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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
SANTA ANA

BY: \_\_\_\_\_

1 JEFFREY T. THOMAS, SBN 106409  
JTthomas@gibsondunn.com  
2 T. KEVIN ROOSEVELT, SBN 205485  
KRoosevelt@gibsondunn.com  
3 GIBSON, DUNN & CRUTCHER LLP  
4 3161 Michelson Drive  
Irvine, California 92612-4412  
5 Telephone: (949) 451-3800  
6 Facsimile: (949) 451-4220

7 Attorneys for Plaintiffs  
ALLERGAN, INC., MURRAY A.  
8 JOHNSTONE, M.D., and DUKE  
UNIVERSITY

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 SOUTHERN DIVISION

14 ALLERGAN, INC.; MURRAY A.  
15 JOHNSTONE, M.D.; and DUKE  
UNIVERSITY,

16 Plaintiffs,

17 v.

18 ATHENA COSMETICS, INC.;  
19 PHARMA TECH INTERNATIONAL,  
20 INC.; DIMENSIONAL  
21 MERCHANDISING, INC.; STELLA  
INTERNATIONAL, LLC; PRODUCT  
22 INNOVATIONS, LLC; METICS, LLC;  
23 NUTRA-LUXE M.D., LLC; SKIN  
RESEARCH LABORATORIES, INC.;  
24 LIFETECH RESOURCES LLC;  
25 ROCASUBA, INC.; LA CANADA  
VENTURES, INC.; SUSAN F. LIN,  
26 M.D.; PETER THOMAS ROTH LABS  
LLC; and PETER THOMAS ROTH,  
INC.,

27 Defendants.

CASE NO. SACV09 -328 CJC (ANx)

COMPLAINT FOR PATENT  
INFRINGEMENT AND DEMAND  
FOR JURY TRIAL

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

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? [X] No [ ] Yes If yes, list case number(s):

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? [ ] No [X] Yes If yes, list case number(s): SACV07-1316 JVS (RNBx)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) [X] A. Arise from the same or closely related transactions, happenings, or events; or [X] B. Call for determination of the same or substantially related or similar questions of law and fact; or [X] C. For other reasons would entail substantial duplication of labor if heard by different judges; or [X] D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides. [ ] Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

Table with 2 columns: County in this District, California County outside of this District, State, if other than California; or Foreign Country. Row 1: Orange County, Washington; North Carolina

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides. [ ] Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

Table with 2 columns: County in this District, California County outside of this District, State, if other than California; or Foreign Country. Row 1: Los Angeles County, Nevada; New Jersey; Arizona; Contra Costa County, California; Florida; Connecticut; Massachusetts; San Mateo County, California; New York

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose. Note: In land condemnation cases, use the location of the tract of land involved.

Table with 2 columns: County in this District, California County outside of this District, State, if other than California; or Foreign Country. Row 1: Orange

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER) [Signature] Date March 16, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Table with 3 columns: Nature of Suit Code, Abbreviation, Substantive Statement of Cause of Action. Rows include codes 861 (HIA), 862 (BL), 863 (DIWC), 863 (DIWW), 864 (SSID), 865 (RSI) with corresponding descriptions of claims.

1 Plaintiffs, Allergan, Inc. ("Allergan"); Murray A. Johnstone, M.D.  
2 ("Dr. Johnstone"); and Duke University (together "Plaintiffs"), for their Complaint  
3 against defendants, Athena Cosmetics, Inc. ("Athena Cosmetics"); Pharma Tech  
4 International, Inc. ("Pharma Tech"); Dimensional Merchandising, Inc. ("DMI"); Stella  
5 International, LLC ("Stella"); Product Innovations, LLC ("PI"); Metics, LLC  
6 ("Metics"); Nutra-Luxe M.D., LLC ("Nutra-Luxe"); Skin Research Laboratories, Inc.  
7 ("SRL"); Lifetech Resources LLC ("Lifetech"); Rocasuba, Inc. ("Rocasuba"); La  
8 Canada Ventures, Inc. ("La Canada"); Susan Lin, M.D. ("Dr. Lin"); and Peter Thomas  
9 Roth Labs LLC and Peter Thomas Roth, Inc. (together "PTR") (collectively  
10 "Defendants"), allege upon personal knowledge with respect to themselves and their  
11 own acts, and upon information and belief with respect to all other matters, as follows:

12 **JURISDICTION AND VENUE**

13 1. This Court has subject matter jurisdiction over this action pursuant to 28  
14 U.S.C. §§ 1331 and 1338, in that this is a civil action for patent infringement arising  
15 under the Patent Laws of the United States, Title 35, United States Code.

