air ("Raley's") hereby responds to Plaintiffs'
25 Complaint for Damages by and through the undersigned counsel, as follows:

26 **GENERAL DENIAL**

27 Answering Plaintiffs' Complaint, Raley's generally and specifically
28 denies each and every allegation contained therein and further denies that, by reason

1 of any act or omission by it or its agents, Plaintiffs have been injured or damaged in
2 any sum, or at all.

3 **RESPONSE TO SPECIFIC ALLEGATIONS**

4 In addition to and incorporating the above denial, Raley’s further answers
5 the numbered Paragraphs in Plaintiffs’ Complaint as follows:

6 1. Raley’s admits the allegations contained in Paragraph 1 of
7 Plaintiffs’ Complaint that it sold Byetta® (“Byetta”) only upon a prescription from a
8 licensed healthcare professional. Raley’s denies the remaining allegations pertaining
9 to Plaintiffs and Decedent Lawrence Anapolsky (“Decedent”) contained in Paragraph
10 1 of Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph
11 directed to parties other than Raley’s, that are deemed to require a response from
12 Raley’s, Raley’s lacks knowledge or information sufficient to form a belief as to the
13 truth of such allegations and, on that basis, denies such allegations. The remaining
14 allegations contained in Paragraph 1 of Plaintiffs’ Complaint include legal
15 conclusions, which do not require a response.

16 2. Raley’s lacks knowledge or information sufficient to form a belief
17 as to the truth of the allegations regarding Plaintiffs’ knowledge, beliefs or allegations
18 regarding unidentified parties contained in Paragraph 2 of Plaintiffs’ Complaint and,
19 on that basis, denies the allegations and demands strict proof thereof. To the extent
20 there are allegations in this Paragraph directed to parties other than Raley’s, that are
21 deemed to require a response from Raley’s, Raley’s lacks knowledge or information
22 sufficient to form a belief as to the truth of such allegations and, on that basis, denies
23 such allegations.

24 3. Raley’s denies the allegations contained in Paragraph 3 of
25 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
26 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
27 lacks knowledge or information sufficient to form a belief as to the truth of such
28 allegations and, on that basis, denies such allegations.

1 4. Raley’s denies the allegations contained in Paragraph 4 of
2 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
3 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
4 lacks knowledge or information sufficient to form a belief as to the truth of such
5 allegations and, on that basis, denies such allegations.

6 5. Raley’s denies the allegations contained in Paragraph 5 of
7 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
8 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
9 lacks knowledge or information sufficient to form a belief as to the truth of such
10 allegations and, on that basis, denies such allegations.

11 6. Raley’s denies the allegations contained in Paragraph 6 of
12 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
13 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
14 lacks knowledge or information sufficient to form a belief as to the truth of such
15 allegations and, on that basis, denies such allegations.

16 7. Raley’s denies the allegations contained in Paragraph 7 of
17 Plaintiffs’ Complaint, except admits that at certain times not specified in the
18 Complaint it sold Byetta only upon a prescription from a licensed healthcare
19 professional. To the extent there are allegations in this Paragraph directed to parties
20 other than Raley’s, that are deemed to require a response from Raley’s, Raley’s lacks
21 knowledge or information sufficient to form a belief as to the truth of such allegations
22 and, on that basis, denies such allegations.

23 8. Raley’s denies the allegations contained in Paragraph 8 of
24 Plaintiffs’ Complaint, except admits that at times not specified in the Complaint it has
25 been authorized to do business in California and that it sold Byetta only upon a
26 prescription from a licensed healthcare professional. To the extent there are
27 allegations in this Paragraph directed to parties other than Raley’s, that are deemed to
28 require a response from Raley’s, Raley’s lacks knowledge or information sufficient to

1 basis, denies the allegations. Raley's denies the remaining allegations. To the extent
2 there are allegations in this Paragraph directed to parties other than Raley's, that are
3 deemed to require a response from Raley's, Raley's lacks knowledge or information
4 sufficient to form a belief as to the truth of such allegations and, on that basis, denies
5 such allegations.

6 **DEFENDANTS**

7 14. No response is necessary to Paragraph 14 of Plaintiffs' Complaint
8 as it contains no allegations directed against Raley's.

9 15. No response is necessary to Paragraph 15 of Plaintiffs' Complaint
10 as it contains no allegations directed against Raley's.

11 16. No response is necessary to Paragraph 16 of Plaintiffs' Complaint
12 as it contains no allegations directed against Raley's.

13 17. Raley's admits Paragraph 17 of Plaintiffs' Complaint.

14 **FACTUAL ALLEGATIONS**

15 18. Raley's denies the allegations contained in Paragraph 18 of
16 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
17 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
18 lacks knowledge or information sufficient to form a belief as to the truth of such
19 allegations and, on that basis, denies such allegations.

20 19. Raley's denies the allegations contained in Paragraph 19 of
21 Plaintiffs' Complaint, except admits that at certain times not specified in the
22 Complaint it sold Byetta only upon a prescription from a licensed healthcare
23 professional. To the extent there are allegations in this Paragraph directed to parties
24 other than Raley's, that are deemed to require a response from Raley's, Raley's lacks
25 knowledge or information sufficient to form a belief as to the truth of such allegations
26 and, on that basis, denies such allegations.

1 20. The allegations contained in Paragraph 20 of Plaintiffs' Complaint
2 purport to quote the American Diabetes Association's website, which speaks for itself,
3 and any characterization inconsistent with the website is denied.

4 21. Raley's admits the allegations contained in Paragraph 21 of
5 Plaintiffs' Complaint.

6 22. The allegations contained in Paragraph 22 of Plaintiffs' Complaint
7 purport to rely on websites, which speak for themselves, and any characterization
8 inconsistent with these websites is denied.

