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8 **UNITED STATES DISTRICT COURT**
FOR THE CENTRAL DISTRICT
9 **OF CALIFORNIA**

10
11 ERIN DUNCAN,

12 Plaintiff,

13 -against-

14 ALLERGAN, INC.; ALLERGAN USA,
15 INC.; and ALLERGAN PLC,

16 Defendants.

COMPLAINT AND DEMAND
FOR JURY TRIAL

17 Case No. _____

18
19 **COMPLAINT**

20 COMES NOW, Plaintiff, by and through the undersigned counsel, and bring this complaint
21 against Defendants and allege as follows:

22 1. This Complaint is brought on behalf of Plaintiff, ERIN DUNCAN, who suffered
23 damages as a direct and proximate result of the negligent and wrongful misconduct of
24 Defendants, ALLERGAN, INC., ALLERGAN USA, INC., and ALLERGAN PLC (hereinafter
25 referred to as "Defendants") in connection with the research, testing, development, design,
26 licensing, manufacture, packaging, labeling, distribution, sale, marketing, and/or introduction
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1 into interstate commerce of Viberzi (eluxadoline). As a result of ingestion of Viberzi, Plaintiff
2 ERIN DUNCAN (hereinafter referred to as “Plaintiff”) was caused to suffer acute pancreatitis, as
3 well as other severe and personal injuries which are permanent and lasting in nature, including
4 physical pain, mental anguish, diminished enjoyment of life, as well as the need for future
5 medical treatment and follow-up.
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7 **JURISDICTION AND VENUE**

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9 2 The Court has jurisdiction over this action pursuant to 28 U.S.C §1332 because
10 the amount in controversy exceeds \$75,000, exclusive of interest and costs, and because there is
11 complete diversity of citizenship between Plaintiff and the Defendants as Defendants are all
12 incorporated and have their principal place of business in states other than Plaintiff’s home state
13 of California.
14

15 3 This Court also has supplemental jurisdiction pursuant to 28 U.S.C. §1367.

16 4 Further, a substantial part of the events and omissions giving rise to Plaintiff’s
17 causes of action occurred in this district. Pursuant to 28 U.S.C. §1391, venue is proper in this
18 district.
19

20 **PARTIES:**
PLAINTIFFS

21 5 Plaintiff is a citizen of the United States of America, and a resident of Burbank,
22 California.
23

24 6 Upon information and belief, Plaintiff was prescribed, used and ingested Viberzi.

25 7 Upon information and belief, the injuries and damages sustained by Plaintiff were
26 caused by Defendants’ drug Viberzi.

27 8 Upon information and belief, Plaintiff read magazines, newspapers, and watched
28

1 television and other media, all of which communicated Defendants' Viberzi advertisements
2 which minimized the risks of Viberzi and overstated its benefits and indications, all of which
3 shaped Plaintiff's favorable perception of Viberzi.

4 9. As a result of using and ingesting Viberzi, Plaintiff was caused to suffer serious
5 injuries.
6

7 **PARTIES:**
8 **DEFENDANTS**

9 10. Defendant Allergan, Inc. is a Delaware corporation having a principal place of
10 business at 5 Giralda Farms, Madison, New Jersey 07940.

11 11. Defendant Allergan USA, Inc. is a Delaware corporation having a principal place
12 of business at 5 Giralda Farms, Madison, New Jersey 07940.

13 12. Defendant Allergan PLC, is a foreign corporation with its principal place of
14 business located at Clonshaugh Business and Technology Park, Coolock, Dublin, D17 E400,
15 Ireland.
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17 13. Upon information and belief, and at all relevant times, Defendants were engaged
18 in the business of researching, testing, developing, designing, licensing, manufacturing,
19 packaging, labeling, distributing, selling, marketing and/or introducing into interstate commerce,
20 either directly or indirectly through third parties or related entities, the prescription drug Viberzi.
21

22 14. Upon information and belief, and at all relevant times, Defendants conducted
23 regular and sustained business in California by selling and distributing its products in California,
24 and engaged in substantial commerce and business activity in California.

25 **FACTUAL BACKGROUND**

26 15. This is an action against Defendants on behalf of Plaintiff, who was prescribed the
27 drug Viberzi which is indicated for the treatment of irritable bowel syndrome with diarrhea.
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1 16. Plaintiff ingested the prescribed dosage of Viberzi in accordance with the
2 prescription written for Plaintiff.

3 17. Viberzi causes serious and sometimes fatal injuries including, but not limited to,
4 acute pancreatitis and its sequelae.

5 18. At all times relevant herein, Defendants, either directly or through their agents,
6 servants and employees, designed, manufactured, marketed, advertised, distributed and sold
7 Viberzi for the treatment of irritable bowel syndrome with diarrhea.

8 19. Persons who were prescribed and ingested Viberzi, including Plaintiff, have
9 suffered serious and permanent personal injuries.

10 20. Viberzi is a mu-opioid receptor agonist indicated in adults for the treatment of
11 irritable bowel syndrome with diarrhea. It was approved for use in May 2015.

12 21. Acute pancreatitis is a sudden inflammation of the pancreas. Pancreatitis can
13 cause serious complications, including infection, kidney failure, respiratory failure, diabetes and
14 pancreatic cancer.

15 22. Acute pancreatitis is diagnosed by medical history, physical examination, and
16 blood test for digestive enzymes of the pancreas (amylase and lipase). Imaging may also be
17 utilized.

18 23. While acute pancreatitis may be suspected in patients with severe acute upper
19 abdominal pain, a diagnosis cannot be established without biochemical or radiologic evidence.

20 24. Despite their collective resources, Defendants failed to fully and adequately test or
21 research Viberzi and its association with pancreatitis to the detriment of Plaintiff, Viberzi users,
22 the public, the medical community, and prescribing doctors.

23 25. Upon information and belief, Defendants failed to design and/or implement
24 clinical trials that would capture and analyze data to determine the incidence of acute pancreatitis
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1 in those patients with and without gallbladders.

