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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DR. JULIO GARCIA, on behalf of
himself and all others similarly
situated,

Plaintiff,

vs.

ALLERGAN, INC., a Delaware
corporation,

Defendant.

CASE NO. 11-CV-9811 PSG (Ex)

~~PROPOSED~~ PROTECTIVE ORDER
REGARDING CONFIDENTIAL
INFORMATION AND PRIVILEGED
COMMUNICATIONS

Pursuant to the Stipulation and Joint Motion of the parties dated July 9,
2012, and good cause appearing, IT IS ORDERED that:

1. This Protective Order shall govern all discovery conducted in
connection with this action, *Garcia v. Allergan, Inc.*, Case No. 11-CV-9811 PSG
(Ex) (the "Action"), and applies to all documents, the information contained in
documents, and all other information produced or disclosed during or in connection
with this Action, whether revealed in a document, deposition, other testimony,
discovery response or otherwise, by any party in this Action (the "Supplying
Party") to any other party (the "Receiving Party"), when the same is designated in
accordance with the procedures set forth in this Protective Order.

1 admission or an agreement by any party that such documents, deposition
2 transcripts, excerpts of deposition transcripts, or discovery responses constitute
3 competent, material, relevant, or admissible evidence in this case.

4 7. Any material produced or provided in this Action for inspection is to
5 be treated by the Receiving Party as Confidential Information pending the copying
6 and delivery of any copies of the same by the Supplying Party to the Receiving
7 Party.

8 8. To the extent that any Confidential Information is used or discussed
9 when taking a deposition, such portions of such depositions shall be taken only in
10 the presence of those persons identified in paragraph 9 and the court reporter and
11 videographer, and all such Confidential Information shall remain subject to the
12 provisions of this Protective Order, along with the transcript pages of the deposition
13 testimony that have been designated "Produced Subject to Protective Order" in the
14 manner set forth below. At the time any Confidential Information is used in any
15 deposition, the reporter and videographer will be informed of this Protective Order
16 and will be required to operate in a manner consistent with this Protective Order.
17 Any Supplying Party who contends that certain portions of a deposition transcript
18 should be subject to the Protective Order shall, within ten calendar days after
19 receipt of the deposition transcript, provide written notice to the Receiving Party
20 identifying by page and line number the portions of the deposition transcript that
21 should be marked "Produced Subject to Protective Order." The Receiving Party
22 will then have ten calendar days from service of the written notice to accept, object,
23 counter-designate, or otherwise respond in writing to each portion of the deposition
24 transcript that the other party contends should be marked "Produced Subject to
25 Protective Order." Counsel for the parties shall then meet and confer with one
26 another concerning the disputed portions of the deposition transcript. If an
27 agreement cannot be reached between the parties, the Supplying Party shall, within
28 thirty days from the date the meet and confer discussions end, apply to the Court for

1 a ruling that the disputed portions of the deposition transcript should be afforded
2 such status and protection. The Supplying Party who contends that the disputed
3 portions of the deposition transcript should be subject to the Protective Order has
4 the burden of proof to establish that each disputed portion of the deposition
5 transcript should be afforded such status and protection. Pending a ruling by the
6 Court on such a motion, and any appeal or final determination of a writ proceeding
7 from the same, whichever occurs first, this Protective Order shall remain in effect in
8 all respects with respect to the deposition transcript.

9 9. Confidential Information shall be disclosed by the Receiving Party
10 only to the following persons:

- 11 a. counsel of record for the Receiving Party, and the attorneys,
12 paralegals, stenographic, and clerical staff employed by such counsel
13 who are working on this Action under the direction of such counsel
14 and to whom it is necessary that the materials be disclosed for
15 purposes of this Action;
- 16 b. in-house counsel employed by the Receiving Party with responsibility
17 for this Action, and the paralegals and stenographic and clerical
18 employees of such counsel, and any employee of the Receiving Party
19 to whom it is necessary to disclose such information for the purpose of
20 assisting in, or consulting with respect to, the preparation of this
21 Action;
- 22 c. any outside consultant or expert who is assisting a party in this Action,
23 to whom it is necessary to disclose Confidential Information for the
24 purpose of assisting in, or consulting with respect to, this Action,
25 regardless of whether the consultant or expert is formally retained by
26 the party itself or by the party's outside counsel, and provided that no
27 disclosure shall be made to any expert or consultant who is currently
28 employed by or currently consults with a competitor of Allergan.

