

Richard D. Meadow, Esq.  
rdm@lanierlawfirm.com  
Catherine T. Heacox, Esq.  
cth@lanierlawfirm.com  
**THE LANIER LAW FIRM, PLLC**  
126 East 56<sup>th</sup> Street, 6<sup>th</sup> Floor  
New York, NY 10022  
(T) 212-421-2800  
(F) 212-421-2878

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U.S. DISTRICT COURT

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**Attorneys for Plaintiffs**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

ARIKA ELIZABETH MORROW )  
as the Proposed Administratrix of the )  
Estate of MARGARET LUCILLE )  
CROOKER, )

Plaintiff, )

v. )

ACTAVIS TOTOWA, LLC, MYLAN )  
LABORATORIES, INC., MYLAN )  
PHARMACEUTICALS, INC. and UDL )  
LABORATORIES, INC., )

Defendants. )

CIVIL ACTION NO. 08-3350  
(JAG)

**COMPLAINT AND JURY  
DEMAND**

Plaintiff ARIKA ELIZABETH MORROW, as the Proposed Administratrix of the Estate of MARGARET LUCILLE CROOKER (hereinafter referred to as "Plaintiff"), by and through their undersigned attorneys, hereby sue Defendants ACTAVIS TOTOWA, LLC, which has its principal place of business at 60 Columbia Road, Building B, Morristown, New Jersey 07906, MYLAN LABORATORIES, INC., which has its

principal place of business at 500 Corporate Drive, Canonsburg, Pennsylvania 15217,  
JDL LABORATORIES, INC., which has its principal place of business at 1718 Northrock

Court, Rockford, Illinois 61103, and MYLAN PHARMACEUTICALS, INC., which has its principal place of business at 781 Chestnut Ridge Road, Morgantown, West Virginia 26505, (hereinafter collectively referred to as "Defendants").

**STATEMENT OF THE CASE**

1. This is an action brought by Plaintiff and Decedent MARGARET LUCILLE CROOKER (hereinafter "Decedent") for personal injuries following ingestion of Digitek® (hereinafter "Digitek") as a direct and proximate result of Defendants' negligent and wrongful conduct in connection with designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling of the prescription drug Digitek.

**PARTIES**

2. Plaintiff was and is a resident of the Town of Kemp, the State of Texas.

3. Plaintiff is the daughter and Proposed Administratrix of the Decedent's estate. Plaintiff brings this action on behalf of herself and all of the next of kin of Decedent, including but not limited to Andrew Franklin Morrow, Robin Kay Morrow, Arthur Eric Morrow and Ruby Katherine. Plaintiff is in the process of seeking appointment as the Administratrix of Decedent's estate.

4. That at all times hereinafter mentioned, upon information and belief, Defendant ACTAVIS TOTOWA, LLC. was and still is a corporation organized and existing under the laws of the State of New Jersey.

5. That at all times hereinafter mentioned, upon information and belief, Defendant ACTAVIS TOTOWA, LLC. was and still is a foreign corporation authorized to do business in the State of New Jersey.

6. That at all times hereinafter mentioned, upon information and belief, Defendant, ACTAVIS TOTOWA, LLC. was and still is a business entity actually doing business in the State of New Jersey.

7. That at all times hereinafter mentioned, upon information and belief, Defendant MYLAN LABORATORIES, INC. was and still is a corporation organized and existing under the laws of the State of Pennsylvania.

8. That at all times hereinafter mentioned, upon information and belief, Defendant MYLAN LABORATORIES INC. was and still is a foreign corporation authorized to do business in the State of New Jersey.

9. That at all times hereinafter mentioned, upon information and belief, Defendant, MYLAN LABORATORIES, INC. was and still is a business entity actually doing business in the State of New Jersey.

10. That at all times hereinafter mentioned, upon information and belief, Defendant, MYLAN PHARMACEUTICALS, INC. was and still is a corporation organized and existing under the laws of the State of West Virginia.

11. That at all times hereinafter mentioned, upon information and belief, Defendant, MYLAN PHARMACEUTICALS, INC. was and still is a foreign corporation authorized to do business in the State of New Jersey.

12. That at all times hereinafter mentioned, upon information and belief, Defendant, MYLAN PHARMACEUTICALS, INC. was and still is a business entity actually doing business in the State of New Jersey.

13. That at all times hereinafter mentioned, upon information and belief, Defendant, UDL LABORATORIES, INC. was and still is a corporation organized and existing under the laws of the State of Illinois.

14. That at all times hereinafter mentioned, upon information and belief, Defendant, UDL LABORATORIES, INC. was and still is a foreign corporation authorized to do business in the State of New Jersey.

15. That at all times hereinafter mentioned, upon information and belief, Defendant, UDL LABORATORIES, INC. was and still is a business entity actually doing business in the State of New Jersey.

16. That at all times hereinafter mentioned, upon information and belief, Defendants engaged in the business of designing, manufacturing, advertising, marketing and selling pharmaceutical drugs, including Digitek, and in pursuance of this business, transacts business within the State of New Jersey and contracts to provide goods and services in the State of New Jersey.

17. That at all times hereinafter mentioned, upon information and belief, Defendants regularly does and solicits business and engages in a persistent course of conduct in the State of New Jersey, deriving substantial revenue from goods and products consumed in the State of New Jersey.

#### **JURISDICTION & VENUE**

18. This Court has jurisdiction pursuant to 28 United States Code § 1332, in that Plaintiff is a citizen of a State which is different from the States where Defendants are incorporated and have their principal place of business.

19. Venue in this action properly lies in the District of New Jersey in that Defendant ACTAVIS TOTOWA, LLC is incorporated in the State of New Jersey and has its principal place of business in this judicial district at 60 Columbia Road, Building B, Morristown, New Jersey 07906.

20. The amount in controversy exceeds SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), exclusive of interest and costs.

21. This diversity action is brought under the New Jersey Products Liability Act, N.J.S.A. 2A:58C-1, *et seq.* (“Product Liability Act”), the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.* (“Consumer Fraud Act”), the New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9 *et seq.* (“Punitive Damages Act”), and common law of the State of New Jersey to recover damages and other relief, including the costs of suit and reasonable attorneys’ and expert fees, for the injuries that Decedent 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 Digitek.

