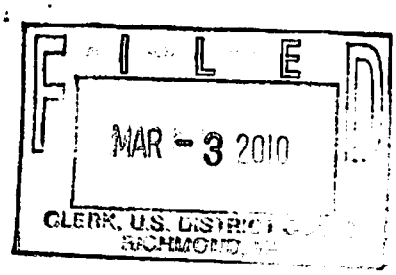
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division



DOUGLAS M. RAY, JR.,

Plaintiff,

v.

ALLERGAN, INC., et al.,

Defendants.

Case No.: 3:10CV136

NOTICE OF REMOVAL

Defendants Allergan, Inc. and Allergan USA, Inc. (collectively the "Allergan defendants"), by and through counsel, and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, file this Notice of Removal of this case from the Circuit Court for the City of Richmond, Virginia, to the United States District Court for the Eastern District of Virginia, Richmond Division, and allege as follows:

1. Complaint. On or about July 15, 2009, plaintiff Douglas M. Ray, Jr. commenced this action by filing a Complaint in the Circuit Court for the City of Richmond, Virginia. Plaintiff claims that he sustained injuries as a result of his use of the prescription drug "Botox" for the treatment of dystonic tremor and writer's cramp. Plaintiff's Complaint seeks $10,000,000 in compensatory damages, $1,000,000 in punitive damages, and pre-judgment interest. (*See* Complaint, attached as Exhibit A.)

2. Basis for Jurisdiction in this Court. This Court has jurisdiction over this removal action pursuant to 28 U.S.C. § 1441 because this action originally could have been filed in this Court pursuant to 28 U.S.C. § 1332.

3. Diversity. There is the requisite complete diversity of citizenship between Plaintiff and the Allergan defendants, and the amount in controversy exceeds $75,000, exclusive of interest and costs. 28 U.S.C. § 1332.

a. Citizenship of Plaintiff. Plaintiff alleges that he is a resident of Spotsylvania County, Virginia. (*See* Ex. A at ¶ 17.) Thus, Plaintiff is considered a Virginia citizen for purposes of determining federal diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(2).

b. Citizenship of the Allergan Defendants. The Allergan defendants are, and at the time of filing of this action were, corporations existing under the laws of the state of Delaware, having their principal place of business in California. (*See* Ex. A. at ¶¶ 3-4.) The Allergan defendants are therefore citizens of the states of Delaware and California. 28 U.S.C. § 1332(c)(1) ("a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business").

c. Citizenship of "John Does 1-25". In addition to the Allergan defendants, Plaintiff's Complaint names "John Does 1-25" as defendants. For purposes of removal, "the citizenship of defendants sued under fictitious names shall be disregarded." 28 U.S.C. § 1441(a).

d. Amount in Controversy. Plaintiff seeks $10,000,000 in compensatory damages and $1,000,000 in punitive damages. (*See* Ex. A.) Thus, the amount in controversy exceeds the sum or value of $75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332.

4. Consent. No additional consent to this removal is required, as no additional defendants have been named or served with process.

5. Notice Given. The Allergan defendants are filing a Notice of Filing of Removal with the Clerk of the State Court in which the action is currently pending pursuant to 28 U.S.C. § 1446(d).

6. Removal is Timely. The Complaint has not yet been served on the Allergan defendants, but is being removed within one year after commencement of the action. *See* 28 U.S.C. § 1446(b).

7. Pleadings and Process. As required by 28 U.S.C. § 1446(a), the Allergan defendants have attached a copy of the state court Complaint to this Notice of Removal as **Exhibit A.**

8. Venue. The United States District Court for the Eastern District of Virginia, Richmond Division, embraces the city in which the state court action is now pending; therefore, this Court is a proper venue for this action pursuant to 28 U.S.C. § 1441(a).

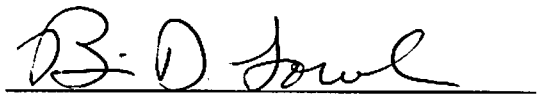
9. If any question arises as to the propriety of the removal of this action, the Allergan defendants request the opportunity to brief any disputed issues and to present oral argument in support of their position that this case is properly removable.

10. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of the Allergan defendants' right to assert any procedural or substantive defense or affirmative matter available under state or federal law.