9 23. Raley's admits that Byetta is a medication approved by FDA to
10 treat type 2 diabetes mellitus. To the extent there are allegations in this Paragraph
11 directed to parties other than Raley's, that are deemed to require a response from
12 Raley's, Raley's lacks knowledge or information sufficient to form a belief as to the
13 truth of such allegations and, on that basis, denies such allegations.

14 24. Raley's admits Byetta is a GLP-1 receptor agonist that enhances
15 glucose-dependent insulin secretion by the pancreatic beta-cell, suppresses
16 inappropriately elevated glucagon secretion, and slows gastric emptying. To the
17 extent there are allegations in Paragraph 24 directed to parties other than Raley's, that
18 are deemed to require a response from Raley's, Raley's lacks knowledge or
19 information sufficient to form a belief as to the truth of such allegations and, on that
20 basis, denies such allegations.

21 25. Raley's admits Byetta is a GLP-1 receptor agonist that enhances
22 glucose-dependent insulin secretion by the pancreatic beta-cell, suppresses
23 inappropriately elevated glucagon secretion, and slows gastric emptying. To the
24 extent there are allegations in Paragraph 25 directed to parties other than Raley's, that
25 are deemed to require a response from Raley's, Raley's lacks knowledge or
26 information sufficient to form a belief as to the truth of such allegations and, on that
27 basis, denies such allegations.

1 26. Raley's admits that Byetta is a member of the drug class referred to
2 as glucagon-like peptide-1 (GLP-1) receptor agonists. To the extent there are
3 allegations in Paragraph 26 directed to parties other than Raley's, that are deemed to
4 require a response from Raley's, Raley's lacks knowledge or information sufficient to
5 form a belief as to the truth of such allegations and, on that basis, denies such
6 allegations.

7 27. The allegations contained in Paragraph 27 of Plaintiffs' Complaint
8 purport to rely on unspecified documents, which speak for themselves, and any
9 characterization inconsistent with the documents is denied. To the extent there are
10 allegations in this Paragraph directed to parties other than Raley's, that are deemed to
11 require a response from Raley's, Raley's lacks knowledge or information sufficient to
12 form a belief as to the truth of such allegations and, on that basis, denies such
13 allegations.

14 28. The allegations contained in Paragraph 28 of Plaintiffs' Complaint
15 purport to quote a document, which speaks for itself, and any characterization
16 inconsistent with the document is denied. Raley's denies any remaining allegations.
17 To the extent there are allegations in this Paragraph directed to parties other than
18 Raley's, that are deemed to require a response from Raley's, Raley's lacks knowledge
19 or information sufficient to form a belief as to the truth of such allegations and, on that
20 basis, denies such allegations.

21 29. The allegations contained in Paragraph 29 of Plaintiffs' Complaint
22 purport to quote a document, which speaks for itself, and any characterization
23 inconsistent with the document is denied. Raley's denies any remaining allegations.
24 To the extent there are allegations in this Paragraph directed to parties other than
25 Raley's, that are deemed to require a response from Raley's, Raley's lacks knowledge
26 or information sufficient to form a belief as to the truth of such allegations and, on that
27 basis, denies such allegations.

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1 30. The allegations contained in Paragraph 30 of Plaintiffs' Complaint
2 purport to reference a document, which speaks for itself, and any characterization
3 inconsistent with the document is denied. Raley's denies any remaining allegations.
4 To the extent there are allegations in this Paragraph directed to parties other than
5 Raley's, that are deemed to require a response from Raley's, Raley's lacks knowledge
6 or information sufficient to form a belief as to the truth of such allegations and, on that
7 basis, denies such allegations.

8 31. The allegations contained in Paragraph 31 of Plaintiffs' Complaint
9 purport to rely on a document, which speaks for itself, and any characterization
10 inconsistent with the document is denied. Raley's denies any remaining allegations.
11 To the extent there are allegations in this Paragraph directed to parties other than
12 Raley's, that are deemed to require a response from Raley's, Raley's lacks knowledge
13 or information sufficient to form a belief as to the truth of such allegations and, on that
14 basis, denies such allegations.

15 32. The allegations contained in Paragraph 32 of Plaintiffs' Complaint
16 purport to rely on a document, which speaks for itself, and any characterization
17 inconsistent with the document is denied. Raley's denies any remaining allegations.
18 To the extent there are allegations in this Paragraph directed to parties other than
19 Raley's, that are deemed to require a response from Raley's, Raley's lacks knowledge
20 or information sufficient to form a belief as to the truth of such allegations and, on that
21 basis, denies such allegations.

22 33. The allegations contained in Paragraph 33 of Plaintiffs' Complaint
23 purport to rely on a document, which speaks for itself, and any characterization
24 inconsistent with the document is denied. Raley's denies any remaining allegations.
25 To the extent there are allegations in this Paragraph directed to parties other than
26 Raley's, that are deemed to require a response from Raley's, Raley's lacks knowledge
27 or information sufficient to form a belief as to the truth of such allegations and, on that
28 basis, denies such allegations.

1 34. The allegations contained in Paragraph 34 of Plaintiffs' Complaint
2 purport to rely on a document, which speaks for itself, and any characterization
3 inconsistent with the document is denied. Raley's denies any remaining allegations.
4 To the extent there are allegations in this Paragraph directed to parties other than
5 Raley's, that are deemed to require a response from Raley's, Raley's lacks knowledge
6 or information sufficient to form a belief as to the truth of such allegations and, on that
7 basis, denies such allegations.