2 26. Upon information and belief, Defendants did not require biochemical or
3 radiological testing to confirm suspected instances of acute pancreatitis during clinical trials.

4 27. Upon information and belief, Defendants did not enforce required biochemical or
5 radiological testing to confirm suspected instances of acute pancreatitis during clinical trials.

6 28. The lack of biochemical or radiological testing during the clinical trials led to
7 undiagnosed instances of pancreatitis, resulting in misleading and inaccurate trial results.

8 29. For example, during the clinical trial phase, there were at least 40 instances of
9 abdominal pain that led to trial discontinuation after starting Viberzi. Approximately half of those
10 events occurred within 24 hours of Viberzi initiation. Of the approximately 40 with abdominal
11 pain, the vast majority lacked biochemical or radiological testing to determine if the patient
12 suffered from acute pancreatitis.

13 30. For example, during the clinical trial phase, there were 484 adverse events
14 identified as possibly related to Sphincter of Oddi spasms (SOD). At least 47 lacked biochemical
15 or radiological testing to determine whether the SOD clinical symptoms were actually instances
16 of pancreatitis. Of the 484, only 37 were reviewed by a specialized committee. Of the 37, 18
17 (~half) were categorized as pancreatitis or biliary events. All 18 had taken Viberzi.

18 31. Properly designed and executed clinical trials would have led the original May
19 2015 label to contraindicate use in patients without gallbladders. Because the FDA did not have
20 the benefit of data from adequately designed and executed clinical trials, it did not require
21 contraindication in patients without a gallbladder.

22 32. The original May 2015 Viberzi Prescribing Label provided for two dosing
23 regimens: 1) 100 mg twice daily; and 2) 75 mg twice daily for those patients who, inter alia, do
24 not have a gallbladder.

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1 33. On March 15, 2017, the FDA issued a Drug Safety Communication advising
2 Viberzi should not be prescribed for patients without a gallbladder due to the risk of pancreatitis
3 that could result in hospitalization or death. The FDA communication discussed 120 serious
4 cases of pancreatitis, 27 of which resulted in hospitalization and 2 in death. The FDA noted that
5 of the 84 cases reporting a time to onset, 48 occurred after only one or two doses of Viberzi.

6 34. On April 17, 2017, the Viberzi Prescribing Label was changed to contraindicate
7 Viberzi use in patients without a gallbladder.

8 35. Plaintiff was 46 years old when she was prescribed Viberzi in September 2016.

9 36. At the time of Plaintiff's prescription, the Viberzi label contained no
10 contraindication for patients without gallbladders.

11 37. Plaintiff had previously undergone a cholecystectomy.

12 38. Prior to September 2016, Defendants knew or should have known that Viberzi use
13 in patients without gallbladders could cause or was causally associated with acute pancreatitis.

14 39. Prior to September 2016, Defendants had received numerous spontaneous reports
15 of acute pancreatitis and/or SOD, the vast majority of which were dosed at 75 mg, indicating use
16 by patients with prior cholecystectomies.

17 40. Prior to September 2016, the European Medicines Agency (EMA) informed
18 Defendants that it would contraindicate Truberzi (the company's name for Viberzi in Europe) use
19 in patients without a gallbladder. Discussing the decision on July 21, 2016, the EMA noted:

20 A more confident conclusion that the occurrence of SO-spasm events can
21 be reduced can be drawn if cholecystectomy is labeled as a
22 contraindication because no such event was observed in a population
23 with intact biliary tract. . . . Given the limited clinical relevance of the
24 efficacy results, all populations at increased risk of SO-spasm and
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1 pancreatitis (with previous such disease, high alcohol intake and without
2 gall-bladder) are consequently excluded from the treatment. This
3 assumption has found preliminary confirmation through the evaluation
4 of the early post-marketing data from the US (where no such contra-
5 indication is imposed) and which show reports of pancreatitis and/or SO-
6 spasm events, with their overwhelming majority affecting patients
7 without gall-bladder.
8

9 41. Plaintiff took her one and only dose of Viberzi on September 21, 2016. She was
10 admitted to Huntington Hospital (Huntington) the same day. Lab tests and imaging confirmed
11 pancreatitis.

12 42. Plaintiff remained hospitalized for four days. She was discharged on September
13 24, 2016. Viberzi was discontinued as it was believed to be the cause of Plaintiff's event.

14 43. Plaintiff continues to suffer health consequences from her initial pancreatic event.

15 44. An episode of pancreatitis increases a patient's risk that she will later develop
16 pancreatic cancer. Fear of developing pancreatic cancer subsequent to pancreatitis is reasonable.

17 45. Plaintiff remains at an increased risk for recurrent acute pancreatitis and/or
18 chronic pancreatitis and pancreatic cancer, which she fears, and she continues to be monitored for
19 health issues.
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22 **FEDERAL REQUIREMENTS**

23 46. Defendants had an obligation to comply with the law in the manufacture, design,
24 and sale of Viberzi.

25 47. Upon information and belief, Defendants violated the Federal Food, Drug and
26 Cosmetic Act, 21 U.S.C. §301, et seq.