WHEREFORE, the Allergan defendants respectfully remove this action from the Circuit Court for the City of Richmond, Virginia, to this Court, pursuant to 28 U.S.C. §§ 1441, *et seq.*

Respectfully submitted,

ALLERGAN, INC., and ALLERGAN USA, INC.



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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of March, 2010, I forwarded a copy of the foregoing Notice of Removal by first class mail, postage pre-paid, to the following:

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Christopher L. Anderson, Esq.
BrickerAnderson, P.C.
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Attorneys for Plaintiff

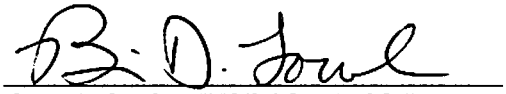

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EXHIBIT A

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

DOUGLAS M. RAY, JR.,

Plaintiff,

v.

CASE NO. _____

ALLERGAN, INC.,

ALLERGAN USA, INC.

and

JOHN DOES 1-25

Defendants.

COMPLAINT

Plaintiff, Douglas M. Ray, Jr., moves for judgment against defendants Allergan, Inc., Allergan USA, Inc. and John Does 1-25 on the grounds and in the amount set forth below:

NATURE OF THE ACTION

1. The plaintiff was injured from use of Botox, a prescription injectable medication which was designed, developed, tested, licensed, manufactured, labeled, marketed, and sold by Allergan, Inc. and/or Allergan USA, Inc.

PARTIES

2. Plaintiff Douglas M. Ray is an individual who resides in Fredericksburg, Virginia. The plaintiff received Botox injections for dystonic tremor and writer's cramp of the right hand from January through July 2007. With the third Botox treatment on July 17, 2007, the plaintiff sustained an immediate, acute severe immune reaction to the Botox with hypotension and fever requiring hospitalization three days later. The Botox reaction resulted in a devastating injury to the brain in which Mr. Ray has sustained multiple ischemic brain lesions, with a severe, continuing dementing encephalopathy, with multiple other entities.

3. Defendant Allergan, Inc. is a Delaware corporation that has its principal place of business in the State of California.

4. Defendant Allergan USA, Inc. is a Delaware corporation that has its principle place of business in the State of California. Upon information and believe, it is a wholly owned subsidiary of and totally controlled by Allergan Inc.

5. Defendants Allergan Inc. and Allergan USA, Inc. will be collectively referred to herein as "Allergan".

6. Allergan designed, developed, manufactured, tested, marketed, promoted, distributed, and sold Botox. In doing so, Allergan placed the product in the stream of commerce in

Virginia and throughout the United States. Allergan has received, and will continue to receive, substantial benefits and income through its activities. Allergan authorized the actions attributed to it herein through its officers, directors, and managing agents.

7. At all relevant times alleged herein, Defendant Allergan was in the business of researching, designing, developing, licensing, compounding, testing, producing, manufacturing, assembling, processing, packaging, inspecting, labeling, warranting, marketing, promoting, advertising, distributing, selling, and/or introducing into interstate commerce, either directly or indirectly through third parties or related entities, the prescription drug Botox.

8. At all times relevant hereto, Defendant Allergan designed, developed, manufactured, promoted, marketed, distributed, tested, warranted and sold Botox in interstate commerce and in the City of Richmond, Virginia. Defendant conducted substantial business at this location in the City of Richmond, advertised Botox in this city, received substantial compensation and profits from sales of Botox in this city, and made material omissions and misrepresentations and committed breaches of warranties in this city.

9. A substantial part of the events or omissions giving rise to Plaintiff's claims occurred in City of Richmond, Virginia.

10. The plaintiff does not know the true names and capacities of those defendants named and sued herein as John Does I through 25, and for that reason has sued said defendants by such fictitious names. The plaintiff will seek leave to amend this complaint to reflect their true names when ascertained. The plaintiff is informed and believes, and accordingly alleges, that each of the defendants sued herein as John Does I through 25 is responsible in some manner for the occurrences alleged in this action and that these defendants proximately caused the harms suffered by the plaintiff.

FACTUAL ALLEGATIONS

11. Upon information and belief, at all times relevant hereto, Allergan, by and through its employees, agents, affiliates, subsidiaries, and representatives, was involved in developing, designing, testing, manufacturing, and/or marketing Botox.