8 35. The allegations contained in Paragraph 35 of Plaintiffs' Complaint
9 purport to rely on a document, which speaks for itself, and any characterization
10 inconsistent with the document is denied. Raley's denies any remaining allegations.
11 To the extent there are allegations in this Paragraph directed to parties other than
12 Raley's, that are deemed to require a response from Raley's, Raley's lacks knowledge
13 or information sufficient to form a belief as to the truth of such allegations and, on that
14 basis, denies such allegations.

15 36. To the extent that the allegations contained in Paragraph 36 of
16 Plaintiffs' Complaint purport to rely on a document, that document speaks for itself,
17 and any characterization inconsistent with the document is denied. Raley's denies any
18 remaining allegations. To the extent there are allegations in this Paragraph directed to
19 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
20 lacks knowledge or information sufficient to form a belief as to the truth of such
21 allegations and, on that basis, denies such allegations.

22 37. The allegations contained in Paragraph 37 of Plaintiffs' Complaint
23 purport to reference a document, which speaks for itself, and any characterization
24 inconsistent with the document is denied. Raley's denies any remaining allegations.
25 To the extent there are allegations in this Paragraph directed to parties other than
26 Raley's, that are deemed to require a response from Raley's, Raley's lacks knowledge
27 or information sufficient to form a belief as to the truth of such allegations and, on that
28 basis, denies such allegations.

1 38. The allegations contained in Paragraph 38 of Plaintiffs' Complaint
2 purport to rely on a document, which speaks for itself, and any characterization
3 inconsistent with the document is denied. Raley's denies any remaining allegations.
4 To the extent there are allegations in this Paragraph directed to parties other than
5 Raley's, that are deemed to require a response from Raley's, Raley's lacks knowledge
6 or information sufficient to form a belief as to the truth of such allegations and, on that
7 basis, denies such allegations.

8 39. The allegations contained in Paragraph 39 of Plaintiffs' Complaint
9 purport to rely on a document, which document speaks for itself, and any
10 characterization inconsistent with the document is denied. Raley's denies any
11 remaining allegations. To the extent there are allegations in this Paragraph directed to
12 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
13 lacks knowledge or information sufficient to form a belief as to the truth of such
14 allegations and, on that basis, denies such allegations.

15 40. The allegations contained in Paragraph 40 of Plaintiffs' Complaint
16 purport to rely on a document, which speaks for itself, and any characterization
17 inconsistent with the document is denied. Raley's denies any remaining allegations.
18 To the extent there are allegations in this Paragraph directed to parties other than
19 Raley's, that are deemed to require a response from Raley's, Raley's lacks knowledge
20 or information sufficient to form a belief as to the truth of such allegations and, on that
21 basis, denies such allegations.

22 41. The allegations contained in Paragraph 41 of Plaintiffs' Complaint
23 purport to rely on documents, which speak for themselves, and any characterization
24 inconsistent with the documents is denied. Raley's denies any remaining allegations.
25 To the extent there are allegations in this Paragraph directed to parties other than
26 Raley's, that are deemed to require a response from Raley's, Raley's lacks knowledge
27 or information sufficient to form a belief as to the truth of such allegations and, on that
28 basis, denies such allegations.

1 42. The allegations contained in Paragraph 42 of Plaintiffs' Complaint
2 purport to rely on a document, which speaks for itself, and any characterization
3 inconsistent with the document is denied. Raley's denies any remaining allegations.
4 To the extent there are allegations in this Paragraph directed to parties other than
5 Raley's, that are deemed to require a response from Raley's, Raley's lacks knowledge
6 or information sufficient to form a belief as to the truth of such allegations and, on that
7 basis, denies such allegations.

8 43. The allegations contained in Paragraph 43 of Plaintiffs' Complaint
9 purport to rely on a document, which speaks for itself, and any characterization
10 inconsistent with the document is denied. Raley's denies any remaining allegations.

11 44. The allegations contained in Paragraph 44 of Plaintiffs' Complaint
12 purport to rely on documents, which speak for themselves, and any characterization
13 inconsistent with the documents is denied. Raley's denies any remaining allegations.

14 45. The allegations contained in Paragraph 45 of Plaintiffs' Complaint
15 purport to rely on a document, which speaks for itself, and any characterization
16 inconsistent with the document is denied. Raley's denies any remaining allegations.
17 To the extent there are allegations in this Paragraph directed to parties other than
18 Raley's, that are deemed to require a response from Raley's, Raley's lacks knowledge
19 or information sufficient to form a belief as to the truth of such allegations and, on that
20 basis, denies such allegations.

21 46. The allegations contained in Paragraph 46 of Plaintiffs' Complaint
22 purport to reference a document, which speaks for itself, and any characterization
23 inconsistent with the document is denied. Raley's lacks knowledge or information
24 sufficient to form a belief as to the truth of the allegations regarding the transmission
25 of the document contained in Paragraph 46 of Plaintiffs' Complaint and, on that basis,
26 denies the allegations. Raley's denies any remaining allegations. To the extent there
27 are allegations in this Paragraph directed to parties other than Raley's, that are deemed
28 to require a response from Raley's, Raley's lacks knowledge or information sufficient

1 to form a belief as to the truth of such allegations and, on that basis, denies such
2 allegations.

3 47. The allegations contained in Paragraph 47 of Plaintiffs' Complaint
4 purport to quote a statement by a third party, which speaks for itself, and any
5 characterization inconsistent with the statement is denied. Raley's denies any
6 remaining allegations. To the extent there are allegations in this Paragraph directed to
7 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
8 lacks knowledge or information sufficient to form a belief as to the truth of such
9 allegations and, on that basis, denies such allegations.