27 48. With respect to Viberzi, the Defendants, upon information and belief, has or may
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1 have failed to comply with all federal standards applicable to the sale of prescription drugs,
2 including, but not limit to, one or more of the following violations:

- 3 (a) Viberzi is misbranded pursuant to 21 U.S.C. §352 because, among other
4 things, its labeling is false and/or misleading;
- 5
6 (b) Viberzi is misbranded pursuant to 21 U.S.C. §352 because words,
7 statements, or other information required by or under authority of chapter
8 21 U.S.C. §352 are not prominently placed thereon with such
9 conspicuousness and in such terms as to render it likely to be read and
10 understood by the ordinary individual under customary conditions of
11 purchase and use;
- 12
13 (c) Viberzi is misbranded pursuant to 21 U.S.C. §352 because the labeling
14 does not bear adequate directions for use, and/or the labeling does not bear
15 adequate warnings against use where its use may be dangerous to health or
16 against unsafe dosage or methods or duration of administration or
17 application, in such manner and form as are necessary for the protection of
18 users;
- 19
20 (d) Viberzi is misbranded pursuant to 21 U.S.C. §352 because it is dangerous
21 to patient health when used in the dosage or manner, or with the frequency
22 or duration prescribed, recommended, or suggested in the labeling thereof;
- 23
24 (e) Viberzi does not contain adequate directions for use pursuant to 21 CFR
25 §201.5 because, among other reasons, the omission, in whole or in part, or
26 incorrect specification of (1) statements of all conditions, purposes, or uses
27 for which it is intended, including conditions, purposes, or uses for which
28 it is prescribed, recommended or suggested in their oral, written, printed,

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or graphic advertising, and conditions, purposes, or uses for which the drug is commonly used, (2) quantity of dose, including usual quantities for each of the uses for which it is intended and usual quantities for persons of different physical conditions, (3) frequency of administration or application, (4) duration of administration or application, and/or (5) route or method of administration or application;

- (f) Defendants violated 21 CFR §201.56 because the labeling was not informative and accurate;
- (g) Viberzi is misbranded pursuant to 21 CFR §201.56 because the labeling was not updated as new information became available causing the labeling to become inaccurate, false, and/or misleading;
- (h) Defendants violated 21 CFR §201.57 by failing to provide information that is important to the safe and effective use of the drug including the potential of Viberzi causing pancreatitis;
- (i) Defendants violated 21 CFR §201.57 because they failed to identify specific tests needed for selection or monitoring of patients who took Viberzi;
- (j) Viberzi is mislabeled pursuant to 21 CFR §201.57 because the labeling does not state the recommended usual dose, the usual dosage range, and, if appropriate, an upper limit beyond which safety and effectiveness have not been established;
- (k) Viberzi violates 21 CFR §210.122 because the labeling and packaging materials do not meet the appropriate specifications;
- (l) Viberzi violates 21 CFR §211.198 because the written procedures

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describing the handling of all written and oral complaints regarding Viberzi were not followed;

- (m) Viberzi violates 21 CFR §310.303 because Defendants failed to establish and maintain records and make reports related to clinical experience or other data or information necessary to make or facilitate a determination of whether there are or may be grounds for suspending or withdrawing approval of the application to the FDA;
- (n) Defendants violated 21 CFR §§310.305 and 314.80 by failing to report adverse events associate with Viberzi as soon as possible or at least within 15 days of the initial receipt by Defendants of the adverse drugs experience;
- (o) Defendants violated 21 CFR §§310.305 and 314.80 by failing to conduct an investigation of each adverse event associate with Viberzi, and evaluating the cause of the adverse event;
- (p) Defendants violated 21 CFR §§310.305 and 314.80 by failing to promptly investigate all serious, unexpected adverse drug experiences and submit follow-up reports within the prescribed 15 calendar days of receipt of new information or as requested by the FDA;
- (q) Defendants violated 21 CFR §312.32 because they failed to review all information relevant to the safety of Viberzi or otherwise received by Defendants from sources, foreign or domestic, including information derived from any clinical or epidemiological investigations, animal investigations, commercial marketing experience, reports in the scientific literature, and unpublished scientific papers, as well as reports from

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foreign regulatory authorities that have not already been previously reported to the agency by the sponsor; and

- (r) Defendants violated 21 CFR §§314.80 by failing to provide periodic reports to the FDA containing (1) a narrative summary and analysis of the information in the report and an analysis of the 15-day Alert reports submitted during the reporting interval, (2) an Adverse Reaction Report for each adverse drug experience not already reported under the Post marketing 15-day Alert report, and/or (3) a history of actions taken since the last report because of adverse drug experiences (for example, labeling changes or studies initiated).

49. Defendants failed to meet the standard of care set by the above statutes and regulations, which were intended for the benefit of individual consumers such as the Plaintiff, making the Defendants liable under California law.

EQUITABLE TOLLING OF APPLICABLE STATUTES OF LIMITATIONS

50. The running of any statute of limitation has been tolled by reason of Defendants’ fraudulent conduct. Defendants, through their affirmative misrepresentations and omissions, actively concealed from Plaintiff and Plaintiff’s prescribing physicians the true risks associated with taking Viberzi.

51. As a result of Defendants’ actions, Plaintiff and Plaintiff’s prescribing physicians were unaware and could not reasonably know or have learned through reasonable diligence that Plaintiff had been exposed to the risks alleged herein and that those risks were the direct and proximate result of the Defendants’ acts and omissions.

52. Furthermore, Defendants are estopped from relying on any statute of limitations because of their fraudulent concealment of the truth. Defendants were under a duty to disclose

1 the true character, quality and nature of Viberzi because this was non-public information over
2 which Defendants had and continue to have exclusive control, and because Defendants knew that
3 this information was not available to Plaintiff, Plaintiff's medical providers and/or to Plaintiff's
4 health facilities. In addition, Defendants are estopped from relying on any statute of limitation
5 because of their intentional concealment of these facts.
6

7 53. Plaintiff had no knowledge that Defendants were engaged in the wrongdoing
8 alleged herein. Because of the fraudulent acts of concealment of wrongdoing by Defendants,
9 Plaintiff could not have reasonably discovered the wrongdoing at any time prior. Also, the
10 economics of this fraud should be considered. Defendants had the ability to and did spend
11 enormous amounts of money in furtherance of their purpose of marketing and promoting a
12 profitable drug, notwithstanding the known or reasonably known risks. Plaintiff and Plaintiff's
13 medical professionals could not have afforded and could not have possibly conducted studies to
14 determine the nature, extent and identity of related health risks, and were forced to rely on
15 Defendants' representations.
16

17 **COUNT ONE:**
18 **STRICT LIABILITY - FAILURE TO WARN**

19 54. Plaintiff realleges and incorporates by reference all other paragraphs of this
20 Complaint as if each were set forth fully and completely herein.

