

SUPREME COURT COPY

No. S233898

SUPREME COURT
FILED

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**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

Jorge Navarrete Clerk

Deputy

T. H., a Minor, etc., et al.,

Plaintiffs and Appellants,

v.

**NOVARTIS PHARMACEUTICALS
CORPORATION,**

Defendant and Respondent.

Review of a Decision of the Court of Appeal
Fourth Appellate District, Division One, Case No. D067839

**NOVARTIS'S SUPPLEMENTAL
AUTHORITY BRIEF**

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Novartis hereby submits this supplemental brief under California Rule of Court 8.520(d) to address new authority which squarely supports its position. On August 4, 2017, the United States District Court for the District of Massachusetts issued a decision in the federal multi-district litigation *In re Zofran (Ondansetron) Products Liability Litigation*, MDL No. 1:15-md-2657-FDS, dismissing claims brought against a prescription drug manufacturer for harm allegedly caused by another generic manufacturer's drug.

Citing the same fundamental legal principles and policy concerns raised by Novartis in its briefing on the merits (see OBOM:8, 17-18, 29, 31-33), the District Court predicted that six state Supreme Courts – in Georgia, Indiana, Kentucky, Massachusetts, New York, and Oklahoma - would follow the majority view and reject the novel innovator duty endorsed by the Court of Appeal here. (*In re Zofran (Ondansetron) Prod. Liab. Litig.* (D.Mass. Aug. 4, 2017, No. 1:15-MD-2657-FDS) 2017 WL 3448548, at *2-3 [dismissing negligent misrepresentation and negligent undertaking claims against GlaskoSmithKline LLC for failure to state a claim in MDL proceedings involving allegations that ondansetron, the active ingredient in the anti-nausea drug Zofran, caused birth defects].) Accordingly, the “solid wall of authority” cited in Novartis’s briefing on the merits now understates the breadth of the national consensus on this issue. (OBOM:29.) A copy of the District Court’s decision is attached.

For the reasons set forth above and in Novartis's merits briefing, the Court of Appeal's opinion should be reversed and the cause remanded to the trial court with directions to enter judgment for Novartis.

Dated: September 22, 2017

Respectfully submitted,

HOLLINGSWORTH LLP

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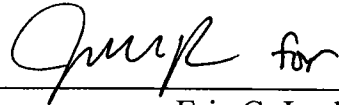
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CERTIFICATE OF WORD COUNT

Pursuant to rule 8.204(c)(1) of the California Rules of Court and in reliance on the word count of the computer program used to prepare this brief, counsel certifies that this brief was produced using 13-point type and contains 250 words.

Dated: September 22, 2017

A handwritten signature in cursive script, appearing to read "Eric G. Lasker", positioned above a horizontal line.

Eric G. Lasker

PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 12351 High Bluff Drive, San Diego, California 92130. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on September 22, 2017, I served a copy of:

NOVARTIS'S SUPPLEMENTAL AUTHORITY BRIEF

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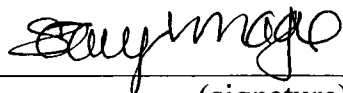
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22nd day of September, 2017, at San Diego, California.

Stacy Vinagre
(typed)



(signature)