10 48. The allegations contained in Paragraph 48 of Plaintiffs' Complaint
11 purport to paraphrase a document or statement by a third party, which speaks for
12 itself, and any characterization inconsistent with the document or statement is denied.
13 Raley's denies any remaining allegations. To the extent there are allegations in this
14 Paragraph directed to parties other than Raley's, that are deemed to require a response
15 from Raley's, Raley's lacks knowledge or information sufficient to form a belief as to
16 the truth of such allegations and, on that basis, denies such allegations.

17 49. Raley's denies the allegations contained in Paragraph 49 of
18 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
19 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
20 lacks knowledge or information sufficient to form a belief as to the truth of such
21 allegations and, on that basis, denies such allegations.

22 50. Raley's denies the allegations contained in Paragraph 50 of
23 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
24 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
25 lacks knowledge or information sufficient to form a belief as to the truth of such
26 allegations and, on that basis, denies such allegations.

27 51. Raley's denies the allegations contained in Paragraph 51 of
28 Plaintiffs' Complaint that Byetta causes or has been proven to cause pancreatic cancer

1 or pancreatitis and that Raley’s breached any duty to warn. To the extent there are
2 allegations in this Paragraph directed to parties other than Raley’s, that are deemed to
3 require a response from Raley’s, Raley’s lacks knowledge or information sufficient to
4 form a belief as to the truth of such allegations and, on that basis, denies such
5 allegations.

6 52. Raley’s denies the allegations contained in Paragraph 52 of
7 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
8 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
9 lacks knowledge or information sufficient to form a belief as to the truth of such
10 allegations and, on that basis, denies such allegations.

11 53. Raley’s denies the allegations contained in Paragraph 53 of
12 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
13 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
14 lacks knowledge or information sufficient to form a belief as to the truth of such
15 allegations and, on that basis, denies such allegations.

16 54. Raley’s denies the allegations contained in Paragraph 54 of
17 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
18 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
19 lacks knowledge or information sufficient to form a belief as to the truth of such
20 allegations and, on that basis, denies such allegations.

21 55. No response is necessary to Paragraph 55 of Plaintiffs’ Complaint
22 as it contains no allegations directed against Raley’s. To the extent there are
23 allegations in this Paragraph directed to parties other than Raley’s, that are deemed to
24 require a response from Raley’s, Raley’s lacks knowledge or information sufficient to
25 form a belief as to the truth of such allegations and, on that basis, denies such
26 allegations.

27 56. Raley’s denies the allegations contained in Paragraph 56 of
28 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to

1 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
2 lacks knowledge or information sufficient to form a belief as to the truth of such
3 allegations and, on that basis, denies such allegations.

4 57. Raley’s denies the allegations contained in Paragraph 57 of
5 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
6 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
7 lacks knowledge or information sufficient to form a belief as to the truth of such
8 allegations and, on that basis, denies such allegations.

9 58. Raley’s lacks knowledge or information sufficient to form a belief
10 as to the truth of the allegations contained in Paragraph 58 of Plaintiffs’ Complaint
11 and, on that basis, denies the allegations.

12 59. The allegations contained in Paragraph 59 of Plaintiffs’ Complaint
13 purport to rely on a website, which speaks for itself, and any characterization
14 inconsistent with the website is denied.

15 60. No response is necessary to Paragraph 60 of Plaintiffs’ Complaint
16 as it contains no allegations directed against Raley’s. To the extent there are
17 allegations in this Paragraph directed to parties other than Raley’s, that are deemed to
18 require a response from Raley’s, Raley’s lacks knowledge or information sufficient to
19 form a belief as to the truth of such allegations and, on that basis, denies such
20 allegations.

21 61. Raley’s denies the allegations contained in Paragraph 61 of
22 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
23 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
24 lacks knowledge or information sufficient to form a belief as to the truth of such
25 allegations and, on that basis, denies such allegations.

26 62. Raley’s denies the allegations contained in Paragraph 62 of
27 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
28 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s

1 lacks knowledge or information sufficient to form a belief as to the truth of such
2 allegations and, on that basis, denies such allegations.

3 63. Raley’s denies the allegations contained in Paragraph 63 of
4 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
5 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
6 lacks knowledge or information sufficient to form a belief as to the truth of such
7 allegations and, on that basis, denies such allegations.

8 64. Raley’s denies the allegations contained in Paragraph 64 of
9 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
10 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
11 lacks knowledge or information sufficient to form a belief as to the truth of such
12 allegations and, on that basis, denies such allegations.

13 65. Raley’s denies the allegations contained in Paragraph 65 of
14 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
15 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
16 lacks knowledge or information sufficient to form a belief as to the truth of such
17 allegations and, on that basis, denies such allegations.

18 66. No response is necessary to Paragraph 66 of Plaintiffs’ Complaint
19 as it contains no allegations directed against Raley’s. To the extent there are
20 allegations in this Paragraph directed to parties other than Raley’s, that are deemed to
21 require a response from Raley’s, Raley’s lacks knowledge or information sufficient to
22 form a belief as to the truth of such allegations and, on that basis, denies such
23 allegations.

24 67. Raley’s denies the allegations contained in Paragraph 67 of
25 Plaintiffs’ Complaint, including all subparts thereto. To the extent there are
26 allegations in this Paragraph directed to parties other than Raley’s, that are deemed to
27 require a response from Raley’s, Raley’s lacks knowledge or information sufficient to
28

1 form a belief as to the truth of such allegations and, on that basis, denies such
2 allegations.

3 68. No response is necessary to Paragraph 68 of Plaintiffs' Complaint
4 as it contains no allegations directed against Raley's. To the extent there are
5 allegations in this Paragraph directed to parties other than Raley's, that are deemed to
6 require a response from Raley's, Raley's lacks knowledge or information sufficient to
7 form a belief as to the truth of such allegations and, on that basis, denies such
8 allegations.