21 55. Defendants researched, tested, developed, designed, licensed, manufactured,
22 packaged, inspected, labeled, distributed, sold, marketed, promoted and/or introduced Viberzi
23 into the stream of commerce and in the course of same, directly advertised or marketed Viberzi to
24 consumers or persons responsible for consumers and, therefore, had a duty to warn of the risk
25 associated with the use of Viberzi, which they know or have reason to know and are inherent in
26 the use of pharmaceutical products.
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1 56. Viberzi was in a defective condition and unreasonably dangerous at the time that it
2 left the control of the Defendants.

3 57. Due to the unreasonably dangerous condition of Viberzi, Defendants are strictly
4 liable to Plaintiff.

5 58. Viberzi was under the exclusive control of Defendants and was not accompanied
6 by appropriate warnings regarding all possible adverse side effects and complications associated
7 with the use of Viberzi, nor with adequate warnings regarding the risk of acute pancreatitis
8 and other severe and permanent injuries associated with its use, nor with a contraindication of the
9 use of Viberzi in patients who had previously had their gallbladder removed.

10 59. Defendants downplayed the serious and dangerous side effects of Viberzi to
11 encourage sales of the product, placing profits above customers' safety.

12 60. Defendants failed to timely and reasonably warn of material facts regarding the
13 risks of Viberzi in patients who had no gallbladder, and Viberzi would not likely have been
14 prescribed or used had those facts been made known to such providers and Plaintiff.

15 61. Defendants' warnings were overwhelmed, downplayed and otherwise suppressed
16 by Defendants' advertisement campaign, which did not demonstrate that Viberzi presented
17 dangerous medical risks.

18 62. Defendants, as manufacturers of pharmaceutical drugs, are held to the level of
19 knowledge of an expert in the field. Further, Defendants had knowledge of the dangerous risks
20 and side effects of Viberzi.

21 63. Plaintiff did not have the same knowledge as Defendants and no adequate warning
22 or contraindication was communicated to Plaintiff's physicians.

23 64. Had an adequate warning and/or contraindication been communicated to
24 Plaintiff's physician, her physician would not have prescribed Viberzi and/or her physician
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1 would have passed the warning/contraindication on to the Plaintiff and Plaintiff would not have
2 used Viberzi.

3 65. Defendants had a continuing duty to warn consumers, including Plaintiff,
4 Plaintiff's physicians and the medical community of the dangers associated with Viberzi. By
5 negligently and/or wantonly failing to adequately warn of the dangers associated with its use,
6 Defendants breached their duty.
7

8 66. As a foreseeable, direct, and proximate result of the aforementioned wrongful acts
9 and omissions of Defendants, Plaintiff was caused to suffer from acute pancreatitis, as well as
10 other severe and personal injuries which are permanent and lasting in nature, physical pain,
11 mental anguish, diminished enjoyment of life and fear of cancer. Plaintiff has endured and
12 continues to suffer the mental anguish and psychological trauma of living with the knowledge
13 that Plaintiff has suffered these serious and dangerous side effects.
14

15 **WHEREFORE**, Plaintiff demands judgment against the Defendants individually, jointly
16 and/or severally and demand compensatory, statutory and punitive damages available under
17 applicable law, together with interest, costs of suit, attorneys' fees and all such other relief as the
18 Court deems just and proper.
19

20 **COUNT TWO:**
STRICT LIABILITY - DEFECTIVE DESIGN

21 67. Plaintiff realleges and incorporates by reference all other paragraphs of this
22 Complaint as if each were set forth fully and completely herein.
23

24 68. Viberzi was expected to and did reach the intended consumers, handlers and
25 persons coming into contact with the product without substantial change in the condition in
26 which it was produced, manufactured, sold, distributed, labeled and marketed by Defendants.
27

28 69. At all times relevant, Viberzi was manufactured, designed and labeled in an

1 unsafe, defective and inherently dangerous condition, which was dangerous for use by the public
2 and in particular, by Plaintiff.

3 70. Viberzi, as researched, tested, developed, designed, licensed, manufactured,
4 packaged, labeled, distributed, sold and marketed by Defendants was defective in design and
5 formulation in that when it left the hands of the manufacturers and/or suppliers the foreseeable
6 risks exceeded the alleged benefits associated with the design and formulation of Viberzi.
7

8 71. Viberzi, as researched, tested, developed, designed, licensed, manufactured,
9 packaged, labeled, distributed, sold and marketed by Defendants was defective in design and
10 formulation because when it left the hands of Defendants' manufacturers and suppliers it was
11 unreasonably dangerous and was also more dangerous than the ordinary consumer would expect.
12

13 72. At all times herein mentioned, Viberzi was in a defective condition and unsafe and
14 Defendants knew and/or had reason to know that their product was defective and inherently
15 unsafe, especially when Viberzi was used in a form and manner instructed and provided by
16 Defendants.

17 73. At the time of Plaintiff's use of Viberzi, it was being used for its intended purpose
18 and in a manner normally intended.

19 74. Defendants had a duty to create a product that was not unreasonably dangerous for
20 its normal, common and intended use.

21 75. Due to the unreasonably dangerous condition of Viberzi, Defendants are strictly
22 liable to Plaintiff.
23

24 76. Viberzi, as researched, tested, developed, designed, licensed, manufactured,
25 packaged, labeled, distributed, sold and marketed by Defendants was manufactured defectively
26 because Viberzi left the hands of Defendants in a defective condition and was unreasonably
27 dangerous for the intended use for which it was manufactured and sold.
28

1 77. Defendants researched, tested, developed, designed, licensed, manufactured,
2 packaged, labeled, distributed, sold and marketed a defective product that created an
3 unreasonable risk to the health of consumers and to Plaintiff in particular. Therefore, Defendants
4 are strictly liable for the injuries and damages sustained by Plaintiff.
5

6 78. Plaintiff could not have discovered, by the reasonable exercise of care, Viberzi's
7 defects and perceived its danger.