16 2. Venue is proper in this district and division under 28 U.S.C. §§ 1391 and  
17 1400.

18 3. This Court has personal jurisdiction over Defendants by virtue of  
19 Defendants' manufacture, marketing, promotion, offers for sale, sales, and distribution  
20 of products, including the products which are the subject of this Complaint,  
21 throughout the State of California, in this District and in this Division. Defendants  
22 have also placed or helped to place, and are continuing to place, products into the  
23 stream of commerce within the United States, within California, in this District and in  
24 this Division, and it is reasonable to expect that such products will continue to enter  
25 and be used by consumers in California, including in this District and in this Division.  
26 In addition, this Court has personal jurisdiction over La Canada by virtue of its  
27 incorporation in California, Lifetech and PI by virtue of their being California limited  
28

1 liability companies, and Dr. Lin by virtue of her being a resident of the State of  
2 California.

3 **THE PARTIES**

4 4. Allergan is a corporation organized and existing under the laws of the  
5 State of Delaware, with its principal place of business at 2525 Dupont Drive, Irvine,  
6 California.

7 5. Dr. Johnstone is an individual residing in Seattle, Washington.

8 6. Duke University is one of the world's leading institutions for education,  
9 research, and medical care, and is located in Durham, North Carolina.

10 7. Athena Cosmetics is a corporation organized and existing under the laws  
11 of the State of Nevada, with its principal place of business at 701 North Green Valley  
12 Parkway, Henderson, Nevada. Allergan is informed and believes and thereon alleges  
13 that Athena is the successor-in-interest to Athena Cosmetics Corporation.

14 8. Pharma Tech is a corporation organized and existing under the laws of  
15 the State of New Jersey, with its principal place of business at 21 Just Road, Fairfield,  
16 New Jersey.

17 9. DMI is a domestic profit corporation organized and existing under the  
18 laws of the State of New Jersey, with its principal place of business at 86 North Main  
19 Street, Wharton, New Jersey.

20 10. Stella is a limited liability company organized and existing under the laws  
21 of the State of Arizona, with its principal place of business at 21827 North Scottsdale  
22 Road, Scottsdale, Arizona.

23 11. PI is a limited liability company organized and existing under the laws of  
24 the State of California, with its principal place of business at 1850 Mt. Diablo  
25 Boulevard, Walnut Creek, California.

26 12. Metics is a limited liability company organized and existing under the  
27 laws of the State of Arizona, with its principal place of business at 2338 West Royal  
28 Palm Road, Phoenix, Arizona.

1 13. Nutra-Luxe is a limited liability company organized and existing under  
2 the laws of the State of Florida, with its principal place of business at  
3 6835 International Center Boulevard, Fort Meyers, Florida.

4 14. SRL is a corporation organized and existing under the laws of the State of  
5 Connecticut.

6 15. Lifetech is a limited liability company organized and existing under the  
7 laws of the State of California, with its principal place of business at 9540 Cozycroft  
8 Avenue, Chatsworth, California.

9 16. Rocasuba is a corporation organized and existing under the laws of the  
10 State of Massachusetts, with its principal place of business at 133 Falmouth Road,  
11 Mashpee, Massachusetts.

12 17. La Canada is a corporation organized and existing under the laws of the  
13 State of California, with its principal place of business at 1265 La Canada Rd,  
14 Hillsborough, California.

15 18. Dr. Lin is an individual residing in San Mateo, California.