1 Before disclosing Confidential Information to any person identified in
2 Paragraph 9 (other than the Court and its staff) who is, independent of
3 this litigation, a current director, officer, or employee of a
4 pharmaceutical company, the party wishing to make such disclosure
5 shall give at least ten days' advance notice in writing to the counsel
6 who designated such information as confidential, stating the names
7 and addresses and pharmaceutical company affiliations of the
8 person(s) to whom the disclosure will be made. If, within the ten day
9 period, a motion is filed objecting to the proposed disclosure, the
10 designated document or item shall not be disclosed unless and until the
11 Court denies the motion objecting to the proposed disclosure, and shall
12 not be disclosed except as permitted by the Court;

- 13 d. the Court and any members of its staff to whom it is necessary to
14 disclose Confidential Information for the purpose of assisting the
15 Court in this Action;
- 16 e. stenographic employees and court reporters recording or transcribing
17 testimony in this Action; and
- 18 f. deposition witnesses, provided that the witness agrees on the record to
19 be bound by the terms of this Protective Order and signs the
20 Certification as required under paragraph 16.

21 10. Persons having knowledge of Confidential Information by virtue of
22 their participation in the conduct of this Action shall use the Confidential
23 Information only in connection with the prosecution, defense, or appeal of this
24 Action and may not use such Confidential Information for any other purpose nor
25 disclose such Confidential Information to any person who is not listed in Paragraph
26 9 of this Protective Order.

27 11. Disclosure of Confidential Information beyond the terms of this
28 Protective Order may be made only if the Supplying Party designating the material

1 as "Confidential Information" consents in writing to such disclosure, or if the
2 Court, after reasonable written notice to all affected parties, orders such disclosure.

3 12. All persons subject to this Protective Order shall not, under any
4 circumstances, post any Confidential Information on the internet, including on any
5 Web site, chat-room, Web log, or blog. The Confidential Information may not, in
6 any way, be distributed or disseminated, electronically or otherwise, to any person,
7 agency, entity, or corporation who is not a party to this Protective Order.

8 13. To the extent that any person described in paragraph 9 and subject to
9 this Protective Order is served with a subpoena to produce a Supplying Party's
10 Confidential Information, such person shall promptly notify the Supplying Party's
11 counsel in writing, by email and facsimile, of all of the following: (1) the materials
12 that are requested for production in the subpoena; (2) the date on which compliance
13 with the subpoena is requested; (3) the location at which compliance with the
14 subpoena is requested; and (4) the identity of the party serving the subpoena. If a
15 subpoena is served requesting Allergan's Confidential Information, Ellen L.
16 Darling should be notified pursuant to this provision. If a subpoena is served
17 requesting Plaintiff's Confidential Information, Rosemary M. Rivas should be
18 notified pursuant to this provision. The Supplying Party will have up to and
19 including the production date set forth in the subpoena to file objections to or a
20 motion to quash the subpoena in the court from which the subpoena was issued, and
21 the Supplying Party has the burden and the expense of seeking the protection in the
22 applicable court. The person receiving the subpoena or other process shall
23 cooperate with the Supplying Party in any proceeding related thereto. Additionally,
24 the person subpoenaed must inform the subpoena's issuer of this Order and provide
25 the subpoena's issuer with a copy of this Order. No party will object to the
26 Supplying Party having a reasonable opportunity to appear in any litigation or
27 proceeding commanding disclosure of such protected material for the sole purpose
28 of seeking to prevent or restrict disclosure thereof. In no event shall Confidential

1 Information be produced prior to the expiration of ten business days following the
2 date on which the Receiving Party provides notice to the Supplying Party. The
3 Confidential Information shall remain confidential and subject to this Protective
4 Order pending the Court's ruling on the Supplying Party's objections or motion to
5 quash, and any subsequent writ or appeal.

6 14. Counsel shall take all reasonable and necessary steps to assure the
7 security of any Confidential Information and will limit access to Confidential
8 Information to those persons listed in Paragraph 9 of this Protective Order.