8 79. Viberzi, as researched, tested, developed, designed, licensed, manufactured,
9 packaged, labeled, distributed, sold and marketed by Defendants was defective due to inadequate
10 warnings and contraindications. Since Defendants knew or should have known that Viberzi
11 created an increased risk of acute pancreatitis and other serious and severe personal injuries,
12 which are permanent and lasting in nature, Defendants failed to adequately test for and warn of
13 these risks.
14

15 80. Viberzi, as researched, tested, developed, designed, licensed, manufactured,
16 packaged, labeled, distributed, sold and marketed by Defendants was defective by design because
17 Defendants were aware at the time it was marketed that Viberzi would cause an increased risk of
18 acute pancreatitis in persons without gallbladders.

19 81. Viberzi, as researched, tested, developed, designed, licensed, manufactured,
20 packaged, labeled, distributed, sold and marketed by Defendants was defective due to inadequate
21 post-marketing surveillance and/or warnings because Defendants knew or should have known of
22 the increased risk of acute pancreatitis.
23

24 82. By reason of the foregoing, Defendants are strictly liable in tort to Plaintiff.

25 83. Defendants' defective design of Viberzi and their over marketing through
26 advertisements, together with the provision of inadequate warnings and contraindications
27 accompanying Viberzi, were acts that amount to willful, wanton and/or reckless conduct by
28

1 Defendants.

2 84. The defects in Defendants' product were substantial and contributing factors in
3 causing Plaintiff's injury.

4 85. As a foreseeable, direct and proximate result of the aforementioned wrongful acts
5 and omissions of Defendants, Plaintiff was caused to suffer from acute pancreatitis as well as
6 other severe and personal injuries which are permanent and lasting in nature, physical pain,
7 mental anguish, diminished enjoyment of life and fear of cancer. Plaintiff has endured and
8 continues to suffer the mental anguish and psychological trauma of living with the knowledge
9 that Plaintiff has suffered these serious and dangerous side effects.
10

11 **WHEREFORE**, Plaintiff demands judgment against the Defendants individually, jointly
12 and/or severally and demand compensatory, statutory and punitive damages available under
13 applicable law, together with interest, costs of suit, attorneys' fees and all such other relief as the
14 Court deems just and proper.
15

16 **COUNT THREE:**
17 **NEGLIGENCE**

18 86. Plaintiff realleges and incorporates by reference all other paragraphs of this
19 Complaint as if each were set forth fully and completely herein.

20 87. Defendants had a duty to exercise reasonable care in the manufacture, labeling,
21 sale and distribution of Viberzi, including a duty to assure that Viberzi did not cause
22 unreasonable, dangerous side-effects to users.

23 88. Defendants failed to exercise ordinary care in the manufacture, labeling, sale,
24 marketing, quality assurance, quality control and distribution of Viberzi into the stream of
25 commerce, in that the Defendants knew or should have known that the drug created a high risk of
26 unreasonable harm in patients without gallbladders.
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89. The negligence of the Defendants, their agents, servants and/or employees included, but was not limited to, the following acts and/or omissions:

- (a) Manufacturing, producing, promoting, formulating, creating, developing, designing, assembling, selling and distributing Viberzi without thorough and adequate testing;
- (b) Manufacturing, producing, promoting, advertising, formulating, creating, developing, designing, assembling and distributing Viberzi while concealing and suppressing test results;
- (c) Not conducting sufficient studies and tests to determine whether Viberzi was safe for its intended use, because Defendants knew or had reason to know that Viberzi was indeed unsafe and unfit for use by reason of the dangers it presents to users;
- (d) Failing to warn Plaintiff, the medical and healthcare community, including Plaintiff's physicians, the general public, and/or the FDA as soon as Defendants knew or should have known of the dangers of the use of Viberzi in patients without gallbladders;
- (e) Concealing, suppressing, failing to warn about and/or failing to follow up on the adverse results of clinical testing that occurred, which indeed indicated that Viberzi had a high risk of serious and dangerous adverse health effects and consequences;
- (f) Failing to provide a contraindication for the use of Viberzi in patients without gallbladders;
- (g) Advertising and recommending the use of Viberzi while suppressing and concealing its known dangers;

- 1 (h) Representing that Viberzi was safe for its intended use when it was
- 2 actually unsafe for its intended purpose in patients without gallbladders;
- 3 (i) Suppressing, concealing, omitting and/or misrepresenting information to
- 4 Plaintiff, the medical community and/or the FDA concerning the severity
- 5 of risks and the dangers inherent in the intended use of Viberzi in patients
- 6 without gallbladders; and
- 7
- 8 (j) Failing to conduct adequate post-marketing surveillance to determine the
- 9 safety of Viberzi, failing to comply with post-marketing requirements of
- 10 FDA regulations, failing to perform adequate Pharmacovigilance, and
- 11 otherwise careless or negligent acts.

12 90. Defendants' conduct, as described above, was extreme and outrageous.

13 Defendants risked the lives of consumers and users of Viberzi, including Plaintiff, by suppressing

14 this knowledge from the general public.

15

16 91. As a foreseeable, direct, and proximate result of the aforementioned wrongful acts

17 and omissions of Defendants, Plaintiff was caused to suffer from acute pancreatitis, as well as

18 other severe and personal injuries which are permanent and lasting in nature, physical pain,

19 mental anguish, diminished enjoyment of life and fear of cancer. Plaintiff has endured and

20 continues to suffer the mental anguish and psychological trauma of living with the knowledge

21 that Plaintiff has suffered these serious and dangerous side effects.