16 19. Peter Thomas Roth Labs LLC is a limited liability company organized  
17 and existing under the laws of the State of New York, with its principal place of  
18 business at 460 Park Avenue, New York, New York.

19 20. Peter Thomas Roth, Inc. is a corporation organized and existing under the  
20 laws of the State of New York, with its principal place of business at 131 West 35th  
21 Street, New York, New York.

22 **GENERAL ALLEGATIONS**

23 21. Allergan manufactures and sells LUMIGAN® ophthalmic solution  
24 ("Lumigan"), a medication approved by the Food and Drug Administration ("FDA") to  
25 lower intraocular eye pressure in people with open-angle glaucoma or ocular  
26 hypertension. Lumigan eye drops contain the active ingredient bimatoprost, which is  
27 in a category of compounds known as prostamides. Prostamides are related to a  
28 category of compounds known as prostaglandins ("PG").

1 22. There are several different types of PGs, which are categorized by their  
2 chemical structures and are named by letters. For example, there are PGAs, PGEs,  
3 PGFs, PGIs, etc. In addition to natural PGs, there are synthetic (i.e., man-made)  
4 compounds that have chemical structures similar to natural PGs. Prostaglandins and PG  
5 esters are two different categories of such synthetic compounds.

6 23. There are two other medications on the market containing PGs that have  
7 been approved by the FDA to lower intraocular eye pressure in people with open-  
8 angle glaucoma or ocular hypertension: Xalatan<sup>(TM)</sup> and Travatan<sup>(TM)</sup>. These products  
9 have been approved by the FDA only for the treatment of glaucoma, and both require  
10 a physician's prescription before they may be sold.

11 24. On December 26, 2008, the FDA approved an Allergan product named  
12 LATISSE<sup>(TM)</sup> (bimatoprost ophthalmic solution) 0.03% as a novel treatment for  
13 hypotrichosis of the eyelashes. Eyelash hypotrichosis is another name for having  
14 inadequate or not enough eyelashes. Other than LATISSE<sup>(TM)</sup>, PGs, PGF esters and  
15 prostamides have only been approved by the FDA for use as a prescription medicine  
16 to lower intraocular eye pressure in people with open-angle glaucoma or ocular  
17 hypertension.

18 25. Dr. Johnstone filed a patent application claiming the use of PGFs to grow  
19 hair, and specifically eyelashes. Application No. 09/366,656 was filed in the United  
20 States Patent and Trademark Office on August 3, 1999, claiming the benefit of  
21 Provisional Application No. 60/037,237, filed on February 4, 1997.

22 26. On July 17, 2001, the United States Patent and Trademark Office duly  
23 and legally issued United States Patent No. 6,262,105 (the "'105 patent"), entitled  
24 "Method of Enhancing Hair Growth" to Dr. Johnstone. A true and correct copy of the  
25 '105 patent is attached hereto as Exhibit A. At that time, Dr. Johnstone became the  
26 sole and exclusive owner of the '105 patent.

27 27. On June 29, 2006, Allergan entered into a Patent License Agreement with  
28 Dr. Johnstone, which grants to Allergan the exclusive right to make, use, and vend the

1 patented invention throughout the world. A true and correct copy of the Patent  
2 License Agreement is attached hereto as Exhibit B.

3 28. On January 15, 2003, Patent Application No. 10/345,788 was filed in the  
4 United States Patent and Trademark Office, claiming the benefit of Provisional  
5 Application No. 60/354,425, filed on February 4, 2002.

6 29. On April 1, 2008, the United States Patent and Trademark Office duly  
7 and legally issued United States Patent No. 7,351,404 (the "'404 patent"). A true and  
8 correct copy of the '404 patent is attached hereto as Exhibit C. Allergan is the sole  
9 assignee of the '404 patent.

10 30. On May 26, 2005, Patent Application No. 11/138,097 was filed in the  
11 United States Patent and Trademark Office, claiming the benefit of Provisional  
12 Application No. 60/193,645, filed on March 31, 2000.