12. Defendant Allergan developed, designed, manufactures, and markets an injectable pharmaceutical known as Botox. Botox is Defendant Allergan's name for Botulinum Toxin Type A.

Botulinum toxin is the most potent neurotoxin known to man. It is several hundred times stronger than cyanide. It has been researched by the United States Government as a biological weapon, and is considered to be one of the most toxic substances on the planet.

13. Botox is designed to be injected intramuscularly, and its intended localized effect is to paralyze the muscle. It is approved by the United States Food and Drug Administration ("FDA") to cosmetically treat glabellar lines between the eyes. It is also approved for certain non-cosmetic uses, such as to treat a rare condition known as cervical dystonia. Although its side effects are not widely known, Botox can migrate outside the injected muscles and affect other tissues and muscles in the body area. More seriously, Botox can cause systemic effects, including autoimmune responses, brain injury, and botulism. The most common systemic side effects of botulism or Botox poisoning are flu-like symptoms, muscle weakness, dysphagia (difficulty swallowing), respiratory difficulties and death.

14. Botox has also been documented as causing retinal vein occlusion.

15. Allergan has never disclosed in any warnings, promotional or marketing materials that Botox can cause serious autoimmune responses, brain injury and botulism. The possibility of retinal vein occlusion is briefly mentioned in the label, but

no mention of vision loss is made, and this information is not provided to consumers. Instead, Allergan sponsors Botox injection conferences for doctors and represents that Botox is "well-tolerated," "safe" and "effective." These Allergan sponsored medical conferences promote Botox as a panacea for over 100 ailments, including cerebral palsy, movement disorders, whiplash, and headaches. Allergan has publicly stated that Botox is a miracle drug and has often compared it to penicillin. Side effects are rarely mentioned and consistently understated.

16. Allergan markets Botox as if it were two separate products-Botox and Botox Cosmetic--even though both products are identical. Also, the majority of Allergan's sales of Botox are "off-label," or in other words not approved by the FDA. In the cosmetic arena, the only approved use is for glabellar lines, but Allergan heavily promotes the product for cosmetic use all over the face, and makes little to no differentiation in its marketing between approved and unapproved off label uses. On the therapeutic side, the situation is much the same. Botox has been approved by the FDA for treatment of strabismus, blepharospasm, cervical dystonia, and hyperhidrosis. However, the majority of Allergan's sales of Botox are for off-label uses including dystonic movement disorders, neck pain, shoulder pain, headaches, cerebral palsy, and sialorrhea. Allergan intentionally circumvents the FDA approval process by seeking

approval only for narrow uses but then aggressively marketing the drug for dozens of other uses.

17. Plaintiff Douglas M. Ray, Jr. is a 65-year-old male, married with two adult children, who resides in Spotsylvania County, Virginia. Prior to his Botox injuries, Mr. Ray was a high-functioning, articulate, retired telecommunications engineer, with a modest dystonic movement disorder of his right hand, but otherwise in good health.

18. As promoted by Allergan, Mr. Ray's physicians recommended Botox treatment for the dystonic movement disorder of his right hand. He received three series of Botox injuries. The first took place on January 10, 2007 when he received 80 units of Botox for therapeutic use. The second was on or about April 3, 2007, when he received 220 units of Botox, also for therapeutic reasons. On or about July 17, 2007, he received his third dosage, in the amount 235 units.

19. Mr. Ray experienced no reaction following the first two series of Botox injections but within hours of the third he be began to experience fatigue, weakness and fever, followed by a diffuse, pruritic rash.

20. His complications from the Botox injection required that he be admitted to the hospital on July 20, 2007 and his condition eventually progressed into a severe acute immune reaction, resulting in a significant and catastrophic injury to

the brain in which Mr. Ray sustained multiple ischemic brain lesions.

21. As a consequence of Mr. Ray's Botox treatment, he has sustained a severe dementing encephalopathy, with devastating brain injury. Previously an articulate and high-functioning individual, he is now fully dependent on this wife and home nursing care givers for all activities of daily living. He cannot independently bath, shave or dress. He is incontinent of urine and wears adult diapers 24 hours a day. He needs assistance/support with walking. Frequently he needs assistance to feed himself. He is frequently confused or disoriented and therefore has difficulty communicating his thoughts.