22

23 **WHEREFORE**, Plaintiff demands judgment against the Defendants individually, jointly

24 and/or severally and demand compensatory, statutory and punitive damages available under

25 applicable law, together with interest, costs of suit, attorneys' fees and all such other relief as the

26 Court deems just and proper.

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28 **COUNT FOUR:**
NEGLIGENT MISREPRESENTATION

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92. Plaintiff realleges and incorporates by reference all other paragraphs of this Complaint as if each were set forth fully and completely herein.

93. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Plaintiff and the public, that Viberzi had been tested and found to be safe and effective for all persons who suffered from irritable bowel syndrome with diarrhea. The representations made by Defendants, in fact, were false.

94. Defendants failed to exercise ordinary care in the representations concerning Viberzi while they were involved in the manufacture, sale, testing, quality assurance, quality control, and distribution in interstate commerce, because Defendants negligently misrepresented Viberzi was safe and effective for all persons who suffered from irritable bowel syndrome with diarrhea.

95. Defendants breached their duty in representing that Viberzi was safe and effective for all persons who suffered from irritable bowel syndrome with diarrhea.

96. As a foreseeable, direct, and proximate result of the aforementioned wrongful acts and omissions of Defendants, Plaintiff was caused to suffer from acute pancreatitis, as well as other severe and personal injuries which are permanent and lasting in nature, physical pain, mental anguish, diminished enjoyment of life and fear of cancer. Plaintiff has endured and continues to suffer the mental anguish and psychological trauma of living with the knowledge that Plaintiff has suffered these serious and dangerous side effects.

WHEREFORE, Plaintiff demands judgment against the Defendants individually, jointly and/or severally and demand compensatory, statutory and punitive damages available under applicable law, together with interest, costs of suit, attorneys' fees and all such other relief as the Court deems just and proper.

COUNT FIVE:
BREACH OF EXPRESS WARRANTY

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97. Plaintiff realleges and incorporates by reference all other paragraphs of this Complaint as if each were set forth fully and completely herein.

98. Defendants expressly warranted in their manufacturing, design, distribution, marketing and promotion of Viberzi that Viberzi was safe, effective and fit for use by Plaintiff and members of the consuming public generally, that it was of merchantable quality, that its side effects were minimal in all persons for whom it was indicated, including Plaintiff, and that it was adequately tested and fit for its intended use.

99. At the time of making such express warranties, Defendants knew or should have known that Viberzi did not conform to these express representations because Viberzi is not safe for its intended use in persons without gallbladders as it could cause them to suffer pancreatitis and its sequelae, and was thus unreasonably unsafe for its intended purpose.

100. As a foreseeable, direct and proximate result of the breach of these warranties, Plaintiff suffered and will continue to suffer severe and permanent personal injuries, harm and economic loss.

101. Plaintiff did rely on the express warranties of Defendants with respect to Viberzi.

102. The express warranties represented by Defendants were a part of the basis for Plaintiff's use of Viberzi.

103. Members of the medical community, including physicians and other healthcare professionals, relied upon the representations and warranties of Defendants in connection with the use, recommendation, description and/or dispensing of Viberzi.

104. Defendants expressly represented to Plaintiff, Plaintiff's physicians and healthcare providers that Viberzi was safe and fit for the purposes intended, that it was of merchantable

1 quality, that it did not produce any dangerous side effects, and that it was adequately tested and
2 fit for its intended use.

3 105. Defendants knew or should have known that their representations and warranties
4 were false, misleading and untrue because Viberzi was not safe and fit for its intended use,
5 Viberzi did not conform to these express warranties and representations (including the
6 representation that it was safe, the representation that it did not have high and/or unacceptable
7 levels of life-threatening side effects, and the representations that are otherwise set forth in this
8 complaint and/or in Defendants' promotional and marketing materials) and Viberzi caused its
9 users without gallbladders serious injuries, and this was not adequately identified and represented
10 by Defendants.
11

12 106. At the time of the making of these express warranties, the Defendants had
13 knowledge of the purpose for which Viberzi was to be used and warranted same to be in all
14 respects safe, effective and proper for such purpose.
15

16 107. Viberzi does not conform to these express warranties and representations because
17 it is not safe or effective in persons without gallbladders and may produce serious side effects,
18 including acute pancreatitis.
19

20 108. Plaintiff is informed and believes that Plaintiff will be required to have further
21 medical and/or hospital care, attention and services.
22

23 109. As a foreseeable, direct and proximate result of the aforementioned wrongful acts
24 and omissions of Defendants, Plaintiff was caused to suffer from acute pancreatitis, as well as
25 other severe and personal injuries which are permanent and lasting in nature, physical pain,
26 mental anguish, diminished enjoyment of life and fear of cancer. Plaintiff has endured and
27 continues to suffer the mental anguish and psychological trauma of living with the knowledge
28 that Plaintiff has suffered these serious and dangerous side effects.

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124. Plaintiff reasonably relied upon the skill and judgment of Defendants as to whether Viberzi was safe and fit for its intended use.

125. Viberzi was injected into the stream of commerce by the Defendants in a defective, unsafe and inherently dangerous condition, and the products and materials were expected to and did reach users, handlers and persons coming into contact with said products without substantial change in the condition in which they were sold.

126. Defendants breached the aforesaid implied warranty as Viberzi was not fit for its intended purposes and uses.

127. As a foreseeable, direct and proximate result of the aforementioned wrongful acts and omissions of Defendants, Plaintiff was caused to suffer from acute pancreatitis, as well as other severe and personal injuries which are permanent and lasting in nature, physical pain, mental anguish, diminished enjoyment of life and fear of cancer. Plaintiff has endured and continues to suffer the mental anguish and psychological trauma of living with the knowledge that Plaintiff has suffered these serious and dangerous side effects.

WHEREFORE, Plaintiff demands judgment against the Defendants individually, jointly and/or severally and demand compensatory, statutory and punitive damages available under applicable law, together with interest, costs of suit, attorneys' fees and all such other relief as the Court deems just and proper.