13 31. On June 17, 2008, the United States Patent and Trademark Office duly  
14 and legally issued United States Patent No. 7,388,029 (the "'029 patent"). A true and  
15 correct copy of the '029 patent is attached hereto as Exhibit D. Duke University is the  
16 sole assignee of the '029 patent.

17 32. On December 17, 2007, Allergan entered into a Patent License  
18 Agreement with Duke University, which grants to Allergan the exclusive right to  
19 make, use, and vend the patented invention throughout the world for treating the loss  
20 or promoting the growth of eyelashes and/or eyebrows. A true and correct copy of the  
21 Patent License Agreement is attached hereto as Exhibit E.

22 33. Defendants Athena Cosmetics, Stella, PI, Metics, Nutra-Luxe, SRL,  
23 Lifetech, Rocasuba, La Canada, Dr. Lin, and PTR have been marketing and selling  
24 hair and/or eyelash growth products with prostamides, PGF esters and/or PGFs as the  
25 active ingredient. For example, Athena Cosmetics is marketing, promoting and selling  
26 products named RevitaLash and Hair by RevitaLash; Stella, PI and Metics are  
27 marketing, promoting and selling a product named RenewLash; Nutra-Luxe is  
28 marketing, promoting and selling a product named BeautyLash MD; SRL and Lifetech

1 are marketing, promoting and selling a product named NeuLash; Rocasuba and  
2 Lifetech are marketing, promoting and selling a product named Rapidlash Eyelash  
3 Renewal Serum; La Canada and Dr. Lin are marketing, promoting and selling a  
4 product named MD Lash Factor; and PTR has been marketing, promoting and selling  
5 a product called Peter Thomas Roth Lashes To Die For.

6 34. Plaintiffs are informed and believe that Pharma Tech manufactures and  
7 sells the compound that is the active ingredient in Athena Cosmetics' RevitaLash and  
8 Hair by RevitaLash products. Plaintiffs are further informed and believe that Pharma  
9 Tech promotes the use of this compound in eyelash growth products through  
10 marketing.

11 35. Plaintiffs are informed and believe that DMI manufactures Athena  
12 Cosmetics' eyelash and hair growth products, RevitaLash and Hair by RevitaLash. On  
13 information and belief, DMI specifically promotes the use of Athena's product for use  
14 in a manner that directly infringes the '029 patent.

15 36. In violation of federal laws regulating the manufacture and sale of  
16 prescription medicines, Defendants are manufacturing and selling these products  
17 without FDA approval and/or without requiring a prescription.

18 37. Purchasers of Defendants' products directly infringe the '105, the '404,  
19 and/or the '029 patents by using those products in a manner described by the claims of  
20 the '105, the '404, and/or the '029 patents.

21 38. Defendants encourage the direct infringement of the '105, the '404, and/or  
22 the '029 patents. Defendants (other than Pharma Tech) develop, market, promote, and  
23 sell products for eyelash and hair growth with prostamides, PGF esters, and/or PGFs  
24 as an ingredient, and promote their products for use in a manner covered by the claims  
25 of the '105, the '404, and/or the '029 patents and provide instructions for use of those  
26 products in a manner that directly infringes the '105, the '404, and/or the '029 patents.  
27 Defendants (other than Pharma Tech) do so with the knowledge of the existence of the  
28 '105, the '404, and/or the '029 patents and with the knowledge and intent that their

1 products will be used by consumers in a manner that directly infringes the '105, the  
2 '404, and/or the '029 patents.

3 39. Pharma Tech manufactures, markets, promotes, and sells a compound  
4 described in the '029 patent to Athena for use in eyelash and hair growth products.  
5 Pharma Tech promotes the use of this compound in a manner covered by the claims of  
6 the '029 patent. Pharma Tech does so with the knowledge of the existence of the '029  
7 patent and with the knowledge and intent that the products it manufactures and sells  
8 will be the active ingredient in products that will be used by consumers in a directly  
9 infringing manner.

10 40. DMI manufactures Athena's products for eyelash and hair growth. DMI  
11 manufactures this product with the knowledge of the existence of the '029 patent and  
12 with the knowledge and intent that the products it manufactures will be used by  
13 consumers in a directly infringing manner.