### **FACTUAL ALLEGATIONS**

#### **A. The Drug – Digitek (digoxin tablets, USP)**

22. Digitek is the brand-name of one of the cardiac glycosides, a closely related group of drugs having in common specific effects on the myocardium of the heart.

23. Digitek is widely prescribed and used by millions of Americans to treat various heart conditions, including atrial fibrillation, atrial flutter and congestive heart failure.

24. Digitek and digoxin are metabolized in the liver but excreted by the kidney.

25. Digitek is approved only for sale and distribution in the United States in the following dosages:

- a. Digitek (digoxin tablets, USP) 0.125 mg, and,
- b. Digitek (digoxin tablets, USP) 0.250 mg  
(collectively referred hereinafter as “approved dose”).

26. Each Digitek tablet is approved by the United States Food and Drug Administration (“FDA”) only for sale and distribution if it contains the labeled amount of digoxin.

27. Digitek tablets manufactured and produced with an amount of digoxin in excess of the labeled dose are not approved for sale or distribution in the United States (hereinafter “unapproved excessive dose”).

**B. The FDA Warning Letters**

**1. The August 15, 2006 FDA Warning Letter**

28. Upon information and belief, Digitek was designed developed, manufactured, produced, processed, compounded, formulated, tested, sold, marketed, labeled, packaged, dosed, advertised, promoted, supplied, released and/or distributed from a plant in Little Falls, New Jersey, owned by one or more of Defendants, which was acquired in December 2005 as part of the acquisition of another company’s generic business.

29. On or about August 15, 2006, the FDA issued a letter warning to the Defendant ACTAVIS TOTOWA LLC. for failing to file periodic safety reports at its

solid oral dose manufacturing facility in Little Falls, New Jersey (hereinafter referred to as the "*August, 2006 Warning Letter*").

30. In the *August, 2006 Warning Letter*, the FDA warned Defendant ACTAVIS TOTOWA LLC. that it had violated its adverse medical event reporting obligations, marketing drugs without proper clearance and causing at least 26 adverse drug experiences (ADEs) by not submitting periodic safety reports.

31. According to the FDA's *August, 2006 Warning Letter*, an FDA inspection between January and February 2006 revealed that there were six potentially serious and unexpected adverse drug events dating back to 1999 for product, including digoxin, that were not reported to the agency.

32. The FDA's *August, 2006 Warning Letter* also warned Defendant ACTAVIS TOTOWA LLC. about not properly investigating serious and unexpected ADEs; not adequately reviewing ADE information; and failing to file periodic safety reports which resulted in at least 26 ADEs which were never reported.

33. The FDA's *August, 2006 Warning Letter* also warned Defendant ACTAVIS TOTOWA LLC. that it had not developed procedures for the surveillance, receipt, evaluation, and report of adverse events.

**2. The Revised Warning Letter About Defendant ACTAVIS TOTOWA LLC.'s "Significant Deviations from the Current Good Manufacturing Practice Regulations"**

34. In or around February 1, 2007, the FDA issued a revised Warning Letter to Defendant ACTAVIS TOTOWA LLC. (hereinafter "*Revised Warning Letter*") citing "significant deviations from the current Good Manufacturing Practice regulations."

35. In the *Revised Warning letter* the FDA noted several deviations from good manufacturing process, resulting in the adulteration of drug products manufactured by Defendant ACTAVIS TOTOWA LLC. that were observed by the FDA during an inspection conducted July 10, 2006 to August 10, 2006.

36. According to the FDA's *Revised Warning Letter*:

Significant deficiencies were found in the operations of your firm's quality control unit, and as a result there is **no assurance that many drug product manufactured and released into interstate commerce by your firm have the identity, strength, quality and purity that they purport to possess.**

37. The deviation from good manufacturing process observed by the FDA were presented to Defendant ACTAVIS TOTOWA LLC. on an FDA-483 (list of Inspections) at the close of the inspection on August 10, 2006.

38. The FDA's *Revised Warning letter* cited deficiencies in the operations of Defendant ACTAVIS TOTOWA LLC.'s quality control unit, which included instances where the unit failed to adequately investigate and resolve laboratory deviations and out-of specification test results for drug products. Specifically, according to the *Revised Warning letter*:

Our investigators observed numerous instances where the quality control unit failed to adequately investigate and resolve laboratory deviations and out-of-specification test results involving drug products that ultimately were released for distribution into interstate commerce. Additionally, our investigators uncovered out-of-specification test results in laboratory raw data that were not documented in laboratory notebooks, and found that products were released based on retesting without any justification for discarding the initial out-of-specification test results.

39. The FDA *Revised Warning letter* stated that the FDA found during its inspection that analysts did not always document the preparation and testing of samples at the time they were done:

Master and batch production and control records were found to be deficient in that they did not include complete procedures for documenting the collection of samples. Although your firm's procedures require the collection of in-process blend uniformity samples of three times the weight of finished product tablets or capsules, master production records do not require, and batch records do not contain, documentation that the samples are being collected accordingly, [21 CFR 211.186(b)(9) and 21 CFR 211.188(b)(10)]

40. The FDA also cited a failure to check for accuracy the input and outputs from a system used to run the high-performance liquid chromatography during analysis of drug products.

41. Among other deficiencies cited by the FDA in the *Revised Warning letter* were:

- a. failure of the quality control unit to recognize that some tablets did not meet in-process specifications;
- b. a lack of adequate procedures for conducting bulk product holding time studies;
- c. failure to identify and control rejected in-process materials;
- d. not adequately qualifying select equipment; and
- e. failure to establish and follow written procedures for maintaining manufacturing equipment.