9 69. Raley's denies the allegations contained in Paragraph 69 of
10 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
11 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
12 lacks knowledge or information sufficient to form a belief as to the truth of such
13 allegations and, on that basis, denies such allegations.

14 70. Raley's denies the allegations contained in Paragraph 70 of
15 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
16 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
17 lacks knowledge or information sufficient to form a belief as to the truth of such
18 allegations and, on that basis, denies such allegations.

19 71. No response is necessary to Paragraph 71 of Plaintiffs' Complaint
20 as it contains no allegations directed against Raley's. To the extent there are
21 allegations in this Paragraph directed to parties other than Raley's, that are deemed to
22 require a response from Raley's, Raley's lacks knowledge or information sufficient to
23 form a belief as to the truth of such allegations and, on that basis, denies such
24 allegations.

25 72. Raley's denies the allegations contained in Paragraph 72 of
26 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
27 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
28

1 lacks knowledge or information sufficient to form a belief as to the truth of such
2 allegations and, on that basis, denies such allegations.

3 73. No response is necessary to Paragraph 73 of Plaintiffs' Complaint
4 as it contains no allegations directed against Raley's. To the extent there are
5 allegations in this Paragraph directed to parties other than Raley's, that are deemed to
6 require a response from Raley's, Raley's lacks knowledge or information sufficient to
7 form a belief as to the truth of such allegations and, on that basis, denies such
8 allegations.

9 74. No response is necessary to Paragraph 74 of Plaintiffs' Complaint
10 as it contains no allegations directed against Raley's. To the extent there are
11 allegations in this Paragraph directed to parties other than Raley's, that are deemed to
12 require a response from Raley's, Raley's lacks knowledge or information sufficient to
13 form a belief as to the truth of such allegations and, on that basis, denies such
14 allegations.

15 75. Raley's denies the allegations contained in Paragraph 75 of
16 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
17 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
18 lacks knowledge or information sufficient to form a belief as to the truth of such
19 allegations and, on that basis, denies such allegations.

20 76. Raley's lacks knowledge or information sufficient to form a belief
21 as to the truth of the allegations regarding the condition of Decedent's health
22 contained in Paragraph 76 of Plaintiffs' Complaint and, on that basis, denies the
23 allegations. Raley's denies that Byetta causes or has been proven to cause pancreatic
24 cancer or pancreatitis.

25 77. Raley's lacks knowledge or information sufficient to form a belief
26 as to the truth of the allegations regarding the condition of Decedent's health
27 contained in Paragraph 77 of Plaintiffs' Complaint and, on that basis, denies the
28

1 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
2 lacks knowledge or information sufficient to form a belief as to the truth of such
3 allegations and, on that basis, denies such allegations.

4 84. Raley’s denies the allegations contained in Paragraph 84 of
5 Plaintiffs’ Complaint.

6 85. Raley’s denies the allegations contained in Paragraph 85 of
7 Plaintiffs’ Complaint.

8 86. Raley’s denies the allegations contained in Paragraph 86 of
9 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
10 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
11 lacks knowledge or information sufficient to form a belief as to the truth of such
12 allegations and, on that basis, denies such allegations.

13 87. Raley’s denies the allegations contained in Paragraph 87 of
14 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
15 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
16 lacks knowledge or information sufficient to form a belief as to the truth of such
17 allegations and, on that basis, denies such allegations.

18 **COUNT I**

19 **STRICT LIABILITY – FAILURE TO WARN**

20 88. Raley’s hereby incorporates all preceding responses to Paragraphs
21 1 through 87 of Plaintiffs’ Complaint as if fully set forth herein.

22 89. Raley’s denies the allegations contained in Paragraph 89 of
23 Plaintiffs’ Complaint, except admits that it sold Byetta only upon a prescription from
24 a licensed healthcare professional. Raley’s lacks knowledge or information sufficient
25 to form a belief as to the truth of the allegations regarding Decedent’s alleged use of
26 Byetta or the condition in which Byetta reached Decedent contained in Paragraph 89
27 of Plaintiffs’ Complaint and, on that basis, denies those allegations. To the extent
28 there are allegations in this Paragraph directed to parties other than Raley’s, that are

1 deemed to require a response from Raley's, Raley's lacks knowledge or information
2 sufficient to form a belief as to the truth of such allegations and, on that basis, denies
3 such allegations.

4 90. Raley's lacks knowledge or information sufficient to form a belief
5 as to the truth of the allegations contained in Paragraph 90 of Plaintiffs' Complaint
6 and, on that basis, denies the allegations.

7 91. Raley's lacks knowledge or information sufficient to form a belief
8 as to the truth of the allegations contained in Paragraph 91 of Plaintiffs' Complaint
9 and, on that basis, denies the allegations.

10 92. No response is necessary to Paragraph 92 of Plaintiffs' Complaint
11 as it contains no allegations directed against Raley's. To the extent there are
12 allegations in this Paragraph directed to parties other than Raley's, that are deemed to
13 require a response from Raley's, Raley's lacks knowledge or information sufficient to
14 form a belief as to the truth of such allegations and, on that basis, denies such
15 allegations.

16 93. Raley's lacks knowledge or information sufficient to form a belief
17 as to the truth of the allegations regarding Decedent's knowledge contained in
18 Paragraph 93 of Plaintiffs' Complaint and, on that basis, denies the allegations.
19 Raley's denies the allegations in Paragraph 93 of Plaintiffs' Complaint that Byetta
20 causes or has been proven to cause pancreatic cancer or pancreatitis and that Raley's
21 breached any duty to warn. To the extent there are allegations in this Paragraph
22 directed to parties other than Raley's, that are deemed to require a response from
23 Raley's, Raley's lacks knowledge or information sufficient to form a belief as to the
24 truth of such allegations and, on that basis, denies such allegations.