14 41. The eyelash growth products manufactured and sold by Defendants (other  
15 than Pharma Tech) have no substantial noninfringing use.

16 42. The compound Pharma Tech sells to Athena is designed especially for  
17 Athena and its eyelash and hair growth products. Pharma Tech knows that its  
18 compound is used as the active ingredient in Athena's eyelash and hair growth  
19 products, and Pharma Tech further knows that the eyelash and hair growth products  
20 cannot be used in any substantial way that does not infringe the '029 patent. Plaintiffs  
21 are further informed and believe that the compound Pharma Tech sells to Athena has  
22 no substantial noninfringing use.

23 43. Defendants recklessly disregard the '105, the '404 and '029 patents in  
24 their development, manufacturing, marketing, promotion, and sale of eyelash and hair  
25 growth products with prostamides, PGF esters and/or PGFs as an ingredient (and in  
26 the case of Pharma Tech, by supplying others with compounds for use in eyelash and  
27 hair growth products and promoting the use of the compounds in such products).  
28 Defendants proceed despite an objectively high likelihood that their actions contribute

1 to and induce infringement of the '105, the '404 and the '029 patents. All Defendants  
2 either know or should know that their actions risk infringement of the '105, the '404  
3 and the '029 patents.

4 **FIRST CLAIM FOR RELIEF**

5 **(Patent Infringement – United States Patent No. 6,262,105 –**  
6 **Against SRL, Lifetech and Rocasuba)**

7 44. Plaintiffs repeat and incorporate by reference the allegations in  
8 paragraphs 1 through 43 above, as if fully set forth herein.

9 45. In violation of 35 U.S.C. § 271(b), SRL, Lifetech and Rocasuba have  
10 actively induced the infringement of one or more claims of the '105 patent.

11 46. In violation of 35 U.S.C. § 271(c), SRL, Lifetech and Rocasuba have  
12 contributed to the infringement of one or more claims of the '105 patent.

13 47. The infringement of the '105 patent by SRL, Lifetech and Rocasuba has  
14 been willful and wanton.

15 48. Allergan and Dr. Johnstone have suffered and will continue to suffer  
16 serious irreparable injury unless SRL's, Lifetech's and Rocasuba's infringement of the  
17 '105 patent is enjoined.

18 **SECOND CLAIM FOR RELIEF**

19 **(Patent Infringement – United States Patent No. 7,351,404 –**  
20 **Against Defendants Stella, PI, Metics, Nutra-Luxe, La Canada,**  
21 **Dr. Lin and PTR)**

22 49. Plaintiffs repeat and incorporate by reference the allegations in  
23 paragraphs 1 through 48 above, as if fully set forth herein.

24 50. In violation of 35 U.S.C. § 271(b), Stella, PI, Metics, Nutra-Luxe, La  
25 Canada, Dr. Lin, and PTR have actively induced the infringement of one or more  
26 claims of the '404 patent.

1 51. In violation of 35 U.S.C. § 271(c), Stella, PI, Metics, Nutra-Luxe, La  
2 Canada, Dr. Lin, and PTR have contributed to the infringement of one or more claims  
3 of the '404 patent.

4 52. The infringement of the '404 patent by Stella, PI, Metics, Nutra-Luxe, La  
5 Canada, Dr. Lin and PTR has been willful and wanton.

6 53. Allergan has suffered and will continue to suffer serious irreparable  
7 injury unless Stella's, PI's, Metics', Nutra-Luxe's, La Canada's, Dr. Lin's and PTR's  
8 infringement of the '404 patent is enjoined.

9 **THIRD CLAIM FOR RELIEF**

10 **(Patent Infringement – United States Patent No. 7,388,029 –**  
11 **Against Defendants Stella, PI, Metics, Nutra-Luxe, Athena**  
12 **Cosmetics, Pharma Tech, DMI, La Canada and Dr. Lin)**

13 54. Plaintiffs repeat and incorporate by reference the allegations in  
14 paragraphs 1 through 53 above, as if fully set forth herein.