COUNT EIGHT:
PUNITIVE DAMAGES

128. Plaintiff realleges and incorporates by reference all other paragraphs of this Complaint as if each were set forth fully and completely herein.

129. Viberzi was researched, tested, developed, designed, licensed, manufactured, packaged, labeled, distributed, sold, marketed and released into the stream of commerce by

1 Defendants and/or each of them after Defendants knew or should have known of the risk of
2 serious and potentially life-threatening side effects and complications from the use of Viberzi in
3 patients without gallbladders.

4
5 130. The acts, conduct, and omissions of Defendants as alleged throughout this
6 Complaint were willful and malicious. Defendants committed these acts with a conscious
7 disregard for the rights, health and safety of Plaintiff and other Viberzi users and for the primary
8 purpose of increasing Defendants' profits from the sale and distribution of Viberzi. Defendants'
9 outrageous and unconscionable conduct warrants an award of exemplary and punitive damages
10 against Defendants in an amount appropriate to punish and make an example of Defendants.

11
12 131. Prior to the manufacturing, sale, and distribution of Viberzi, Defendants knew that
13 said medication was in a defective condition as previously described herein and knew that those
14 who were prescribed the medication would experience and did experience severe physical,
15 mental, and emotional injuries. Further, Defendants, through their officers, directors, managers
16 and agents, knew that the medication presented a substantial and unreasonable risk of harm to the
17 public, including Plaintiff, and as such Defendants unreasonably subjected consumers of said
18 drugs to risk of injury or death from using Viberzi.

19
20 132. Despite its knowledge, Defendants, acting through its officers, directors and
21 managing agents, for the purpose of enhancing Defendants' profits knowingly and deliberately
22 failed to remedy the known defects in Viberzi and failed to warn the public, including Plaintiff,
23 of the extreme risk of injury occasioned by said defects inherent in Viberzi. Defendants and their
24 agents, officers and directors intentionally proceeded with the manufacturing, sale, distribution
25 and marketing of Viberzi knowing these actions would expose persons to serious danger in order
26 to advance Defendants' pecuniary interest and monetary profits.

27
28 133. The aforesaid conduct of Defendants was committed with knowing, conscious

1 indifference, and deliberate disregard for the rights and safety of consumers, including the
2 Plaintiff herein, thereby entitling the Plaintiff to punitive damages in an amount appropriate to
3 punish Defendants and deter them from similar conduct in the future.

4 134. Defendants' actions showed willful misconduct, malice, fraud, wantonness,
5 oppression, and/or the entire want of care raises the presumption of conscious indifference to the
6 consequences.
7

8 135. When warning of risks of Viberzi, Defendants recklessly and/or fraudulently
9 represented to the medical and healthcare community, the FDA, Plaintiff and the public in
10 general that Viberzi had been tested and was found to be safe and/or effective for its indicated
11 use, including in patients without gallbladders.

12 136. Defendants concealed their knowledge of Viberzi's defects from Plaintiff, the
13 FDA, the public in general and/or the medical community specifically.
14

15 137. Defendants maliciously concealed their knowledge of the defects in Viberzi from
16 Plaintiff and Plaintiff's physicians, hospitals, pharmacists, the FDA and the public in general.

17 138. Defendants knowingly withheld or misrepresented information required to be
18 submitted under the FDA's regulations, which information was material and relevant to the harm
19 in question.
20

21 139. As a foreseeable, direct and proximate result of the aforementioned wrongful acts
22 and omissions of Defendants, Plaintiff was caused to suffer from acute pancreatitis, as well as
23 other severe and personal injuries which are permanent and lasting in nature, physical pain,
24 mental anguish, diminished enjoyment of life and fear of cancer. Plaintiff has endured and
25 continues to suffer the mental anguish and psychological trauma of living with the knowledge
26 that Plaintiff has suffered these serious and dangerous side effects.
27

28 **WHEREFORE**, Plaintiff demands judgment against the Defendants individually, jointly

1 and/or severally and demand compensatory, statutory and punitive damages available under
2 applicable law, together with interest, costs of suit, attorneys' fees and all such other relief as the
3 Court deems just and proper.

4
5 **PRAYER FOR RELIEF**

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

- 7 a. Awarding compensatory damages resulting from Defendants' violation of their
8 duties;
- 9 b. Awarding compensatory damages resulting from Defendants' breach of warranties;
- 10 c. Awarding medical monitoring damages to Plaintiff;
- 11 d. Awarding actual damages to Plaintiff incidental to Plaintiff's purchase and use
12 of Viberzi in an amount to be determined at trial;
- 13 e. Awarding punitive damages to Plaintiff;
- 14 f. Awarding pre-judgment and post-judgment interest to Plaintiff;
- 15 g. Awarding the costs and the expenses of litigation to Plaintiff;
- 16 h. Awarding reasonable attorneys' fees and costs to Plaintiff as provided by law; and
- 17 i. Granting all such other relief as the Court deems necessary, just and proper.
- 18
- 19

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands trial by jury as to all issues.