25 94. Raley's denies the allegations contained in Paragraph 94 of
26 Plaintiffs' Complaint, except admits that it had certain legal duties as prescribed by
27 law; Raley's denies that it breached any such duties. To the extent there are
28 allegations in this Paragraph directed to parties other than Raley's, that are deemed to

1 require a response from Raley's, Raley's lacks knowledge or information sufficient to
2 form a belief as to the truth of such allegations and, on that basis, denies such
3 allegations.

4 95. Raley's denies the allegations contained in Paragraph 95 of
5 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
6 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
7 lacks knowledge or information sufficient to form a belief as to the truth of such
8 allegations and, on that basis, denies such allegations.

9 96. Raley's denies the allegations contained in Paragraph 96 of
10 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
11 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
12 lacks knowledge or information sufficient to form a belief as to the truth of such
13 allegations and, on that basis, denies such allegations.

14 97. Raley's denies the allegations contained in Paragraph 97 of
15 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
16 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
17 lacks knowledge or information sufficient to form a belief as to the truth of such
18 allegations and, on that basis, denies such allegations.

19 98. Raley's denies the allegations contained in Paragraph 98 of
20 Plaintiffs' Complaint, including all subparts thereto. To the extent there are
21 allegations in this Paragraph directed to parties other than Raley's, that are deemed to
22 require a response from Raley's, Raley's lacks knowledge or information sufficient to
23 form a belief as to the truth of such allegations and, on that basis, denies such
24 allegations.

25 99. Raley's denies the allegations contained in Paragraph 99 of
26 Plaintiffs' Complaint, except admits that it had certain legal duties as prescribed by
27 law; Raley's denies that it breached any such duties. The allegations in Paragraph 99
28 of Plaintiffs' Complaint include legal conclusions, which do not require a response.

1 To the extent there are allegations in this Paragraph directed to parties other than
2 Raley's, that are deemed to require a response from Raley's, Raley's lacks knowledge
3 or information sufficient to form a belief as to the truth of such allegations and, on that
4 basis, denies such allegations.

5 100. Raley's denies the allegations contained in Paragraph 100 of
6 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
7 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
8 lacks knowledge or information sufficient to form a belief as to the truth of such
9 allegations and, on that basis, denies such allegations.

10 101. Raley's denies the allegations contained in Paragraph 101 of
11 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
12 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
13 lacks knowledge or information sufficient to form a belief as to the truth of such
14 allegations and, on that basis, denies such allegations.

15 102. Raley's denies the allegations contained in Paragraph 102 of
16 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
17 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
18 lacks knowledge or information sufficient to form a belief as to the truth of such
19 allegations and, on that basis, denies such allegations.

20 103. Raley's denies the allegations contained in Paragraph 103 of
21 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
22 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
23 lacks knowledge or information sufficient to form a belief as to the truth of such
24 allegations and, on that basis, denies such allegations.

25 **COUNT II**

26 **NEGLIGENCE**

27 104. Raley's hereby incorporates all preceding responses to Paragraphs
28 1 through 103 of Plaintiffs' Complaint as if fully set forth herein.

1 105. Raley’s denies the allegations contained in Paragraph 105 of
2 Plaintiffs’ Complaint, except admits that it had certain legal duties as prescribed by
3 law; Raley’s denies that it breached any such duties. To the extent there are
4 allegations in this Paragraph directed to parties other than Raley’s, that are deemed to
5 require a response from Raley’s, Raley’s lacks knowledge or information sufficient to
6 form a belief as to the truth of such allegations and, on that basis, denies such
7 allegations.

8 106. Raley’s denies the allegations contained in Paragraph 106 of
9 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
10 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
11 lacks knowledge or information sufficient to form a belief as to the truth of such
12 allegations and, on that basis, denies such allegations.

13 107. Raley’s denies the allegations contained in Paragraph 107 of
14 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
15 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
16 lacks knowledge or information sufficient to form a belief as to the truth of such
17 allegations and, on that basis, denies such allegations.

18 108. Raley’s denies the allegations contained in Paragraph 108 of
19 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
20 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
21 lacks knowledge or information sufficient to form a belief as to the truth of such
22 allegations and, on that basis, denies such allegations.

23 109. Raley’s denies the allegations contained in Paragraph 109 of
24 Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph directed to
25 parties other than Raley’s, that are deemed to require a response from Raley’s, Raley’s
26 lacks knowledge or information sufficient to form a belief as to the truth of such
27 allegations and, on that basis, denies such allegations.

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1 110. Raley's denies the allegations contained in Paragraph 110 of
2 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
3 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
4 lacks knowledge or information sufficient to form a belief as to the truth of such
5 allegations and, on that basis, denies such allegations.

6 111. Raley's denies the allegations contained in Paragraph 111 of
7 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
8 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
9 lacks knowledge or information sufficient to form a belief as to the truth of such
10 allegations and, on that basis, denies such allegations.

11 **COUNT III**

12 **BREACH OF IMPLIED WARRANTY**

13 112. Raley's hereby incorporates all preceding responses to Paragraphs
14 1 through 111 of Plaintiffs' Complaint as if fully set forth herein.

15 113. Raley's denies the allegations contained in Paragraph 113 of
16 Plaintiffs' Complaint, except admits that it sold Byetta only upon a prescription from
17 a licensed healthcare professional. To the extent there are allegations in this
18 Paragraph directed to parties other than Raley's, that are deemed to require a response
19 from Raley's, Raley's lacks knowledge or information sufficient to form a belief as to
20 the truth of such allegations and, on that basis, denies such allegations.

21 114. Raley's lacks knowledge or information sufficient to form a belief
22 as to the truth of the allegations contained in Paragraph 114 of Plaintiffs' Complaint
23 and, on that basis, denies the allegations.