9 15. Any Supplying Party may designate as Confidential Information or
10 withdraw a Confidential Information designation from any material that it has
11 produced ("Redesignated Material"), provided, however, that such redesignation
12 shall be effective only as of the date of such redesignation. Such redesignation
13 shall be accomplished by notifying counsel for each party in writing of such
14 redesignation. Upon receipt of any such written redesignation, counsel shall (i) not
15 make any further disclosure or communication of such Redesignated Material
16 except as provided for in this Protective Order; (ii) take reasonable steps to notify
17 any persons known to have possession of any Redesignated Material of such
18 redesignation under this Protective Order; and
19 (iii) promptly endeavor to procure all copies of such Redesignated Material from
20 any persons known to have possession of any Redesignated Material who are not
21 entitled to receipt under

22 Paragraph 9. Notwithstanding the foregoing, it is up to the Supplying Party to
23 initiate action, which the Receiving Party will not oppose, to retrieve from the
24 Court or place under seal Redesignated Material that the Receiving Party submitted
25 to the Court prior to the redesignation.

26 16. Prior to the disclosure of any Confidential Information to any person
27 identified in Paragraph 9 (other than the Court and its staff), such person shall be
28 provided with a copy of this Protective Order, which he or she shall read. Upon

1 reading this Protective Order, such person shall complete and sign a copy of the
2 Certification that is appended to this Protective Order, acknowledging that he or she
3 has read this Protective Order and shall abide by its terms. A file of all executed
4 Certifications shall be maintained by outside counsel for the party obtaining them
5 and shall be made available, upon request, for inspection by the Court in camera.
6 Persons who come into contact with Confidential Information for clerical or
7 administrative purposes, and who do not retain copies or extracts thereof, are not
8 required to execute Certifications.

9 17. Any party may request at any time permission to disclose Confidential
10 Information to a person other than those permitted under Paragraph 9, or to use
11 such information in a manner otherwise precluded by this Protective Order, by
12 serving a written request upon the Supplying Party's counsel. Any such request
13 shall state the material the party wishes to disclose, to whom it wishes to make
14 disclosure and the reason and purpose therefor. The Supplying Party or its counsel
15 shall thereafter respond to the request in writing (by hand delivery or facsimile
16 transmission) within ten business days of its receipt of such request, and if consent
17 is withheld, it shall state the reasons why consent is being withheld. A failure to so
18 respond within such ten-day period shall constitute a denial of the request. If,
19 where consent is withheld, the Requesting Party and the Supplying Party are
20 subsequently unable to agree on the terms and conditions of disclosure, disclosure
21 may only be made in accordance with the Supplying Party's designation of the
22 material unless and until differing treatment is directed pursuant to an order of the
23 Court.

24 18. Any party may object to the propriety of the designation (or
25 redesignation) of specific material as "Confidential Information" by serving a
26 written objection upon the Supplying Party's counsel. The Supplying Party or its
27 counsel shall thereafter, within ten calendar days, respond (by hand delivery,
28 facsimile transmission, or email) to such objection in writing by either: (i) agreeing

1 to remove the designation; or (ii) stating the reasons for such designation. If the
2 Objecting Party and the Supplying Party are subsequently unable to agree upon the
3 terms and conditions of disclosure for the material(s) in issue, the Objecting Party
4 may move the Court for an order removing or modifying the disputed designation.
5 On such a motion the Supplying Party shall have the burden of proving that the
6 material is Confidential. The material(s) in issue shall continue to be treated in the
7 manner as designated by the Supplying Party until the Court orders otherwise.

8 19. Notwithstanding any other provisions of this Protective Order, nothing
9 in the foregoing shall restrict any party's counsel from rendering advice to its
10 clients with respect to this Action and, in the course thereof, relying upon
11 Confidential Information, provided that in rendering such advice, counsel shall not
12 disclose any other party's Confidential Information other than in a manner provided
13 for in this Protective Order.

14 20. To the extent that any Confidential Information is, in whole or in part,
15 contained in, incorporated in, reflected in, described in, or attached to any pleading,
16 motion, memorandum, appendix, or other judicial submission, the submission shall
17 be made to the Court only as set forth herein. Such submission shall be filed in
18 accordance with the provisions of L.R. 79-5, Local Rules – Central District of
19 California, as a "Sealed Document" and shall bear the following statement for
20 viewing by the Court:

21 **CONDITIONALLY UNDER SEAL**

22 **Contents hereof are confidential and are subject to a**
23 **Protective Order of the Court governing the use and**
24 **dissemination of such contents. The contents shall**
25 **remain sealed and shall not be viewed without express**
order of the Court.

26 21. When submitting Confidential Information pursuant to Paragraph 20
27 of this Protective Order, the submitting party shall submit only those pages of the
28 deposition transcript, document, or other matter containing Confidential

1 Information that are cited, referred to, or specifically relied on by the submitting
2 party. The submitting party shall not submit or lodge the entirety, or other portions,
3 of the deposition transcript, document, or other matter containing Confidential
4 Information.