22. These neurological deficits are thought to be permanent and life-long and are proximately due to the Botox treatment.

FIRST CAUSE OF ACTION: PRODUCT LIABILITY/FAILURE TO WARN (BY THE PLAINTIFF AGAINST ALL DEFENDANTS)

23. The plaintiff repeats and re-alleges the allegations set forth above in the foregoing paragraphs as though fully stated herein, against Allergan.

24. Allergan wholly failed to warn the plaintiff and others that Botox: a) can cause brain damage, ischemic autoimmune reactions and botulism poisoning; b) can cause life-

threatening systemic effects; c) can migrate out of the muscle(s) into which it is injected; d) has other serious side effects; e) has a dose related effect meaning the higher the dose the more likely side effects are to occur. Because of this failure-to-warn defect, Botox was unreasonably dangerous to an ordinary person, like plaintiff, who used Botox in a manner in which it was intended by Allergan to be used or in a manner in which Allergan could have reasonably foreseen. The risks of the Botox were known by Allergan or were reasonably scientifically knowable at the time Botox injured plaintiff.

25. An ordinary user of Botox would not foresee the risk of botulism, auto-immune reaction, brain injury or poisoning, particularly in light of Allergan's intentional minimization of the risks of Botox.

26. The lack of sufficient warnings was a substantial factor in causing the plaintiff's injuries and damages. If Allergan had informed the plaintiff or plaintiff's health care providers of the known risks of Botox, they would have refused to use Botox.

27. As a direct and proximate result of the defects in Botox and the conduct of Allergan, the plaintiff sustained damages.

SECOND CAUSE OF ACTION: PRODUCT LIABILITY/MANUFACTURING DEFECT

(BY THE PLAINTIFF AGAINST ALL DEFENDANTS)

28. The plaintiff repeats and re-alleges the allegations set forth in the foregoing paragraphs as though fully stated herein.

29. Allergan is the manufacturer, distributor, and supplier of Botox. The product reached the plaintiff without a substantial change in its condition upon leaving the Defendant.

30. The Botox given to the plaintiff contained a defect in its manufacture. This defect in Botox existed at the time Botox left the possession and control of Allergan.

31. The defect in Botox caused it to fail during the time of use. This failure caused Plaintiff to suffer injuries and damages detailed herein.

32. Botox was used by Plaintiff in a manner foreseeable to Allergan.

33. As a direct and proximate result of the manufacturing defect in Botox and the conduct of the Allergan, Plaintiff sustained damages.

THIRD CAUSE OF ACTION: NEGLIGENCE
(BY THE PLAINTIFF AGAINST ALL DEFENDANTS)

34. The plaintiff repeats and re-alleges the allegations set forth in the foregoing paragraphs as though fully stated herein.

33. Defendant Allergan was negligent in designing and marketing Botox and such negligence was a proximate cause of injuries and damages to the plaintiff. Allergan, through its agents, employees and/or servants, designed, manufactured, produced, inspected, tested, maintained, sold and/or made Botox available to the plaintiff. The negligence on the part of Defendant Allergan included, but was not limited to: marketing and making available Botox to the plaintiff even though it was a dangerous, defective and deficient drug; and failing to provide Plaintiff and health-care providers with sufficient information as to the product's known dangers and risks, including botulism poisoning.

34. Defendant Allergan was negligent in designing Botox and such negligence was a proximate cause of injuries and damages to the plaintiff. Allergan, through its agents, employees and/or servants, designed, manufactured, produced, inspected, tested, maintained, sold and/or made available Botox to the plaintiff.

35. As a consequence of Allergan's negligence, careless conduct, and failure to exercise ordinary and reasonable care and caution, the plaintiff sustained damages.

FOURTH CAUSE OF ACTON: BREACH OF IMPLIED WARRANTY (BY THE PLAINTIFF AGAINST ALL DEFENDANTS)

36. The plaintiff repeats and re-alleges the allegations set forth in the foregoing paragraphs as though fully stated herein.