42. By way of example, the FDA states in the *Revised Warning Letter* that:

"Your firm's cleaning validation studies were found to be inadequate and, as a result, there was no assurance that equipment is adequately cleaned between the manufacture of different drug products. [21 CFR 21.67(b)] For example:

- a) Cleaning validation was performed for the process trains without evaluating for sample recovery for numerous products, including: Amidal Nasal Decongestat; Amigesic Caplets, 750 mg; Carisoprodol and Aspirin Tablets, USP, 200mg/325mg; Carisoprodol Tablets, USP, 350mg; Chlorzoxazone Tablets, USP, 250mg and 500 mg; **Digoxin Tablets, USP, 0.25mg.**"

43. The FDA gave Defendant ACTAVIS TOTOWA LLC. 15 working days to provide a written listing of all released lots of finished drug products that remain within specification that are associated with any out-of-specification test results during manufacture and to provide description of the actions taken to ensure that lots were suitable for release.

C. **The Manufacture, Production, Labeling, Distribution and Sale of Dangerous Digitek Tablets Containing an Amount of Digoxin Exceeding the Labeled Dose, Including Some With A Dose Exceeding that Approved for Medical Treatment in Humans.**

44. The Defendants are drug companies, that upon information and belief, engaged in the design, development, manufacture, production, processing, compounding, formulating, testing, sale, marketing, labeling, packaging, dosing, advertising, promotion, supply, releasing and/or distribution of Digitek tablets containing an amount of digoxin which exceedws the dose on the label.

45. At all times relevant to this action, Defendants knew, and/or had reason to know, that certain Digitek tablets were not safe for the patients for whom the drug was prescribed because the excess dose of digoxin can cause serious medical problems, digoxin overdose, digitalis toxicity and, in certain patients, catastrophic injuries and death.

D. **The Class I-Recall in the United States and Defendants' Failure to Provide, Complete and Adequate Information About the Recalled Digitek.**

46. On or about April 25, 2008, the United States Food and Drug Administration ("FDA") announced a Class I Recall of all strengths of Digitek. The products are distributed by Defendant Mylan Pharmaceuticals Inc., and under a "Bertek"

label by Defendant UDL Laboratories, Inc. under a “UDL” label (hereinafter collectively referred to as “Recalled Digitek”).

47. The FDA’s announcement, available at <http://www.fda.gov/medwatch/safety/2008/safety08.htm#Digitek>, stated the following:

**DIGITEK (DIGOXIN TABLETS, USP)**

Audience: Cardiologists, family physicians, pharmacist, other healthcare professionals, patients [Posted 4/28/2008] Actavis Totowa LLC notified healthcare professionals of a Class I nationwide recall of all strengths of Digitek, a drug used to treat heart failure and abnormal heart rhythms. The products are distributed by Mylan Pharmaceuticals Inc., under a “Bertek” label and by UDL Laboratories, Inc. under a “UDL” label. The product is being recalled due to the possibility that tablets with double the appropriate thickness may contain twice the approved level of active ingredient. The existence of double strength poses a risk of digitalis toxicity in patients with renal failure. Digitalis toxicity can cause nausea, vomiting, dizziness, low blood pressure, cardiac instability and bradycardia. Several reports of illnesses and injuries have been reported. Patients should contact their healthcare professional with questions.  
[April 25, 2008 – Press Release – Actavis Totowa LLC]

48. Class I Recalls are instituted only when there exists a reasonable probability that use of the product will cause serious injury or death.

49. The Recalled Digitek is an adulterated drug and its label and packaging are misbranded.

50. As of the date that this Complaint was filed, Defendants released little additional information about the Recalled Digitek beyond the Press Release set forth in Paragraph 46 above. Defendants have failed to inform, the medical community, the public including Plaintiff:

- a. How many, and which lots of Digitek contained amounts of unapproved digoxin;
- b. How long Defendants manufactured and produced the Recalled Digitek and how long the adulterated drug was supplied, sold distributed and released into the stream of commerce;
- c. How many “reports of illness and injuries have been received” and,

- d. The nature and extent of the reports of illness and injuries that were received.

51. Defendants' failure to provide the medical community, the public, the Decedent, complete and adequate information about the Recalled Digitek, including the information set forth in the preceding paragraph is consistent with the safety violations which led the FDA to issue an *August 15, 2006 Warning Letter*, as set forth above.

**E. The Well-Known Serious and Life-threatening Injuries from Digoxin Overdose and Digitalis Toxicity**

52. Digoxin overdose and digitalis toxicity can cause serious life-threatening personal injury, and death.

53. The Digitek label states, in relevant parts, under "Precautions" that:

**Use in Patients with Impaired Renal Function:** Digoxin is primarily excreted by the kidneys; therefore, patients with impaired renal function require smaller than usual maintenance doses of digoxin. Because of the prolonged elimination half-life, a longer period of time is required to achieve an initial or new steady-state serum concentration in patients with renal impairment than in patients with normal renal function. If appropriate care is not taken to reduce the dose of digoxin, such patients are at high risk for toxicity, and toxic effects will last longer in such patients than in patients with normal renal function.

**Adults: Cardiac:** Therapeutic doses of digoxin may cause heart block in patients with pre-existing sinoatrial or AV conduction disorders; heart block can be avoided by adjusting the dose of digoxin. Prophylactic use of a cardiac pacemaker may be considered if the risk of heart block is considered acceptable. High doses of digoxin may produce a variety of rhythm disturbances, such as first-degree, second-degree (Wendkebach), or third-degree heart block (including asystole); atrial tachycardia with block; AV dissociation; accelerated junctional (nodal) rhythm; unifocal or multifocal ventricular premature contractions (especially bigeminy or trigeminy); ventricular tachycardia; and ventricular fibrillation. Digoxin produces PR prolongation and ST segment depression which should not by themselves be considered digoxin toxicity. Cardiac toxicity can also occur at therapeutic doses in patients who have conditions which may alter their sensitivity to digoxin.

**Gastrointestinal:** Digoxin may cause anorexia, nausea, vomiting and diarrhea. Rarely, the use of digoxin has been associated with abdominal pain, intestinal ischemia and hemorrhagic necrosis of the intestines.

**CNS:** Digoxin can produce visual disturbances (blurred or yellow vision), headache, weakness, dizziness, apathy, confusion and mental disturbances (such as anxiety, depression, delirium and hallucination).

54. Non-approved, excessive doses of digoxin significantly increase the likelihood that overdose patients will experience the known side-effects and reactions

that can result from the approved doses of digoxin. In other words, the risk and dangers of approved doses are enhanced by an overdose of digoxin.