5 22. Nothing herein shall be construed to affect in any manner the
6 admissibility at trial or any other court proceeding of any document, testimony, or
7 other evidence.

8 23. Upon the conclusion of this Action, including any appeals related
9 thereto, at the written request and option of the Supplying Party, all Confidential
10 Information and any and all copies, summaries, notes, compilations (electronic or
11 otherwise), and memoranda related thereto, shall be returned and/or certified for
12 destruction within thirty calendar days to the Supplying Party, provided, however,
13 that counsel may retain their attorney work product and all court-filed documents
14 even though they contain Confidential Information, but such retained work product
15 and court-filed documents shall remain subject to the terms of this Protective Order.
16 At the written request of the Supplying Party, any person or entity having custody
17 or control of recordings, notes, memoranda, summaries or other written materials,
18 and all copies thereof, relating to or containing Confidential Information shall
19 deliver to the Supplying Party an affidavit certifying that reasonable efforts have
20 been made to assure that all such Confidential Information and any copies thereof,
21 any and all records, notes, memoranda, summaries, or other written material
22 regarding the Confidential Information (except for attorney work product and court
23 filed documents as stated above) have been delivered to the Supplying Party in
24 accordance with the terms of this Protective Order.

25 24. If Confidential Information is disclosed to any person other than in the
26 manner authorized by this Protective Order, the party responsible for the disclosure
27 shall immediately upon learning of such disclosure inform the Supplying Party of
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1 all pertinent facts relating to such disclosure and shall make all reasonable efforts to
2 prevent disclosure by each unauthorized person who received such information.

3 25. Nothing contained in this Protective Order shall preclude any party
4 from using its own Confidential Information in any manner it sees fit, without prior
5 consent of any party or the Court.

6 26. This Protective Order does not address the offering of Confidential
7 Information in evidence at trial or any court hearing, but nothing contained in this
8 Protective Order shall preclude any party from moving the Court at an appropriate
9 time for an order that the evidence be received in camera or under other conditions
10 to prevent unnecessary disclosure.

11 **DISCLOSURE OF COMMUNICATIONS COVERED**
12 **BY THE ATTORNEY-CLIENT PRIVILEGE AND**
13 **WORK-PRODUCT PROTECITON**

14 27. The following provisions of Paragraphs 28 through 31(j) apply to and
15 govern the disclosure, in connection with this Action, of a communication or
16 information covered by the attorney-client privilege or work-production protection.

17 28. The term "Privileged Information" means and refers to any
18 communication, information, or documents subject to a claim of attorney-client
19 privilege, work product protection, or any other legal privilege protecting the
20 communication, information, or document from discovery.

21 29. No privilege or protection applicable to any Privileged Information is
22 waived by disclosure of the Privileged Information in connection with this Action.
23 Disclosure of any Privileged Information in connection with this Action is not, shall
24 not constitute, and shall not be deemed to be, a waiver of any applicable privilege
25 or protection in any other federal or state proceeding.

26 30. If Privileged Information is inadvertently produced to a party or parties
27 ("Inadvertently Produced Privileged Information"), nothing in this Protective Order
28 shall relieve counsel for any Receiving Party of any existing duty or obligation,

1 whether established by case law, rule of court, regulation, or other authority, to
2 return, and to not review, any privileged documents or attorney work product of a
3 Supplying Party, without needing to be requested by the Supplying Party to do so.
4 Rather, in the event that counsel for any Receiving Party becomes aware that the
5 Receiving Party is in possession of what appears to be Inadvertently Produced
6 Privileged Information, then counsel for the Receiving Party shall immediately: (i)
7 cease any further review of the Inadvertently Produced Privileged Information; (ii)
8 return to the Supplying Party or destroy all copies of the Inadvertently Produced
9 Privileged Information within the possession, custody or control of the Receiving
10 Party; and (iii) take reasonable steps to ensure the return or destruction of any
11 copies of the Inadvertently Produced Privileged Information that the Receiving
12 Party disseminated to other persons.