37. Prior to the time that Botox was used by the plaintiff, Allergan, through its agents, employees, subsidiaries, representatives and affiliates, impliedly warranted to the plaintiff and his health care providers that Botox was of a merchantable quality and safe and fit for the use for which it was intended.

38. The plaintiff and his health care providers were, and remain, unskilled in the research, design, and manufacture of Botox and reasonably relied entirely on the skill, judgment, and implied warranty of Allergan in using the aforementioned Botox.

39. Allergan knew or had reason to know that the plaintiff and his physicians relied upon the skill and judgment of the defendant as a leader in the pharmaceutical industry to create, market, test, and sell a suitable and safe product.

40. Botox was neither safe for its intended use nor of merchantable quality, as warranted by Allergan, in that Botox had dangerous propensities when put to its intended use and would cause severe injuries to the user.

41. At the time it was manufactured and at all subsequent times, Botox was not as warranted, but was unfit for the particular purpose for which it was intended in that it was

defective, causing the plaintiff to suffer damages and consequential damages.

42. As a result of Allergan's breach of the implied warranty of fitness for a particular purpose and the resulting dangers associated with the use of Botox, the plaintiff suffered the injuries and damages set forth above.

FIFTH CAUSE OF ACTION: BREACH OF EXPRESS WARRANTY: (BY THE PLAINTIFF AGAINST ALL DEFENDANTS)

43. The plaintiff repeats and re-alleges the allegations set forth in the foregoing paragraphs as though fully stated herein.

44. Allergan expressly warranted to the public and the plaintiff through his physicians that Botox was safe, effective, fit, and proper for its intended use through its advertising and marketing. Allergan also expressly warranted to the plaintiff that Botox was fit for off-label uses. Allergan did so through statements that it made orally and in publications, through Allergan-sponsored Botox conventions for medical professionals, package inserts, promotional and other written, oral, and electronically disseminated statements and materials provided to the medical trade journals and to massmarket publications.

45. The plaintiff relied on the skill, judgment, representations, and foregoing express warranties of Allergan

when he decided to use Botox. These warranties and representations were false since Botox was not safe and was unfit for the uses for which it was intended, among other things.

46. As a result of Allergan's breaches of warranty, the plaintiff suffered the injuries and damages as set forth above.

SEVENTH CAUSE OF ACTION: NEGLIGENT MISREPRESENTATION (BY THE PLAINTIFF AGAINST ALL DEFENDANTS)

47. The plaintiff repeats and re-alleges the allegations set forth in the foregoing paragraphs as though fully stated herein.

48. Defendant, from the time that Botox was first tested, studied, researched, first manufactured, marketed and distributed, and up to the present, made false representations, as previously set forth herein, to plaintiff, his health care providers, and the general public, including but not limited to the misrepresentation that Botox was safe, fit, and effective for human consumption.

49. At all times relevant hereto, Allergan conducted a sales and marketing campaign to promote the sale of Botox and willfully deceived the plaintiff, his health care providers, and the general public as to the health risks and consequences of the use of Botox. Defendant made the following

misrepresentations without any reasonable ground for believing them to be true:

a. Representing to the plaintiff, his physicians, and the general public that Botox was safe, fit, and effective for human consumption, knowing that said representations were false, and concealing from each user, their physicians, and the general public that Botox had a serious propensity to cause injuries to users;

b. Engaging in an advertising program and media campaign designed to create the image, impression and belief by consumers and physicians that the use of Botox was safe for a variety of therapeutic and cosmetic uses and concealing its poisonous properties, even though the Defendant knew these representations to be false, and even though the Defendant had no reasonable grounds to believe Botox was safe for the general public;

c. Purposely downplaying and understating the health hazards and risks associated with Botox;

d. Issuing promotional literature and commercials and conducting mass-media and news promotional interviews deceiving potential users of Botox by relaying positive information, including manipulating and/or

omitting statistics to suggest widespread acceptability and safety, while downplaying the known adverse and serious health effects and concealing material relevant information regarding the safety of Botox; and

e. Representing that Botox cannot and does not cause botulism.