24 115. Raley's denies the allegations contained in Paragraph 115 of
25 Plaintiffs' Complaint. To the extent there are allegations in this Paragraph directed to
26 parties other than Raley's, that are deemed to require a response from Raley's, Raley's
27 lacks knowledge or information sufficient to form a belief as to the truth of such
28 allegations and, on that basis, denies such allegations.

1 lacks knowledge or information sufficient to form a belief as to the truth of such
2 allegations and, on that basis, denies such allegations.

3 121. Raley’s lacks knowledge or information sufficient to form a belief
4 as to the truth of the allegations regarding Decedent’s and Decedent’s physicians’
5 purported reliance contained in Paragraph 121 of Plaintiffs’ Complaint and, on that
6 basis, denies the allegations. Raley’s denies the remaining allegations in Paragraph
7 121 of Plaintiffs’ Complaint. To the extent there are allegations in this Paragraph
8 directed to parties other than Raley’s, that are deemed to require a response from
9 Raley’s, Raley’s lacks knowledge or information sufficient to form a belief as to the
10 truth of such allegations and, on that basis, denies such allegations.

11 122. Raley’s denies the allegations contained in Paragraph 122 of
12 Plaintiffs’ Complaint.

13 **PREAMBLE TO AFFIRMATIVE DEFENSES**

14 Raley’s reserves the right to rely upon any of the following or any
15 additional defenses to each claim for relief asserted by Plaintiffs to the extent that such
16 defenses are supported by information developed through discovery or by evidence at
17 trial.

18 **AFFIRMATIVE DEFENSES**

19 **FIRST AFFIRMATIVE DEFENSE**

20 The Complaint fails to state a claim upon which relief can be granted
21 against Raley’s.

22 **SECOND AFFIRMATIVE DEFENSE**

23 Plaintiffs’ claims are barred, in whole or in part, by the applicable statute
24 of limitations, including but not limited to California Code of Civil Procedure §§
25 335.1 and 340; and California Civil Code § 1783.

26 **THIRD AFFIRMATIVE DEFENSE**

27 To the extent that Plaintiffs’ claim for strict products liability is based
28

1 upon a failure to warn theory, and to the extent California law controls, such a claim is
2 barred by California law, which holds that a pharmaceutical manufacturer's liability
3 for failure to warn shall not be measured by the standards of strict liability. *Brown v.*
4 *Superior Court (Abbott Laboratories)*, 44 Cal. 3d 1049, 1061 (1988); *see also*
5 *Armstrong v. Optical Radiation Corp.*, 50 Cal. App. 4th 580, 595 (1996); *Hufft v.*
6 *Horowitz*, 4 Cal. App. 4th 8, 13-17 (1992).

7 **FOURTH AFFIRMATIVE DEFENSE**

8 Some or all of Plaintiffs' claims are barred by the learned intermediary
9 and/or sophisticated user doctrines. At all relevant times herein, Decedent's
10 prescribing physicians were in the position of learned intermediaries and/or
11 sophisticated purchasers, fully knowledgeable and informed with respect to the risks
12 and benefits of Byetta.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 The injuries, damages, and losses alleged in the Complaint, none being
15 admitted, were caused in whole or in part by the negligence of the Plaintiffs,
16 Decedent, and/or others, over whom Raley's exercised no control, had no opportunity
17 to anticipate or right to control, and with whom Raley's had no legal relationship by
18 which liability could be attributed to it because of the actions of the Plaintiffs,
19 Decedent, and/or others, which, by comparison was far greater than any conduct
20 alleged as to Raley's.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 Plaintiffs' alleged loss, damage, injury, harm, expense, diminution, or
23 deprivation alleged, if any, was caused in whole or in part by Plaintiffs' and
24 Decedent's failure to exercise reasonable care and diligence to mitigate Plaintiffs'
25 alleged damages.

26 **SEVENTH AFFIRMATIVE DEFENSE**

27 Plaintiffs' claims are barred in that Byetta was designed, manufactured
28 and labeled in a manner consistent with the state of the art at the pertinent time.

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EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims are preempted by federal law in that Byetta was approved by the FDA. The granting of the relief prayed for in Plaintiffs’ Complaint would impede, impair, frustrate, or burden the effectiveness of such federal law and would violate the Supremacy Clause (Art. VI, cl. 2) of the United States Constitution.

NINTH AFFIRMATIVE DEFENSE

Some or all of Plaintiffs’ claims are barred by the doctrines concerning unavoidably unsafe products, including, but not limited to, the operation of comments j and k to Section 402A of the RESTATEMENT (SECOND) OF TORTS and/or barred by the RESTATEMENT (THIRD) OF TORTS.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs’ breach of warranty claims are barred because there is no privity of contract between Decedent and Raley’s; Plaintiffs failed to give timely notice of any alleged breach of warranty to Raley’s; Decedent did not reasonably rely upon any alleged warranty; Decedent failed to satisfy all conditions precedent or subsequent to the enforcement of such alleged warranty; and the alleged warranty was appropriately disclaimed, excluded, or modified.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims are barred in whole or in part by the applicable provisions of the United States Constitution, the California Constitution, should it apply, and/or the applicable Constitution of any other State or Commonwealth of the United States whose laws might be deemed controlling in this case. These provisions include, but are not limited to, the First Amendment to the Constitution of the United States, and Article I, Section 2 of the Constitution of the State of California because Raley’s commercial speech, if any, regarding Byetta was neither false nor misleading.

TWELFTH AFFIRMATIVE DEFENSE

Raley’s alleges that Decedent was fully informed of the risks of the use

1 of Byetta by the treating physician(s), and the informed consent given by Decedent is
2 pleaded as an affirmative defense.