55. Doses of digoxin exceeding the dose prescribed by a physician for medical treatment can cause personal injury and death.

56. The Digitek label states in relevant part that:

**Massive Digitalis Overdosage:** Manifestations of life-threatening toxicity include ventricular tachycardia or ventricular fibrillation, or progressive bradyarrhythmias, or heart block. The administration of more than 10 mg of digoxin in a previously healthy adult or more than 4 mg in a previously healthy child, or steady-state serum concentration great than 10mg/mL often results in cardiac arrest.

DIGIBIND [Digoxin Immune Fab (Ovine)] should be used to reverse the toxic effects of ingestion of a massive overdose. The decision to administer DIGIBIND [Digoxin Immune Fab (Ovine)] to a patient who has ingested a massive dose of digoxin but who has not yet manifested life-threatening toxicity should depend on the likelihood that life-threatening toxicity will occur. Patients with massive digitalis ingestion should receive large doses of activated charcoal to prevent absorption and bind digoxin in the gut during enteroenteric recirculation. Emesis or gastric lavage may be indicated especially if ingestion has occurred within 30 minutes of the patient's presentation of the hospital. Emesis should not be induced in patients who are obtunded. If a patient presents more than 2 hours after ingestion or already has toxic manifestations, it may be unsafe to induct vomiting or attempt passage of a gastric tube, because such maneuvers may induce an acute vagal episode that can worsen digitalis-related arrhythmias.

Severe digitalis intoxication can cause a massive shift of potassium from inside to outside the cell leading to life-threatening hyperkalemia. The administration of potassium supplements in the setting of massive intoxication may be hazardous and should be avoided. Hyperkalemia caused by massive digitalis toxicity is best treated with DIGIBIND [Digoxin Immune Fab (Ovine)]; initial treatment with glucose and insulin may also be required if hyperkalemia itself is acutely life-threatening.

57. The Digitek label states, in relevant part, under "Adverse Events" that:

In general, the adverse reaction of digoxin are dose dependent and occur at doses higher than those need to achieve a therapeutic effect. Hence, adverse reactions are less common when digoxin is used within the recommended dose range or therapeutic serum concentration range and when there is careful attention to concurrent medications and conditions.

Because some patients may be particularly susceptible to side effects with digoxin, the dosage of the drug should always be selected carefully and adjusted as the clinical conditions of the patient warrant. In the past, when high doses of digoxin were used and little attention was paid to the clinical status or concurrent medications, adverse reactions were more frequent and severe. Cardiac reactions accounted for about one-half, gastrointestinal disturbances about one-fourth and CNS and other toxicity for about one-fourth of these adverse reactions.

58. The Recalled Digitek was adulterated, misbranded, defective, unreasonably dangerous and unfit for its intended uses. Defendants placed tens of

thousands of patients including Decedent, unnecessarily at risk of serious injury and/or death and may have caused them to suffer personal injuries and harm, including medical expenses, anxiety and fear induced from ingesting the defective and misbranded drug.

59. Defendants knew or should have known about the manufacturing and production defects, misbranding and negligent sale and distribution of the Recalled Digitek, and had a duty to design, develop, manufacture, produce, process, compound, formulate, test, sell, market, label, package, dose, advertise, promote, supply, release and/or distribute only sage Digitek with approved doses of digoxin and doses of digoxin that were consistent with the dose on the label.

60. Defendants knew or should have known that they designed, developed, manufactured, produced, processed, compounded, formulated, tested, sold, marketed, labeled, packaged, dosed, advertised, promoted, supplied, released and/or distributed Digitek with excessive unapproved amounts of digoxin before:

- a. any of the Recalled Digitek was released for distribution and sale; and,
- b. they mislabeled the Recalled Digitek.

61. Defendants failed to implement or utilize adequate safeguards, tests inspections and quality assurance procedures to ensure the accuracy of the strength of Digitek.

62. Defendants failed to implement or utilized adequate testing, including batch testing, batch dose verification, and other procedures, safeguards, and inspections to confirm, monitor and assess the quality, dose and safety of Digitek.

63. Decedent MARGARET LUCILLE CROOKER was lawfully prescribed Digitek but unwittingly ingested the Recalled Digitek.

64. As a direct and proximate result of the liability-producing conduct of Defendants, and the defective and unreasonably dangerous condition of the Recalled Digitek, Plaintiff suffered significant physical injury and died on March 15, 2008.

65. As a direct and proximate result of the acts and omissions of Defendants, Decedent suffered serious physical injury, pain and suffering, loss of income, loss of opportunity, loss of family and social relationships, and medical, hospital surgical expenses and other expenses related to diagnosis and treatment thereof, for which Defendants are liable.

**COUNT I**  
**PRODUCT LIABILITY – DESIGN DEFECT (N.J.S.A. 2A-58C-1 et seq.)**

66. Plaintiff repeats and reiterates the allegations previously set forth herein.

67. At all times material to this action, Defendants were responsible for designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling Digitek.

68. The subject product is defective and unreasonably dangerous to consumers.

69. Digitek was defective in its design or formulation in that it is not reasonably fit, suitable, or safe for its intended purpose and/or its foreseeable risks exceed the benefits associated with its design and formulation.

70. That at all times hereinafter mentioned, Digitek was not suited or effective for the treatment of its intended purpose, even though Defendants directly and indirectly advertised, marketed and promoted Digitek for such use.

71. That at all times hereinafter mentioned, Digitek was not safe and were not suited for purposed for which Defendants, directly and indirectly, advertised, marketed

and promoted the drug at the time Defendants designed, manufactured, distributed and sold the drugs and placed it in the stream of commerce.

72. Digitek was defective and unreasonably dangerous when they left control of Defendants in one or more of the following manners:

- a. The risk associated with use of Digitek far outweighed the utility derived from using the medication;
- b. Defendants' failed to provide adequate warnigs regarding the hazards associated with the use of Digitek;
- c. Defendants' product was defectively designed and unreasonably dangerous in design and composition in that other medications could achieve similar results without the risks presented by Digitek; and
- d. Digitek failed to comply with express warrantees that the product was safe and effective for human consumption.