50. These misrepresentations were made directly by Defendant, by sales representatives and other authorized agents of said Defendant, and in publications, mass media outlets, and other written materials directed to physicians, patients, and the general public, with the intention of inducing reliance and the prescription, purchase, and use of Botox. Allergan has previously represented in its advertisements to the general public that Botox has a 25-year track record of safety and likening the toxin to the discovery of penicillin. In addition, Defendant's most recent advertising campaign regarding Botox, "Express Yourself," fails to mention the topic of safety. Allergan refers to its product as "purified," which is intended to misrepresent that Botox is in actuality a highly lethal poison that can cause botulism, brain damage, auto immune reactions and/or botulism-like symptoms.

51. Allergan sponsors Botox conferences for physicians and medical professionals numerous times every year. Allergan

represents that Botox is "safe" and "well-tolerated" for all of these purposes, despite knowing that said representations are unsubstantiated and often false, and, meanwhile, conceals from physicians and the general public, and ultimately each user, that Botox has serious propensity to cause injuries to users.

52. The foregoing representations by Defendant were in fact false, in that Botox is not safe, fit, and effective for human consumption, the use of Botox is hazardous to health, and Botox has significant propensity to cause serious injuries to users, including but not limited to the injuries suffered by the Plaintiff as described above. The foregoing misrepresentations by Defendant were made with the intention of inducing reliance and the prescription, purchase, and use of Botox.

53. In reliance on the misrepresentations by Defendant, the plaintiff was induced to purchase and use Botox, and his health care providers were induced to prescribe it. If each of them had known of the true facts and the facts concealed by Defendant, the plaintiff would not have used Botox and his health care providers would not have prescribed it. Their reliance upon Defendant's misrepresentations was justified because such misrepresentations were made and conducted by individuals and entities that were in a position to know the true facts.

54. As a result of the foregoing negligent misrepresentations by Defendant, the plaintiff suffered injuries and damages as described above.

PUNITIVE DAMAGES ALLEGATIONS

55. The plaintiff repeats and re-alleges the allegations set forth in the foregoing paragraphs as though fully stated herein.

56. The acts, conduct, and omissions of Defendant, as alleged throughout this Complaint, were willful and malicious and were done with a conscious disregard for the rights of the Plaintiff and other recipients of Botox and for the primary purpose of increasing Defendant's profits from the sale, marketing and distribution of Botox. Defendant's outrageous and unconscionable conduct warrants an award of exemplary and punitive damages against Defendant in an amount appropriate to punish and make an example of Defendant Allergan.

57. Prior to the manufacturing, marketing, sale and distribution of said prescribed medication, Defendant knew that said toxin was in a defective condition as previously described herein and knew that those who were prescribed the toxin would experience and did experience severe physical, mental, and emotional injuries. Further, Defendant, through its officers, directors, managers, and agents, had knowledge that the

prescription toxin presented a substantial and unreasonable risk of harm to the public, including the plaintiff and as such, said consumers of Botox were unreasonably subjected to risk of injury or death.

58. Despite such knowledge, Defendant, acting through its officers, directors, and managing agents for the purpose of enhancing Defendant's profits, knowingly and deliberately failed to remedy the known defects in Botox and failed to warn the public, including the Plaintiff, of the extreme risk of injury occasioned by said defects inherent in Botox. Defendant and its individual agents, officers, and directors intentionally proceeded with the manufacturing, sale, distribution and marketing of Botox knowing that the public, including the plaintiff, would be exposed to serious danger in order to advance Defendant's pecuniary interests and monetary profits.

59. Defendant acted with oppression, fraud and malice in that Defendant knew or had reason to know prior to plaintiff's use specified herein that Botox was unreasonably dangerous and intentionally misrepresented or concealed this fact from plaintiff and his health care providers. Defendant acted with full awareness of the harm that could result and as a consequence, is liable for punitive damages.

RELIEF REQUESTED

WHEREFORE, the Plaintiff prays for judgment against Defendant Allergan, Inc., and as appropriate to each cause of action alleged and as appropriate to the standing of the plaintiff as follows:

1. Compensatory damages against defendants in the amount of ten million dollars;

2. Punitive damages against defendants in the amount one million dollars;

3. Costs of suit incurred herein;

4. Pre-judgment interest as provided by law; and

5. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, by his undersigned counsel, hereby demand a trial by jury on all counts in this Complaint and all issues so triable.

DOUGLAS M. RAY, JR.

By _____
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