3 **THIRTEENTH AFFIRMATIVE DEFENSE**

4 Plaintiffs' claims are barred and/or this Court should defer this matter, in
5 whole or in part, pursuant to the doctrine of primary jurisdiction, in that the FDA is
6 charged under the law with regulating prescription drugs, including Byetta, and is
7 specifically charged with determining the content of the warnings and labeling for
8 prescription drugs.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 To the extent Plaintiffs' claims are based on alleged misrepresentations
11 made to the FDA, such claims are barred pursuant to *Buckman Co. v. Plaintiffs' Legal*
12 *Committee*, 531 U.S. 341 (2001).

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 The injuries or damages alleged by Plaintiffs can be attributed to several
15 causes and, accordingly, should be apportioned among the various causes according to
16 the respective contribution of each such cause to the harm sustained, if any.

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 Any verdict or judgment rendered against Raley's must be reduced by
19 those amounts that have been, or will, with reasonable certainty, replace or indemnify
20 Plaintiffs, in whole or in part, for any past or future claimed economic loss, from any
21 collateral source such as insurance, social security, worker's compensation, or
22 employee benefit programs.

23 **SEVENTEENTH AFFIRMATIVE DEFENSE**

24 The proximate cause of Plaintiffs' alleged injuries was a modification or
25 alteration of the products at issue, which was not reasonably expected by Raley's.
26 Any injuries or expenses incurred by Plaintiffs were not caused by Raley's, but may
27 have been proximately caused, in whole or part, by the unforeseen alteration,
28 unintended use, misuse or abuse of the products referenced in Plaintiffs' Complaint.

1 amount of non-economic damages allocated to that defendant in direct proportion to
2 that defendant's percentage of fault, and a separate judgment shall be rendered against
3 that defendant for that amount.

4 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

5 Venue is incorrect and improper in this judicial district.

6 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

7 Raley's asserts that choice of law rules should determine which
8 jurisdiction's laws govern this case, and expressly reserves the right to supplement
9 this answer with any defenses that may be available to it under the law of the
10 jurisdictions determined to apply to it in accordance with choice of law rules.

11 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

12 If Plaintiffs have sustained injuries or losses as alleged in the Complaint,
13 such injuries or losses resulted from Decedent's pre-existing and/or unrelated medical,
14 genetic and/or environmental conditions, diseases, or illnesses, subsequent medical
15 conditions or natural courses of conditions for which Raley's is not responsible.

16 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

17 The Plaintiffs' alleged loss, damage, injury, harm, expense, diminution,
18 or deprivation alleged, if any, resulted from independent, unforeseeable, superseding,
19 and/or intervening causes unrelated to any conduct of Raley's.

20 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

21 Raley's had no duty to warn about any possible risks of Byetta that were
22 not known at the time of the medication's manufacture and sale.

23 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

24 Plaintiffs' claim for failure to warn is barred because Decedent or his
25 physician knew or had reason to know of the risks of Byetta.

26 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

27 Plaintiffs' claims are barred because Byetta was not unreasonably
28 dangerous for its ordinary and foreseeable use.

1 in the Fifth and Fourteenth Amendments to the United States Constitution; the
2 Excessive Fines Clause of the Eighth Amendment to the United States Constitution;
3 the Double Jeopardy Clause in the Fifth Amendment to the United States
4 Constitution; the Tenth Amendment to the United States Constitution; and common
5 law, public policy, and applicable statutes and court rules.

6 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

7 Plaintiffs' causes of action are barred because a reasonable purchaser
8 and/or consumer would have been aware of the alleged risks of Byetta.

9 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

10 Raley's did not breach any implied warranties or any warranties created
11 by law.

12 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

13 Raley's is entitled to, and claims the benefit of, all defenses and
14 presumptions set forth in or arising from any rule of law or statute in California and/or
15 any other law or statute that may be applicable.

16 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

17 Plaintiffs' claims are barred, in whole or in part, because defendant acted
18 in good faith at all relevant times and gave adequate warnings of all known or
19 reasonably knowable risks associated with the use of its product.

20 **FORTIETH AFFIRMATIVE DEFENSE**

21 Raley's is not a proper party to this action. Raley's is not a manufacturer
22 of Byetta and it is prohibited under federal law from changing Byetta's warnings.

23 **FORTY-FIRST AFFIRMATIVE DEFENSE**

24 Plaintiffs' strict liability claims are barred because pharmacies may not
25 be held strictly liable for selling prescription drugs. *Murphy v. E.R. Squibb & Sons,*
26 *Inc.*, 40 Cal. 3d 672, 680 (Cal. 1985).

27 Raley's denies that Plaintiffs are entitled to recover any relief requested in
28 Plaintiffs' Prayer, or any relief whatsoever.

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WHEREFORE, Raley’s prays for judgment as follows:

1. That Plaintiffs take nothing by the Complaint;
2. That the Court enter judgment dismissing the Complaint against Raley’s, with prejudice;
3. That the Court award Raley’s its reasonable expenses and costs incurred in the defense of the Complaint;
4. That the Court grant Raley’s such relief as the Court may deem proper.

DATED: March 19, 2015

REED SMITH LLP

By: /s/ David E. Stanley
David E. Stanley
Email: dstanley@reedsmith.com
Attorneys for Defendant Raley's

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DEMAND FOR JURY TRIAL

Defendant Raley’s hereby demands a trial by jury as to all issues so triable.

DATED: March 19, 2015

REED SMITH LLP

By: /s/ David E. Stanley
David E. Stanley
Email: dstanley@reedsmith.com
Attorneys for Defendant Raley's

REED SMITH LLP
A limited liability partnership formed in the State of Delaware