13 31. If a party or nonparty discloses or produces (i) Privileged Information
14 or (ii) any other communication, information, or document that the party claims is
15 irrelevant or otherwise nondiscoverable (collectively, "Privileged and/or
16 Nondiscoverable Information"):

- 17 a. The disclosure or production of any Privileged and/or Nondiscoverable
18 Information by the Supplying Party shall not be deemed an admission
19 by the Supplying Party that such Privileged and/or Nondiscoverable
20 Information should be disclosed or produced in this Action.
- 21 b. The Supplying Party may request the return of all Privileged and/or
22 Nondiscoverable Information within a reasonable amount of time after
23 the Supplying Party actually discovers that the Privileged and/or
24 Nondiscoverable Information was produced.
- 25 c. The claw-back request shall be made in writing, shall identify with
26 reasonable particularity (*e.g.*, by Bates number, if available) the
27 Privileged and/or Nondiscoverable Information that the party requests

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- 1 be returned, and shall state the basis for requesting the return of the
2 Privileged and/or Nondiscoverable Information.
- 3 d. Upon receiving the claw-back request, the Receiving Party must return
4 all hard copies of the Privileged and/or Nondiscoverable Information
5 in its possession, custody, or control to the Supplying Party, and the
6 Receiving Party must also permanently delete all electronic copies of
7 the Privileged and/or Nondiscoverable Information in its possession,
8 custody, or control, except that the Receiving Party may—after
9 providing written notice to the Supplying Party—maintain one sealed
10 copy of the Privileged and/or Nondiscoverable Information for the sole
11 purpose of delivery to the Court for *in camera* review, if necessary.
- 12 e. The Receiving Party shall also take reasonable steps to ensure the
13 return or destruction of any copies of the Privileged and/or
14 Nondiscoverable Information that the Receiving Party disseminated to
15 other persons.
- 16 f. Within ten business days after receiving the claw-back request from
17 the Supplying Party and subject to Paragraph 32(d) above, the
18 Receiving Party must certify in writing that all hard and electronic
19 copies of the Privileged and/or Nondiscoverable Information identified
20 in the claw-back request have been returned, destroyed, and deleted.
- 21 g. If requested in writing by the Receiving Party, the Supplying Party
22 shall provide a privilege log for the Privileged and/or Nondiscoverable
23 Information within ten business days after receiving the written request
24 from the Receiving Party.
- 25 h. In the event that the Receiving Party contends the documents are not
26 privileged, protected, or otherwise exempt from discovery as asserted
27 by the Supplying Party, the Receiving Party may, following the return
28 and destruction of the Privileged and/or Nondiscoverable Information,

1 challenge the claim through a motion to compel or other pleading with
2 this Court, subject to the provisions of Rules 26 and 37, Fed. R. Civ.
3 P., and L.R. 37-1 through 37-4, Local Rules – Central District of
4 California. Any review by the Court of the materials or documents in
5 dispute shall be *in camera*.

6 i. If the Receiving Party does not challenge the Supplying Party's claim
7 of privilege, protection, or exemption from discovery, or if the Court
8 determines that the materials or documents are privileged, protected, or
9 exempt from discovery, the Privileged and/or Nondiscoverable
10 Information and any information derived therefrom shall not be used
11 against the Supplying Party in this Action or in any other state or
12 federal proceeding.

13 j. Mere failure to diligently screen documents or other information
14 before producing them shall not preclude a party from seeking and
15 obtaining the return of Privileged and/or Nondiscoverable Information
16 and does not waive any applicable privilege, protection, or exemption
17 from discovery in this or any other federal or state proceeding.

18 **MISCELLANEOUS PROVISION**

19 32. The terms of this Protective Order may be amended or modified by
20 written agreement of the parties or upon motion and order of the Court. This
21 Protective Order shall continue in force until
22 amended or superseded by express order of the Court, and shall survive any final
23 judgment or settlement in this Action.

24 **IT IS SO ORDERED.**

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26 Dated: 7/9/12

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28 Charles F. Eick
United States Magistrate Judge

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APPENDIX

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DR. JULIO GARCIA, on behalf of
himself and all others similarly
situated,

Plaintiff,

vs.

ALLERGAN, INC., a Delaware
corporation,

Defendant.

CASE NO. 11-CV-9811 PSG (Ex)

CERTIFICATION

The undersigned acknowledges that he or she has read the Protective Order Regarding Confidential and Privileged Information (the "Protective Order"), understands the terms thereof, and agrees to be bound thereby. The undersigned further agrees to submit to the jurisdiction of the Court for purposes of enforcement of the provisions of the Protective Order and understands that the Court may impose sanctions for any violation of the Protective Order.

Dated: _____

Name (type or print)

Signature