73. In addition, at the time the subject product left the control of Defendants, there were practical and feasible alternative designs that would have prevented and/or significantly reduced the risk of the Decedent'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 the Decedent's injuries without substantially impairing the product's ability.

74. As a direct and proximate result of the subject product's defective design, Decedent suffered severe and permanent physical injuries. Decedent endured substantial conscious pain and suffering, both physical and emotional in nature. Decedent incurred significant expenses for medical care and treatment, suffered lost wages and earning, and was otherwise physically, emotionally and economically injured. Plaintiff seeks actual and punitive damages from Defendants as alleged herein.

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

76. Plaintiff repeats and reiterates the allegations previously set forth herein.

77. At all time material to this action, Defendants were engaged in the business of designing, developing, manufacturing, rebranding, labeling, marketing, distributing and/or selling Digitek.

78. At all times material to this action, Digitek was expected to reach and did reach consumers in the State of New Jersey and throughout the United States, including Decedent herein with substantial change in the condition in which it was sold.

79. Defendants sold and/or distributed Digitek in a condition that posed unreasonable risks from reasonably anticipated use. Digitek was expected to and did reach Decedent without substantial change in condition from the time that it left the control of the Defendants.

80. The defective conditions alleged herein rendered Digitek was unreasonably dangerous to the Decedent and proximately caused the injuries and damages for which this lawsuit seeks recovery.

81. At all times material to this action, Digitek was designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and/or sold by Defendants in a defective and unreasonably dangerous condition at the time it were

placed in the stream of commerce in ways which include, but not limited to, on or more of the following particulars:

- a. When placed in the stream of commerce Digitek contained manufacturing defects which rendered the product unreasonably dangerous;
- b. The subject product's manufacturing defects occurred while the products was in the possession and control of Defendants;
- c. The subject products were not made in accordance with Defendants' specifications or performance standards; and
- d. The subject products' manufacturing defects existed before it left the control of the Defendants.

82. As a direct and proximate result of the subject products' manufacturing design, Decedent suffered severe and permanent physical injuries. Decedent endured substantial conscious pain and suffering, both physical and emotional in nature. Decedent incurred significant expenses for medical care and treatment, suffered lost wages and earning, and was otherwise physically, emotionally and economically injured. Plaintiff seeks actual and punitive damages from Defendants as alleged herein.

83. 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 – FAILURE TO WARN (N.J.S.A. 2A-58C-1 et seq.)**

84. Plaintiff repeats and reiterates the allegations previously set forth herein.

85. Defendants knew, or in the light of reasonably available knowledge, should have known, of the danger in Digitek that caused the damage for which recovery

is sought. The ordinary user or consumer of Digitek would not have realized such dangers.

86. Defendants neglected to provide Decedent with warnings that reasonably could have been expected to catch the attention of reasonably prudent person under similar circumstances taking into account the characteristics of, and the ordinary knowledge common to an ordinary consumer who purchases the products. Furthermore, Defendants failed to provide warnings which could accurately advise ordinary consumers of the scope, severity and likelihood of serious injury resulting from the use of its product. Had such warnings been provided, the injuries and damages sustained by Decedent could have been avoided.

87. Defendants neglected to provide Decedent's prescribing physician with adequate warnings to accurately advise such physician of the increased severity and likelihood of serious injury resulting from the prescribing and ingestion of Digitek to patients such as the Decedent.

88. Defendants' products failed to function as expected and there existed feasible design alternatives equally effective and useful that would have had a reasonable probability of preventing the harms sustained by Decedent.

89. That at all times hereinafter mentioned, upon information and belief, Defendants assumed a strict products liability to person using Digitek, including Decedent, who sustained injuries, harm and damages by reason of the use of Digitek for purposes directly and indirectly advertised, marketed, and promoted by Defendants.

90. As a direct and proximate result of the subject product's defective and inappropriate warnings, Decedent suffered severe and permanent physical injuries.

Decedent endured substantial conscious pain and suffering, both physical and emotional in nature. Decedent incurred significant expenses for medical care and treatment, suffered lost wages and earning, and was otherwise physically, emotionally and economically injured. Plaintiff seeks actual and punitive damages from Defendants as alleged herein.

91. 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 – BREACH OF IMPLIED WARRANTY**  
**(N.J.S.A. 2A-58C-1 et seq.)**

92. Plaintiff repeats and reiterates the allegations previously set forth herein.

93. Defendants designed, manufactured, marketed, distributed, supplied and sold the subject product for treatment of heart failure and abnormal heart rhythms.

94. At all time that Defendants manufactured, marketed, distributed, supplied and/or sold Digitek, they knew of the use for which the subject products was intended and impliedly warranted it to be merchantable quality and safe and fit for such use.

95. Decedent, individually and through her prescribing physician, reasonably relied upon the skill, superior knowledge and judgment of the Defendants.

96. Decedent was prescribed, purchased and used the subject product for its intended purpose.

97. Due to Defendants' wrongful conduct as alleged herein, Decedent could not have known about the nature of the risks and side effect associated with the subject product until after he used it.

98. Contrary to the implied warranty for the subject product, Digitek was not of merchantable quality, and were not safe or fit for its intended users and purposes, as alleged herein.

99. As a direct and proximate result of the Defendants' breach of implied warranty, Decedent suffered severe and permanent physical injuries. Decedent endured substantial conscious pain and suffering, both physical and emotional in nature. Decedent incurred significant expenses for medical care and treatment, suffered lost wages and earning, and was otherwise physically, emotionally and economically injured. Plaintiff seeks actual and punitive damages from Defendants as alleged herein.

100. 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**

101. Plaintiff repeats and reiterates the allegations previously set forth herein.

102. That at all times hereinafter mentioned, upon information and belief, Defendants, by direct and indirect advertising, marketing and promoting Digitek for the treatment of heart failure and/or abnormal heart rhythms, and by placing this drug in the stream of commerce knowing that Digitek would be prescribed for the treatment for its intended purpose, in reliance upon representations of Defendants expressly warranted to all foreseeable users of this drug, including the Decedent, that Digitek were safe and effective for the treatment of heart failure and or abnormal heart rhythms.