22
23 */s/ Levi M. Plesset*

24 Levi M. Plesset, CA Bar No. 296039
25 MILSTEIN JACKSON FAIRCHILD & WADE
26 10250 Constellation Blvd., Suite 1400
27 Los Angeles, CA 90067
lplesset@mjfwlaw.com
28 Tel: (310) 396-9600
Fax: (310) 396-9635

Attorney for Plaintiff

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Erin Duncan	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) Allergan, Inc.; Allergan USA, Inc.; Allergan PLC
(b) County of Residence of First Listed Plaintiff <u>Los Angeles, CA</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>	County of Residence of First Listed Defendant <u>Morris, NJ</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i>
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Levi M. Plesset; Milstein, Jackson Fairchild & Wade, LLP 10250 Constellation Blvd., Suite 1400 Los Angeles, CA 90067 (310) 396-9600	Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

II. BASIS OF JURISDICTION (Place an X in one box only.)

<input type="checkbox"/> 1. U.S. Government Plaintiff	<input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2. U.S. Government Defendant	<input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

Citizen of This State	<input checked="" type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> PTF 2	<input type="checkbox"/> DEF 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> PTF 5	<input checked="" type="checkbox"/> DEF 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> PTF 3	<input type="checkbox"/> DEF 3	Foreign Nation	<input type="checkbox"/> PTF 6	<input type="checkbox"/> DEF 6

IV. ORIGIN (Place an X in one box only.)

<input checked="" type="checkbox"/> 1. Original Proceeding	<input type="checkbox"/> 2. Removed from State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Reinstated or Reopened	<input type="checkbox"/> 5. Transferred from Another District (Specify)	<input type="checkbox"/> 6. Multidistrict Litigation - Transfer	<input type="checkbox"/> 8. Multidistrict Litigation - Direct File
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V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 US Civil Statute: 28 U.S.C. 1332

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))	<input type="checkbox"/> 120 Marine	<input checked="" type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee Sentence	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 140 Negotiable Instrument	TORTS	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	PERSONAL INJURY	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 330 Fed. Employers' Liability	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 350 Motor Vehicle	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	REAL PROPERTY	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	LABOR	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision		<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
		<input type="checkbox"/> 448 Education	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

<p>QUESTION A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.</p>	<p align="center">STATE CASE WAS PENDING IN THE COUNTY OF:</p> <input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino	<p align="center">INITIAL DIVISION IN CACD IS:</p> Western Southern Eastern
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<p>QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "no," skip to Question C. If "yes," answer Question B.1, at right.</p>	<p>B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co.? <i>check one of the boxes to the right</i> →</p> <p>B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →</p>	<p><input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.</p> <p><input type="checkbox"/> NO. Continue to Question B.2.</p> <p><input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.</p> <p><input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.</p>
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<p>QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "no," skip to Question D. If "yes," answer Question C.1, at right.</p>	<p>C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.? <i>check one of the boxes to the right</i> →</p> <p>C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →</p>	<p><input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.</p> <p><input type="checkbox"/> NO. Continue to Question C.2.</p> <p><input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.</p> <p><input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.</p>
--	---	--

QUESTION D: Location of plaintiffs and defendants?	A. Orange County	B. Riverside or San Bernardino County	C. Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<p>D.1. Is there at least one answer in Column A? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "yes," your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question E, below, and continue from there. If "no," go to question D2 to the right. →</p>	<p>D.2. Is there at least one answer in Column B? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "yes," your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question E, below. If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓</p>
--	--

QUESTION E: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, C, or D above: →	WESTERN

QUESTION F: Northern Counties?

Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? Yes No

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

IX(a). IDENTICAL CASES: Has this action been previously filed **in this court**? NO YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed **in this court**? NO YES

If yes, list case number(s): _____

Civil cases are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): /s/ Levi M. Plesset DATE: 9/17/2018

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY(S)
 OR OF PARTY APPEARING IN PRO PER
 Levi M. Plesset, CA SBN 296039
 Milstein, Jackson, Fairchild & Wade, LLP
 10250 Constellation Blvd., Suite 1400
 Los Angeles, CA 90067
 Telephone: (310) 396-9600
 Facsimile: (310) 396-9635
 Email: lplesset@mjfwlaw.com

ATTORNEY(S) FOR: Erin Duncan

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

Erin Duncan

CASE NUMBER:

2:18-cv-8047

Plaintiff(s),

v.

Allergan, Inc.; Allergan USA, Inc.; and Allergan
 PLC,

Defendant(s)

**CERTIFICATION AND NOTICE
 OF INTERESTED PARTIES
 (Local Rule 7.1-1)**

TO: THE COURT AND ALL PARTIES OF RECORD:

The undersigned, counsel of record for Plaintiff, Erin Duncan
 or party appearing in pro per, certifies that the following listed party (or parties) may have a pecuniary interest in
 the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification
 or recusal.

(List the names of all such parties and identify their connection and interest. Use additional sheet if necessary.)

PARTY	CONNECTION / INTEREST
Erin Duncan	Plaintiff
Allergan, Inc.	Defendant
Allergan USA, Inc.	Defendant
Allergan PLC	Defendant

9/17/2018
 Date

/s/ Levi M. Plesset
 Signature

Attorney of record for (or name of party appearing in pro per):

Erin Duncan

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

Erin Duncan

Plaintiff(s)

v.

Allergan, Inc.; Allergan USA, Inc.; and Allergan PLC

Defendant(s)

Civil Action No. 2:18-cv-8047

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Allergan, Inc.
5 Giralda Farms
Madison, New Jersey 07940

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Levi M. Plesset
Milstein, Jackson, Fairchild & Wade, LLP
10250 Constellation Blvd., Suite 1400
Los Angeles, CA 90067

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 2:18-cv-8047

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

Erin Duncan

Plaintiff(s)

v.

Allergan, Inc.; Allergan USA, Inc.; and Allergan PLC

Defendant(s)

Civil Action No. 2:18-cv-8047

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Allergan PLC
Clonshaugh Business and Technology Park
Coolock, Dublin D17 E400
Ireland

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Levi M. Plesset
Milstein, Jackson, Fairchild & Wade, LLP
10250 Constellation Blvd., Suite 1400
Los Angeles, CA 90067

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 2:18-cv-8047

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

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Other *(specify)*:

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

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Plaintiff(s)

v.

Allergan, Inc.; Allergan USA, Inc.; and Allergan PLC

Defendant(s)

Civil Action No. 2:18-cv-8047

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Allergan USA, Inc.
5 Giralda Farms
Madison, New Jersey 07940

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Levi M. Plesset
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10250 Constellation Blvd., Suite 1400
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If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

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Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: