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19 Attorneys for Plaintiffs  
20 ALLERGAN, INC. and ALLERGAN SALES, LLC  
21 (Additional counsel listed on signature page)

22 **UNITED STATES DISTRICT COURT**  
23 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
24 **SOUTHERN DIVISION**

25 ALLERGAN, INC., ALLERGAN  
26 SALES, LLC,

27 Plaintiffs,

28 v.

FERRUM FERRO CAPITAL, LLC;  
KEVIN BARNES,

Defendants.

Case No.

**COMPLAINT FOR CIVIL  
EXTORTION, MALICIOUS  
PROSECUTION, AND UNFAIR  
BUSINESS PRACTICES ARISING  
FROM U.S. PATENT LAWS**

**JURY TRIAL DEMANDED**

1 Plaintiffs Allergan, Inc. and Allergan Sales, LLC (collectively, “Allergan”), by  
2 their attorneys, alleges the following claims against Defendants Ferrum Ferro Capital,  
3 LLC (“FFC”) and Kevin Barnes (“Barnes”) (collectively “Defendants”):

4 **NATURE OF THE ACTION**

5 1. This is a civil action arising out of Defendants’ attempt to extort  
6 Allergan by misusing the Inter Partes Review (“IPR”) process established by the  
7 America Invents Act (“AIA”), H.R. 1249, enacted to reform 35 U.S.C. §§ 1 *et seq.*  
8 Defendants’ conduct raises substantial issues related to the misuse of the patent  
9 system and the processes established by the AIA, and constitutes attempted civil  
10 extortion and malicious prosecution under California law in addition to violating  
11 California’s Unfair Competition Law codified at California Bus. & Prof. Code §§  
12 17200 *et seq.*

13 **THE PARTIES**

14 2. Allergan, Inc. is a corporation organized and existing under the laws of  
15 the State of Delaware, with a principal place of business at 2525 Dupont Drive,  
16 Irvine, California 92612.

17 3. Allergan Sales, LLC is a limited liability company organized and  
18 existing under the laws of the State of Delaware, with a principal place of business at  
19 2525 Dupont Drive, Irvine, California 92612.

20 4. On information and belief, FFC is a Delaware limited liability company  
21 without any principal place of business. On information and belief, FFC maintains a  
22 mail drop box at 717 N. Union Street, #78, Wilmington, Delaware 19805.

23 5. On information and belief, Kevin Barnes is a citizen of the state of New  
24 York, who resides at 515 W. 59th Street, Apartment 19A, New York, New York  
25 10019.

1 **JURISDICTION AND VENUE**

2 6. This Court has original jurisdiction over all causes of action asserted  
3 herein pursuant to 28 U.S.C. §§ 1331, 1338, or 1367. As described in detail below,  
4 this complaint necessarily raises issues related to Defendants’ misuse of the patent  
5 laws of the United States of America, and the processes established by the AIA,  
6 which amended the patent laws of the United States.

7 7. FFC has filed an objectively baseless IPR petition for the express  
8 purpose of monetizing the petition, including by attempting to extort compensation  
9 from Allergan. The objective baselessness of FFC’s IPR petition necessarily raises  
10 federal issues that are actually disputed and substantial. Moreover, the issues raised  
11 by this complaint are not limited to the facts of or parties involved in this case, but  
12 rather apply to many other AIA petitioners attempting similar extortionate schemes.  
13 Indeed, the behavior complained of herein—the use of the IPR process in an effort to  
14 extract compensation from patent-holders—has been the subject of extensive debate  
15 in Congress and the national press, as evidenced by the attached recent op-ed in the  
16 Wall Street Journal. *See Ex. A*, attached. This Court’s exercise of jurisdiction over  
17 these important and far-reaching federal issues will not disrupt the balance struck by  
18 Congress between the federal and state courts.

19 8. Given the importance and potential impact of this dispute on the federal  
20 system and the laws governing the AIA, this Court can and should exercise  
21 jurisdiction over this case under 28 U.S.C. §§ 1331 and 1338.

22 9. This Court has personal jurisdiction over FFC because FFC specifically  
23 reached out to Allergan, which is resident in this Judicial District, for the purposes of  
24 extorting Allergan under the guise of settlement of an IPR petition authorized under  
25 the AIA. FFC has hired counsel based in this Judicial District for the purpose of  
26 aiding in its efforts to extort Allergan under the guise of settlement from Allergan.  
27 The harm caused by FFC and suffered by Allergan has occurred in this district and  
28 was directed at this district by FFC. In addition, through its conduct, FFC has sought

1 to allegedly do business in this Judicial District and to avail itself of the laws in this  
2 Judicial District.

3 10. This Court has personal jurisdiction over Kevin Barnes because Mr.  
4 Barnes, acting through FFC, specifically reached out to Allergan, which is resident in  
5 this Judicial District, for the purposes of extorting Allergan under the guise of  
6 settlement of an IPR petition authorized under the AIA. Mr. Barnes, through FFC,  
7 has hired counsel based in this Judicial District for the purpose of aiding in its efforts  
8 to extort Allergan under the guise of settlement from Allergan. The harm caused by  
9 Mr. Barnes and suffered by Allergan has occurred in this district and was directed at  
10 this district by Mr. Barnes. In addition, Mr. Barnes, through FFC, has sought to  
11 allegedly do business in this Judicial District and to avail himself of the laws of the  
12 state in this Judicial District.

13 11. Allergan's complaint originates from Defendants' attempts to extort  
14 Allergan under the guise of settlement, and Defendants' associated conduct and  
15 activities in this Judicial District. As such, this Court has specific personal  
16 jurisdiction over Defendants.

17 12. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and/or  
18 1391(c).

19 **FACTUAL ALLEGATIONS REGARDING ALLERGAN'S INNOVATIVE**  
20 **TREATMENT FOR GLAUCOMA AND OCULAR HYPERTENSION**

21 13. Allergan incorporates and realleges Paragraphs 1-12 of this Complaint as  
22 if repeated verbatim in this Paragraph.

23 14. Allergan is one of the world's leading and most innovative  
24 pharmaceutical companies. One of the specialties of Allergan is research and  
25 development of products for treating diseases of the eye.

26 15. Glaucoma is an incurable disease of the eye that damages the optic nerve  
27 over time, resulting in vision loss, and often, blindness. It afflicts approximately 70  
28 million patients worldwide. While the cause of glaucoma is unknown, a symptom

1 of the disease is a dramatic escalation of the pressure inside the eye, known as  
2 intraocular pressure. Elevated intraocular pressure is known as ocular hypertension.

3 16. While incurable, the elevated intraocular pressure found in glaucoma  
4 and ocular hypertension patients can be treated with eye drops to control pressure,  
5 slowing the progression of the diseases. For many patients, one type of drop a day is  
6 not enough—these patients must administer multiple medications, many of which  
7 require multiple doses taken at different times of day.

8 17. In part to solve this problem, Allergan developed COMBIGAN®, which  
9 is a combination of brimonidine and timolol for “topical ophthalmic use” in treating  
10 patients suffering from glaucoma and/or ocular hypertension. The development of  
11 COMBIGAN® required the investment of tens of millions of dollars by Allergan and  
12 thousands of hours in research and development.

13 18. Allergan is the holder of an approved New Drug Application (“NDA”)  
14 No. 21-398 for brimonidine tartrate/timolol maleate ophthalmic solution 0.2%/0.5%,  
15 sold under the COMBIGAN® trademark.

16 19. COMBIGAN® has proven to be a significant improvement for treating  
17 glaucoma and ocular hypertension due, in part, to its having comparable efficacy to  
18 brimonidine and timolol administered separately and to its superior safety profile.

19 20. NDA No. 21-398 for COMBIGAN® is associated with at least six  
20 patents duly issued to Chin-Ming Chang, Gary J. Beck, Cynthia C. Pratt, and Amy L.  
21 Batoosingh, including U.S. Patent Nos. 7,030,149 (“the ’149 patent”), 7,320,976,  
22 7,642,258, 8,133,890, 8,354,409, and 8,748,425.

23 21. Allergan, as assignee, owns the entire right, title, and interest in each of  
24 these six patents, including the ’149 patent.

25 22. COMBIGAN® or approved methods of using COMBIGAN® are  
26 covered by at least one claim of each of the six patents listed above, including the  
27 ’149 patent.

28 23. Because of its success in the marketplace, numerous generic

1 pharmaceutical companies, including Sandoz, Inc., Hi-Tech Pharmacal Co., Inc.,  
2 Alcon Laboratories, Inc., Falcon Pharmaceuticals, Ltd., Apotex, Inc., Apotex,  
3 Corporation, and Watson Laboratories, Inc. (collectively “the Competitors” or  
4 “Allergan’s Competitors”), have filed Abbreviated New Drug Applications  
5 (“ANDA”) with the United States Food and Drug Administration (“FDA”), seeking  
6 approval to market generic versions of COMBIGAN® before the expiration of  
7 Allergan’s patents covering COMBIGAN®, including the ’149 patent. These  
8 ANDAs were filed pursuant to the Hatch-Waxman Act, the statute that governs  
9 generic drug approvals.

10 24. As contemplated by the Hatch-Waxman Act, Allergan sued the  
11 Competitors for a judgment that the Competitors’ generic formulations disclosed in  
12 their various ANDA applications infringed Allergan’s duly issued patents, including  
13 the ’149 patent.

14 25. In response, the Competitors sought declaratory judgment that  
15 Allergan’s patents, including the ’149 patent, were invalid.

16 26. Included among the validity challenges raised by the Competitors were  
17 claims that the ’149 patent was invalid as obvious in light of certain prior art,  
18 including the DeSantis, Timmermans, Stewart, and Larsson references.

19 27. The cases between Allergan and the Competitors were tried to the bench  
20 in the United States District Court for the Eastern District of Texas in August 2011,  
21 the Honorable T. John Ward presiding. In support of their validity challenges on the  
22 ’149 patent, the Competitors introduced lengthy expert witness testimony at trial,  
23 including from a treating ophthalmologist and an ophthalmic formulator. Those  
24 experts addressed the DeSantis, Timmermans, Stewart, and Larsson references.

25 28. In August 2011, the district court entered judgment in favor of Allergan  
26 on the Competitors’ validity challenges to the ’149 patent, rejecting the Competitors’  
27 arguments and testimony. The district court rejected defendants’ arguments over  
28 each of the DeSantis, Timmermans, Stewart, and Larsson references.



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35. Consistent with its “mail drop box” “place of business,” FFC’s website, <http://www.ferrumferro.com>, is a shell, with no information available on it about any of FFC’s supposed activities. A print-out of all of the pages of FFC’s website is attached hereto as Exhibit B.

36. Indeed, FFC’s website is almost identical to the website of another venture fund owned by Mr. Barnes, which he has named Hyacinth Sloop Capital, LLC. A print-out of all of the pages of Hyacinth Sloop Capital’s website, <http://www.hyacinthsloop.com>, is attached hereto as Exhibit C.



1           37. On information and belief, FFC has no facilities in which to conduct  
2 research and development to create a generic formulation of Allergan’s  
3 COMBIGAN®, or any other pharmaceutical drug.

4           38. On information and belief, FFC has not financed any research and  
5 development activities to create a generic formulation of Allergan’s COMBIGAN®,  
6 or any other pharmaceutical drug.

7           39. On information and belief, FFC has hired no scientists or other personnel  
8 capable of performing any research and development activities to create a generic  
9 formulation of Allergan’s COMBIGAN®, or any other pharmaceutical drug.

10           40. On information and belief, FFC has hired no regulatory or other  
11 personnel necessary to prepare, submit and prosecute an ANDA application for any  
12 generic drug with the FDA.

13           41. On March 9, 2015, FFC sent a letter to Allergan. A copy of that letter is  
14 attached as Exhibit D.

15           42. FFC’s March 9, 2015 letter falsely represented to Allergan that FFC was  
16 prepared to “seek [Federal Food and Drug Administration (“FDA”)] approval via a  
17 Paragraph III ANDA filing to produce and market a generic brimonidine  
18 tartrate/timolol maleate ophthalmic solution with [an unnamed] Contract  
19 Manufacturing Partner (“CMP”).” Ex. D at 2.

20           43. Attached to the March 9, 2015 letter, FFC included an incomplete  
21 “proposed FDA filing” for generic brimonidine tartrate/timolol maleate ophthalmic  
22 solution, attached hereto as Exhibit E. FFC’s “proposed ANDA filing” is clearly a  
23 sham.

24           44. In the sham “proposed FDA filing,” FFC named its fictitious generic  
25 brimonidine tartrate/timolol maleate ophthalmic solution “Combivious,” apparently  
26 as some kind of play on the words “COMBIGAN®” and “obvious.” The fictitious  
27 ANDA filing further lists its date of submission as “03/XX/2015.” Moreover, FFC  
28 included only the first page of the three-page FDA application to market an

1 abbreviated new drug. Notably, FFC omitted the certification acknowledgment and  
2 the signature page of the form from what it sent Allergan.

3 45. Also attached to the March 9, 2015 letter was an IPR petition that FFC  
4 filed with the United States Patent and Trademark Office (“PTO”) on March 9, 2015  
5 challenging the validity of Allergan’s ’149 patent. That IPR petition is attached  
6 hereto as Exhibit F.

7 46. IPR is a trial proceeding established by Congress and the President when  
8 they enacted into law the AIA, which amended 35 U.S.C. §§ 1 *et seq.* IPRs are  
9 conducted before the Patent Trial and Appeal Board (“PTAB”) of the PTO whereby a  
10 third party may seek a review of the patentability of one or more claims in a patent.

11 47. The third party filer has the option to withdraw its IPR petition.

12 48. FFC’s IPR petition is based on the same prior art as that previously  
13 argued by Allergan’s Competitors in the prior U.S. District Court and Court of  
14 Appeals litigation, namely the DeSantis, Timmermans, Stewart, and Larsson  
15 references. FFC’s IPR petition further raises the identical invalidity arguments over  
16 those references—obviousness—that the District Court and the Federal Circuit  
17 already rejected.

18 49. Moreover, rather than accept the majority Federal Circuit opinion  
19 affirming the district court’s judgment on the ’149 patent, FFC’s IPR petition instead  
20 purports to rely on the dissenting opinion of Judge Dyk as a basis for asserting the  
21 ’149 patent is invalid. In so doing, the IPR petition significantly and falsely  
22 characterizes what the dissent said about claim construction.

23 50. FFC’s March 9, 2015 letter explicitly threatens Allergan with its IPR  
24 petition as follows: “[FFC] is confident that at a minimum, the IPR petition for the  
25 ’149 patent presents a significant and terminal threat to Allergan’s exclusive rights to  
26 distribute Combigan.” Ex. D at 2.

27 51. In an apparent effort to place additional pressure on Allergan, FFC’s  
28 March 9, 2015 letter highlighted the fact that “upon institution of the IPR by the

1 PTAB, formerly time-barred defendants, such as [Allergan’s Competitors], will have  
2 the opportunity to file petitions of their own in the ongoing invalidation proceedings.”

3 *Id.*

4 52. FFC’s letter further stated that “Allergan should be mindful that FFC’s  
5 IPR could result in [Allergan’s Competitors] joining the fast-track challenge of the  
6 ’149 patent.” *Id.*

7 53. In the concluding part of its letter, FFC attempts to extract compensation  
8 from Allergan by stating that it “firmly believes that a company such as Allergan  
9 should be given a single opportunity to support FFC’s core social and investment  
10 interests before other time-barred producers are able to file for joinder in the ’149  
11 Patent IPR, and before FFC files additional IPR petitions against the COMBIGAN®  
12 patents and proceeds with a Paragraph III filing. As such, FFC is amenable to  
13 discussing an immediate and confidential settlement with Allergan.” *Id.* at 3.

14 54. FFC’s letter set a deadline of March 18, 2015 for Allergan to contact  
15 FFC to discuss this “single opportunity” to “support” FFC’s “core social and  
16 investment interests” in settlement of FFC’s IPR petition. *Id.*

17 55. On March 18, 2015, Allergan contacted FFC to obtain further  
18 information regarding FFC’s demands.

19 56. On March 18, 2015, FFC, including Mr. Barnes, informed Allergan that  
20 it would not disclose its demands unless Allergan first signed a non-disclosure  
21 agreement. The draft non-disclosure agreement initially provided by FFC, in addition  
22 to requiring confidentiality of settlement discussions, contained a term that barred the  
23 use of anything learned under the non-disclosure agreement as a basis for bringing an  
24 action against Mr. Barnes or FFC. Allergan refused to sign such an NDA, but  
25 ultimately did enter into a modified NDA to speak to Mr. Barnes confidentially.

26 57. While these activities were ongoing, Mr. Barnes—FFC’s founder—  
27 publicly stated that he sees “multiple pathways to monetization” of the IPR filing  
28 against the ’149 patent. That statement is attached hereto as Exhibit G, page 4.

1 58. Indeed, Allergan has learned that Hyacinth Sloop Capital, LLC, Mr.  
2 Barnes's other known entity, has threatened to file an IPR challenging the validity of  
3 another company's patent that covers a different drug. Allergan suspects that  
4 Hyacinth Sloop and Mr. Barnes are similarly seeking to extort that other  
5 pharmaceutical company.

6 59. Defendants' (and third parties') extortionate tactics necessarily raise  
7 questions regarding the scope and reach of the IPR procedure for challenging the  
8 validity of patents, involving substantial questions of patent law.

9 **COUNT I – ATTEMPTED CIVIL EXTORTION**  
10 **UNDER CALIFORNIA PENAL CODE §§ 518 ET SEQ.**

11 60. Allergan incorporates and re-alleges Paragraphs 1-59 of this Complaint  
12 as if repeated verbatim in this Paragraph.

13 61. Defendants' IPR petition regarding the '149 patent is objectively  
14 baseless and filed for an improper purpose. The IPR petition is based on the same  
15 prior art and the same grounds already rejected by the District Court and the Federal  
16 Circuit in the litigation between Allergan and the Competitors. Compounding the  
17 matter, the IPR relies on a false characterization of the Federal Circuit opinion.

18 62. Defendants did not have and still do not have a reasonable basis for  
19 filing the IPR petition against the '149 patent based on the same prior art and the  
20 same grounds that were already rejected by the U.S. District Court and the Federal  
21 Circuit in the litigation between Allergan and the Competitors.

22 63. Defendants' reason for filing the IPR petition is in an attempt to extort  
23 Allergan through the guise of providing Allergan a "single opportunity" to "support"  
24 FFC's "core social and investment interests" in settlement of the IPR.

25 64. As described above, Defendants sent to Allergan a letter expressly  
26 threatening Allergan if Allergan did not enter into an immediate and confidential  
27 settlement regarding the IPR petition. Because Defendants' threats against the '149  
28 patent are objectively baseless, Defendants' conduct constitutes attempted extortion

1 under California Penal Code §§ 519, 523 and 524, giving rise to this civil action.

2 65. Defendants' unlawful purpose in filing the IPR petition against the '149  
3 patent and sending their letter to Allergan is further shown by Defendants' fraudulent  
4 claims to be prepared to file an ANDA for a generic brimonidine/timolol combination  
5 product, and by proposing a name for it, "Combivious," that is plainly a sham.

6 66. Defendants' unlawful purpose and their consciousness of the same is  
7 also manifest, by among other things, FFC's initial refusal to provide any settlement  
8 terms absent Allergan signing a non-disclosure agreement that forbade Allergan from  
9 using any information learned in settlement talks as a grounds for bringing a lawsuit  
10 against Defendants.

11 67. Further manifestation of Defendants' unlawful purpose and  
12 consciousness of the same is demonstrated by Mr. Barnes' admission that there are  
13 "multiple pathways to monetiz[e]" the IPR petition related to Allergan's '149 patent.

14 68. Further manifestation of Defendants' unlawful purpose and  
15 consciousness of the same is demonstrated by Defendants' attempts to intimidate  
16 Allergan into settling quickly by threatening that "upon institution of the IPR by the  
17 PTAB, formerly time-barred defendants, such as [Allergan's Competitors], will have  
18 the opportunity to file petitions of their own in the ongoing invalidation proceedings."

19 69. Defendants' "settlement" offer is an attempt by FFC to use the threat of  
20 an objectively baseless IPR petition and fake ANDA filing to extort Allergan.

21 70. Defendants have improperly used the IPR process because Defendants'  
22 statements and actions reveal that they do not have a genuine desire to proceed with  
23 the IPR or to invalidate Allergan's '149 patent, but rather used the IPR process in an  
24 effort to extort Allergan as Defendants knew that they could withdraw their IPR  
25 petition if Allergan succumbed to their demand.

26 71. Defendants have improperly used the FDA's ANDA process because  
27 Defendants do not have a desire or intent to proceed with a generic brimonidine  
28 tartrate/timolol maleate ophthalmic solution, but simply used the false "proposed

1 FDA filing” to further Defendants’ efforts to extort Allergan as Defendants never  
2 actually formulated or filed for a generic solution.

3 72. Defendants’ activities constitute attempted civil extortion under  
4 California law and are contrary to public policy.

5 73. As a proximate cause of Defendants’ actions, Allergan has suffered  
6 disruption to its business, loss of productivity, loss of business goodwill, substantial  
7 litigation expense, additional operational expense, and other damages in an amount to  
8 be proven at trial, but in any event in excess of \$100,000.

9 **COUNT II – UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS &**  
10 **PROFESSIONS CODE §§ 17200 ET SEQ.**

11 74. Allergan incorporates and realleges Paragraphs 1-73 of this Complaint as  
12 if repeated verbatim in this Paragraph.

13 75. Defendants’ conduct described herein constitutes unfair, unlawful and/or  
14 fraudulent business acts or practices under California Business and Professions Code.  
15 §§ 17200 *et seq.*, including but not limited to:

- 16 a. Creating a limited liability company with no offices, and only a mail  
17 drop box for the purpose of attempting to extort Allergan;
- 18 b. Preparing a false “proposed FDA filing” for a hypothetical generic  
19 brimonidine tartrate/timolol maleate ophthalmic solution in furtherance  
20 of Defendants’ attempts to extort Allergan through the guise of a  
21 settlement of the IPR proceeding;
- 22 c. Falsely representing to Allergan that Defendants were prepared to “seek  
23 FDA approval via a Paragraph III ANDA filing to produce and market a  
24 generic brimonidine tartrate/timolol maleate ophthalmic solution with  
25 [an unnamed] Contract Manufacturing Partner (“CMP”)”;
- 26 d. Filing an objectively baseless IPR petition for the unlawful purpose of  
27 extorting Allergan; and
- 28 e. Attempting to intimidate Allergan into settling quickly by threatening

1 that “upon institution of the IPR by the PTAB, formerly time-barred  
2 defendants, such as [Allergan’s Competitors], will have the opportunity  
3 to file petitions of their own in the ongoing invalidation proceedings.”

4 76. As a proximate cause of Defendants’ actions, Allergan has suffered  
5 disruption to its business, loss of productivity, loss of business goodwill, substantial  
6 litigation expense, additional operational expense, and other damages in an amount to  
7 be proven at trial, but in any event in excess of \$100,000.

8 **COUNT III – MALICIOUS PROSECUTION UNDER CALIFORNIA LAW**

9 77. Allergan incorporates and realleges Paragraphs 1-76 of this Complaint as  
10 if repeated verbatim in this Paragraph.

11 78. Defendants’ conduct in filing the IPR petition constitutes malicious  
12 prosecution under California law by, among other things:

- 13 a. Creating a limited liability company with no offices, and only a mail  
14 drop box for the purpose of attempting to extort Allergan;
- 15 b. Filing an objectively baseless IPR petition for unlawful purpose of  
16 extorting Allergan;
- 17 c. Preparing a false “proposed FDA filing” for a hypothetical generic  
18 brimonidine tartrate/timolol maleate ophthalmic solution in furtherance  
19 of Defendants’ attempts to extort Allergan through the guise of a  
20 settlement of the IPR proceeding;
- 21 d. Falsely representing to Allergan that Defendants were prepared to “seek  
22 FDA approval via a Paragraph III ANDA filing to produce and market a  
23 generic brimonidine tartrate/timolol maleate ophthalmic solution with  
24 [an unnamed] Contract Manufacturing Partner (“CMP”)” in furtherance  
25 of Defendants’ attempts to extort Allergan through the guise of a  
26 settlement of the IPR proceedings; and
- 27 e. Furthering their extortionate acts by attempting to intimidate Allergan  
28 into settling quickly with threats that “upon institution of the IPR by the

1 PTAB, formerly time-barred defendants, such as [Allergan’s  
2 Competitors], will have the opportunity to file petitions of their own in  
3 the ongoing invalidation proceedings.”

4 79. As a proximate and substantial cause of Defendants’ actions, including  
5 the filing and maintenance of an objectively baseless IPR petition, Allergan has  
6 suffered disruption to its business, loss of productivity, loss of business goodwill,  
7 substantial litigation expense, additional operational expense, and other damages in  
8 an amount to be proven at trial, but in any event in excess of \$100,000.<sup>1</sup>

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs Allergan, Inc., and Allergan Sales, LLC prays for the  
11 following relief against Defendants:

12 1. For judgment in favor of Allergan that Defendants have engaged in  
13 attempted civil extortion in violation of California Penal Code §§ 519 *et seq.*;

14 2. For judgment in favor of Allergan that Defendants have violated  
15 California’s unfair competition law, codified at Bus. & Prof. Code §§ 17200 *et seq.*;

16 3. For judgment in favor of Allergan that Defendants’ filing and  
17 maintenance of an objectively baseless IPR constitutes malicious prosecution under  
18 California law;

19 4. For a permanent injunction prohibiting Defendants, including their  
20 officers, agents, employees, and all persons acting in concert or participation with  
21 them who receive actual notice of the Court’s Order, from pursuing the objectively  
22 baseless IPR petition that Defendants filed against Allergan’s ’149 patent or any other  
23 IPR petitions against Allergan;

24 5. For a permanent injunction prohibiting Defendants, including their  
25 officers, agents, employees, and all persons acting in concert or participation with  
26

27 <sup>1</sup> Allergan recognizes that a claim for malicious prosecution requires that the objectively  
28 baseless IPR have concluded in its favor. However, given PTAB’s statutory timeline for deciding  
an IPR – 6 months from filing for the institution decision or 18 months from filing for a final  
decision – Allergan thought it judicially economical and prudent to allege the cause of action now  
rather than have to file a separate, subsequent lawsuit on that claim alone.



1 them who receive actual notice of the Court’s Order, from committing additional acts  
2 of attempted civil extortion, civil extortion, malicious prosecution and/or additional  
3 acts that violate California’s unfair competition law;

4         6. For an award of restitutionary damages;

5         7. For an award to Allergan of its reasonable attorneys’ fees; and

6         8. For such other and further relief in law or in equity to which Allergan  
7 may be justly entitled.

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**JURY DEMAND**

Allergan demands trial by jury for all issues so triable.

Dated: June 19, 2015

FISH & RICHARDSON P.C.

By: /s/ Michael A. Amon

Michael A. Amon

amon@fr.com

FISH & RICHARDSON P.C.

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