103. Defendants impliedly warranted in manufacturing, distributing, selling advertising, marketing and promoting Digitek to all foreseeable users, including

Decedent, that Digitek were safe and effective for the purposes for which it had been placed in the stream of commerce by Defendants, including for the treatment of heart failure and/or abnormal heart rhythms, and that Digitek was reasonably safe, proper, merchantable and fit for its intended purpose.

104. That at all times hereinafter mentioned, Decedent relied upon the aforesaid express and implied warranties by Defendants.

105. That at all times hereinafter mentioned, Decedent's use of Digitek to and up to the time of the above-described incident was consistent with the purposes for which Defendants directly and indirectly advertised, marketed and promoted Digitek, and Decedent's use of Digitek was reasonably contemplated, intended and foreseen by Defendants at the time of the distribution and sale of Digitek by Defendants, and, therefore, Decedent's use of Digitek was within the scope of the above-described express and implied warranties.

106. Defendants breached the aforesaid express and implied warranties because Digitek was not safe and effective for its intended purpose, and because Decedent's use of Digitek caused or contributed to the incident described herein.

107. As a direct and proximate result of the Defendants' breach of express warranty, Decedent suffered severe and permanent physical injuries. Decedent endured substantial conscious pain and suffering, both physical and emotional in nature. Decedent incurred significant expenses for medical care and treatment, suffered lost wages and earning, and was otherwise physically, emotionally and economically injured. Plaintiff seeks actual and punitive damages from Defendants as alleged herein.

108. 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**  
**NEGLIGENCE**

109. Plaintiff repeats and reiterates the allegations previously set forth herein.

110. That all times hereinafter mentioned, Defendants under a duty of exercise reasonable care in the design, manufacturing, testing, processing, marketing, advertising, labeling, packaging, distributing, and sales of Digitek, Defendants knew or should have known that Digitek was not safe and that the user could sustain injuries and harm from these drugs.

111. Defendants negligently, recklessly, gross negligently, wantonly and willfully displayed a morally culpable and conscious disregard of the rights of others in that they failed to exercise reasonable care and failed to fulfill the above-stated duty by the manner that Defendants, directly and indirectly, advertised, marketed and promoted Digitek for the treatment of heart failure and/or abnormal heart rhythms, even though Digitek, in fact, was not reasonably safe for such use, and furthermore, Defendants failed to adequately warn of the increased risk of serious adverse reactions including but not limited to digitalis toxicity and/or death, which Defendants knew or should have known about.

112. Defendants were further negligent, reckless, grossly negligent, wantonly and willfully displayed a morally culpable and conscious disregard of the rights of others by manufacturing, distributing, selling, advertising, marketing and promoting Digitek even though such drugs were not safe or effective for any purpose because it caused

serious adverse reactions including but not limited to digitalis toxicity and/or death, and by failing to adequately warn the public of such risks.

113. The aforesaid incident and the injuries sustained by Decedent were caused by or were contributed to by the negligence, recklessness, gross negligence, wantonness, willfulness, conscious and callous disregard of the safety of the public, including the Decedent, on the part of Defendants in the design, manufacturing, distribution, advertising, marketing and promoting of Digitek as being safe and effective for its intended use, and by inducing the public, including the Decedent and her prescribing physician, to believe that Digitek was effective in the treatment of heart failure and/or abnormal heart rhythms.

114. Defendants failed to exercise reasonable care in the design, manufacturing, testing, marketing, advertising, labeling, packaging, rebranding, distribution and/or sales of Digitek in one or more of the following respects:

- a. designing, marketing, process, advertising, packaging, distributing and/or selling a product that defendants knew, or should have known, carried the risk of serious life-threatening side effects;
- b. failure to adequately test the product prior to placing the drugs Digitek on the market;
- c. failure to use care in designing, developing and manufacturing their product so as to avoid posing unnecessary health risks to users of such product;
- d. failure to conduct adequate pre-clinical testing and post-marketing surveillance to determine the safety of Digitek;
- e. failure to advise consumers, such as Decedent, that consumption of Digitek could result in severe and disabling side effects, including but not limited to digitalis toxicity and/or death;

- f. failure to advise the medical and scientific communities of the potential for severe and disabling side effects, including but not limited to digitalis toxicity and/or death;
- g. failure to provide timely and/or adequate warnings about the potential health risks associated with the use of Digitek; and
- h. any and all other acts of negligence with respect to Digitek which may be shown at trial.

115. That at all times hereinafter mentioned, upon information and belief, the above-described culpable conduct by Defendants were a proximate cause of Decedent's injuries.

116. That at all times hereinafter mentioned, Decedent did not contribute to her injuries by reason of any negligence or culpable conduct on Decedent's part.

117. That as a result of the aforesaid occurrence, the Decedent's injuries resulting therefrom, Decedent suffered extensive monetary and pecuniary losses and other compensatory damages were also incurred and paid out including necessary medical, hospital and concomitant expenses. In addition, Decedent was deprived of a chance for safe and effective and/or treatment.

118. As a direct and proximate result of the Defendants' carelessness and negligence, Decedent suffered severe and permanent physical injuries. Decedent endured substantial conscious pain and suffering, both physical and emotional in nature. Decedent incurred significant expenses for medical care and treatment, suffered lost wages and earning, and was otherwise physically, emotionally and economically injured. Plaintiff seeks actual and punitive damages from Defendants as alleged herein.

119. 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**  
**VIOLATION OF NEW JERSEY CONSUMER FRAUD ACT**  
**(N.J.S.A. 56:8-1 et seq.)**

120. Plaintiff repeats and reiterates the allegations previously set forth herein.

121. The subject products are considered "merchandise" as that term is defined by N.J.S.A. 56:8-1(c).

122. Defendants widely advertised and promoted Digitek as a safe and effective medications.

123. Defendants knew, or should have known, that the subject products were unreasonably dangerous and defective, and had a propensity to cause serious and potentially life-threatening side effects.

124. Defendants had a duty to disclose material information about serious side effects to consumers including the Decedent. Additionally by virtue of Defendants' partial disclosures about the medication, in which Defendants touted Digitek as a safe and effective treatments, Defendants had a duty to disclose all facts about the risks of use associated with the medication, including the potential for the medication to cause life-threatening injuries. Defendants intentionally failed to disclose this information for the purpose of inducing consumers, such as the Decedent, to purchase their dangerous products.

125. Had Decedent been aware of the hazards associated with Digitek, Decedent would not have purchased and/or consumed the products.

126. Defendants' advertisements regarding Digitek made material misrepresentations to the effect that Digitek was a safe and effect treatment, which these misrepresentations knew to be false by Defendants, for the purpose of fraudulently inducing consumers, such as the Decedent, to purchase their product. Decedent relied on these material misrepresentations in deciding to purchase and consume Digitek.

127. The damages sustained by Decedent were a direct and foreseeable result of, and were proximately cause by Defendants' misrepresentations, concealment and omissions.

128. Defendants have violated the New Jersey Consumer Fraud Act (N.J.S.A. 56:8-1 *et seq.*), in that they made untrue, deceptive, and/or misleading representations of material facts, and omitted and/or concealed material facts from the public, including the Decedent herein, concerning the use and safety of the subject product.

129. Defendants' practice of promoting the subject product created and/or reinforced a false impression as to its safety.

130. Defendants' statements and omissions were made with the intent that the Decedent herein, and her prescribing physician, would rely on such statement and omissions.

131. Defendants' conduct was willful, wanton, and reckless. Based on the intentionally dishonest nature of Defendants' conduct, which was directed at Decedent and the public generally, Defendants should also be held liable for punitive damages.

132. The aforesaid promotion, statements and/omissions concerning subject product by Defendants constitute and unconscionable commercial practice, deception, false pretense, misrepresentation, and/or knowing concealment, suppression, or omission

of material facts with the intent that others rely upon such concealment, suppression or omissions in connection with the sale or advertisement of merchandise or services by Defendants, in violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8.1, *et seq.*

133. As a direct and proximate result of Defendants' acts of consumer fraud, Decedent suffered ascertainable loss – economic loss that includes the purchases of the subject product and additional out-of-pocket healthcare related costs – for which Defendants are liable to Decedent for treble the actual damages.

134. As a direct and proximate result of the Defendants' acts of consumer fraud, Decedent suffered severe and permanent physical injuries. Decedent endured substantial conscious pain and suffering, both physical and emotional in nature. Decedent incurred significant expenses for medical care and treatment, suffered lost wages and earning, and was otherwise physically, emotionally and economically injured. Plaintiff seeks actual and punitive damages from Defendants as alleged herein.

135. 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**  
**PUNITIVE DAMAGES UNDER COMMON LAW, PUNITIVE DAMAGES ACT**  
**(N.J.S.A. 2A:15-5.9, *et seq.*) AND PRODUCT LIABILITY ACT**  
**(N.J.S.A. 2A:58C-1 *et seq.*)**

136. Plaintiff repeats and reiterates the allegations previously set forth herein.

137. At all times material hereto, Defendants knew or should have known that the subject products were inherently more dangerously associated with the medication, including potential for the medication to cause digitalis toxicity and/or death.

138. At all times material hereto, Defendants attempted to misrepresent and did misrepresent facts concerning the safety of the subject products.

139. Defendants' misrepresentations include knowingly withholding material information from the medical community and the public, including the Decedent herein, concerning the safety of the subject products.

140. Defendants knew of the subject product's defective and unreasonably dangerous nature, as set forth herein, but continued to design, develop manufacture, market, distribute and sell it so as to maximize sales and profits at the expense of the health and safety of the public, including the Decedent herein, in conscious and/or negligent disregard for foreseeable harm caused by Digitek.

141. Defendants intentionally concealed and/or recklessly failed to disclose to the public, including the Decedent herein, the potentially life-threatening side effects of Digitek in order to ensure continued and increased sales.

142. Defendants' intentional and/or reckless failure to disclose information deprived, the Decedent of necessary information to enable him to weight the true risks of using the subject product against its benefits.

143. As a direct and proximate result of the Defendants' conscious and deliberate disregard for the rights and safety of consumers such as the Decedent, Decedent suffered severe and permanent physical injuries. Decedent endured substantial conscious pain and suffering, both physical and emotional in nature. Decedent incurred significant expenses for medical care and treatment, suffered lost wages and earning, and was otherwise physically, emotionally and economically injured. Plaintiff seeks actual and punitive damages from Defendants as alleged herein.

144. The aforesaid conduct of Defendants were committed knowing, conscious, and deliberate disregard for the rights and safety of consumers, including the Decedent herein, thereby entitling the Plaintiff to punitive damages in an amount appropriate to punish the Defendants and deter them from similar conduct in the future.

145. 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 IX**  
**FRAUD**

146. Plaintiff repeats and reiterates the allegations previously set forth herein.

147. Defendants widely advertised and promoted Digitek as a safe and effective medications.

148. Defendants had a duty to disclose material information about serious side effects to consumers such as the Decedent. Additionally by virtue of Defendants' partial disclosures about the medication, in which Defendants touted Digitek as safe and effective treatment, Defendants had a duty to disclose all facts about the risks of use associated with the medication, including the potential for the medications to cause digitalis toxicity and/or death. Defendants intentionally failed to disclose this information for purpose of inducing consumers, such as Decedent, to purchase Defendants' dangerous product.

149. Had Decedent been aware of the hazards associated with Digitek, Decedent would not have purchased and/or consumed the product that lead to Decedents' injuries.

150. Defendants' advertisements regarding Digitek made material misrepresentations to the effect that Digitek was safer and effect treatment, which misrepresentations Defendants knew to be false, for the purpose of fraudulently inducing consumers, such as Decedent, to purchase such product. Decedent relied on these material misrepresentations in deciding to purchase and consume Digitek.

151. The damages sustained by Decedent were a direct and foreseeable result of, and were proximately cause by Defendants' misrepresentations, concealment and omissions.

152. Defendants' conduct was willful, wanton, and reckless. Based on the intentionally dishonest nature of Defendants' conduct, which was directed at the Decedent and the public generally, Defendants should also be held liable for punitive damages.

153. Any applicable statutes of limitation have been tolled by Defendants knowing and active concealment and denial of the facts alleged herein. Decedent and other members of the public who were prescribed and ingested Digitek for the treatment of heart failure and/or abnormal heart rhythms have been kept in ignorance of vital information essential to the pursuit of these claims, without any fault or lack of diligence on their part, and could not reasonably have discovered the fraudulent nature of Defendants' conduct, and information and documents concerning the safety and efficacy on Digitek. Furthermore, due to the aforesaid allegations, Decedent may rely on the discovery rule in pursuit of this claim.

154. By reason of foregoing, Decedent sustained damages in a sum which exceeds the jurisdictional limits of all lower courts which would have jurisdiction of this

matter, and in addition thereto, Plaintiff seeks punitive and exemplary damages against Defendants in an amount to be determined upon trial of this matter.

155. 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 X**  
**NEGLIGENCE PER SE**

156. Plaintiff repeats and reiterates the allegations previously set forth herein.

157. Defendants have an obligation not to violate the law.

158. Defendants have violated the Federal Food, Drug and Cosmetic Act, 21, U.S.C. 301, *et seq.*, related amendments and codes and federal regulations promulgated thereunder, and other applicable state and federal laws.

159. Decedent, as a purchaser and consumer of Digitek, is within the class of person that statutes described above are designed to protect.

160. Injury due to false, misleading and/or reckless advertising and promotion, and misbranding, misleading products and as otherwise set forth in this complaint, are the specific type of harm these statutes are designed to prevent.

161. Defendants are responsible to Decedent for injuries incurred for their violations of the statutes described above under the doctrine of negligence per se.

162. As a direct and proximate result of the negligence and negligence per se of Defendants and each one individually and as a result of Defendants' actions and/or inactions as set forth in this complaint, Decedent suffered severe and permanent physical injuries. Decedent endured substantial conscious pain and suffering, both physical and emotional in nature. Decedent incurred significant expenses for medical care and

treatment, suffered lost wages and earning, and was otherwise physically, emotionally and economically injured. Plaintiff seeks actual and punitive damages from Defendants as alleged herein.

163. 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 XI**  
**NEGLIGENT MISREPRESENTATION**

164. Plaintiff repeats and reiterates the allegations previously set forth herein.

165. Defendants represented and marketed Digitek as being safe and effective.

166. After Defendants became aware of the risks of ingestion Digitek, Defendants failed to communicate to Decedent and other members of the general public, that the ingestion of this drug could have the increased of serious adverse reactions.

167. Therefore, Decedent brings this cause of action against Defendants under the theory of negligent misrepresentation for the following reasons.

- a. Plaintiff incorporates all facts and allegations previously stated in this Complaint;
- b. Defendants failed to warn Decedent, and other consumers, of the defect condition of Digitek, as manufactured an/or supplied by Defendants;
- c. Defendants, individually, and through its agents, representatives, distributors and/or employees, negligently misrepresented material facts about Digitek in that they made such misrepresentations when they knew or reasonably should have known of the falsity of such misrepresentations. Alternatively, Defendants made such misrepresentations without exercising reasonable care to ascertain the accuracy of these representations;
- d. the above misrepresentations were made to Decedent, as well as the general public;

- e. Decedent and her healthcare providers justifiably relied on Defendants' misrepresentations; and
- f. Consequently, Decedent's ingestion of Digitek and/or Bertek was injured. Defendants' negligent misrepresentations proximately caused Decedent her injuries and monetary loss.

168. 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 XII**  
**WRONGFUL DEATH**

169. Plaintiff repeats and reiterates the allegations previously set forth herein.

170. As a direct and proximate result of the acts and/or omissions of Defendants as set forth herein, the Decedent suffered substantial pain and suffering, both physical and emotional in nature, and subsequently died on March 15, 2008.

171. Plaintiff, on behalf of herself and all of the next of kin of Decedent, including but not limited to Andrew Franklin Morrow, Robin Kay Morrow, Arthur Eric Morrow and Ruby Katherine, is entitled to recover damages as Decedent would have if he were living, as a result of acts and/or omissions of Defendants.

172. Plaintiff, on behalf of herself and all of Decedent's next of kin, including but not limited to Andrew Franklin Morrow, Robin Kay Morrow, Arthur Eric Morrow and Ruby Katherine, is also entitled to recover punitive damages and damages for substantial pain and suffering caused to Decedent from the acts and/or omissions of Defendants as fully set forth herein, including without limitations, punitive damages.

173. Plaintiff demands judgment against Defendants for the damages resulting from Decedent's death, including, without limitations, Decedent's pecuniary injury, together with all hospital, medical and funeral expenses, as well as compensatory damages, treble damages, exemplary damages, attorneys' fees, interest and costs of suit, including without limitations, punitive damages, and all such other relief as the Court deems just.

**COUNT XIII**  
**SURVIVAL ACTION**

174. Plaintiff repeats and reiterates the allegations previously set forth herein.

175. As a direct and proximate result of the acts and/or omissions of Defendants set forth herein, Decedent was caused to suffer substantial pain and suffering, both physical and emotional in nature before her death.

176. Plaintiff as the Proposed Administratrix of the Estate of Decedent seeks damages compensable against Defendants.

177. 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.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

- a. Awarding actual damages to Plaintiff incidental purchase and use of Digitek and/or Bertek in an amount to be determined at trial;
- b. Awarding treble and/or punitive damages to Plaintiff;
- c. Awarding pre-judgment and post-judgment interest to Plaintiff;
- d. Awarding the costs and expenses of this litigation to Plaintiff;

- e. Awarding reasonable attorneys' fees and costs to Plaintiff as provided by law; and
- f. Granting all such other relief as the Court deems necessary, just and proper.


**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all Counts and as to all issues.

Date: July 3, 2008

Respectfully submitted,

**THE LANIER LAW FIRM, PLLC**

By: 

Richard D. Meadow, Esq.

[rdm@lanierlawfirm.com](mailto:rdm@lanierlawfirm.com)

Catherine T. Heacox, Esq.

[cth@lanierlawfirm.com](mailto:cth@lanierlawfirm.com)

126 East 56<sup>th</sup> Street, 6<sup>th</sup> Floor

New York, NY 10022

(T) 212-421-2800

(F) 212-421-2878

**Attorneys for Plaintiffs**