15 55. In violation of 35 U.S.C. § 271(b), Stella, PI, Metics, Nutra-Luxe, Athena  
16 Cosmetics, Pharma Tech, DMI, La Canada and Dr. Lin have actively induced the  
17 infringement of one or more claims of the '029 patent.

18 56. In violation of 35 U.S.C. § 271(c), Stella, PI, Metics, Nutra-Luxe, Athena  
19 Cosmetics, Pharma Tech, DMI, La Canada and Dr. Lin have contributed to the  
20 infringement of one or more claims of the '029 patent.

21 57. The infringement of the '029 patent by Stella, PI, Metics, Nutra-Luxe,  
22 Athena Cosmetics, Pharma Tech, DMI, La Canada and Dr. Lin has been willful and  
23 wanton.

24 58. Allergan and Duke University have suffered and will continue to suffer  
25 serious irreparable injury unless Stella's, PI's, Metics', Nutra-Luxe's, Athena  
26 Cosmetics', Pharma Tech's, DMI's, La Canada's and Dr. Lin's infringement of the '029  
27 patent is enjoined.

28

**PRAYER FOR RELIEF**

WHEREFORE, Allergan, Dr. Johnstone, and Duke University respectfully requests that this Court enter judgment in their favor and against Defendants and grant the following relief:

A. A judgment that SRL, Lifetech and Rocasuba have induced the infringement of the '105 patent in violation of 35 U.S.C. § 271(b);

B. A judgment that SRL, Lifetech and Rocasuba have contributed to the infringement of the '105 patent in violation of 35 U.S.C. § 271(c);

C. A judgment that Stella, PI, Metics, Nutra-Luxe, La Canada, Dr. Lin, and PTR have induced the infringement of the '404 patent in violation of 35 U.S.C. § 271(b);

D. A judgment that Stella, PI, Metics, Nutra-Luxe, La Canada, Dr. Lin, and PTR have contributed to the infringement of the '404 patent in violation of 35 U.S.C. § 271(c);

E. A judgment that Stella, PI, Metics, Nutra-Luxe, Athena Cosmetics, Pharma Tech, DMI, La Canada and Dr. Lin have induced the infringement of the '029 patent in violation of 35 U.S.C. § 271(b);

F. A judgment that Stella, PI, Metics, Nutra-Luxe, Athena Cosmetics, Pharma Tech, DMI, La Canada and Dr. Lin have contributed to the infringement of the '029 patent in violation of 35 U.S.C. § 271(c);

G. A judgment that SRL's, Lifetech's and Rocasuba's infringement of the '105 patent has been willful and wanton;

H. A judgment that Stella's, PI's, Metics', Nutra-Luxe's, La Canada's, Dr. Lin's, and PTR's infringement of the '404 patent has been willful and wanton;

I. A judgment that Stella's, PI's, Metics', Nutra-Luxe's, Athena Cosmetics', Pharma Tech's, DMI's, La Canada's and Dr. Lin's infringement of the '029 patent has been willful and wanton;

1 J. A preliminary and permanent injunction, pursuant to 35 U.S.C. § 283,  
2 enjoining SRL, Lifetech and Rocasuba, and all persons in active concert or  
3 participation with SRL, Lifetech and Rocasuba, from any further acts of infringement,  
4 inducement of infringement, or contributory infringement of the '105 patent;

5 K. A preliminary and permanent injunction, pursuant to 35 U.S.C. § 283,  
6 enjoining Stella, PI, Metics, Nutra-Luxe, La Canada, Dr. Lin, and PTR, and all  
7 persons in active concert or participation with Stella, PI, Metics, Nutra-Luxe, La  
8 Canada, Dr. Lin, and PTR, from any further acts of infringement, inducement of  
9 infringement, or contributory infringement of the '404 patent;

10 L. A preliminary and permanent injunction, pursuant to 35 U.S.C. § 283,  
11 enjoining Stella, PI, Metics, Nutra-Luxe, Athena Cosmetics, Pharma Tech, DMI, La  
12 Canada, Dr. Lin, and PTI, and all persons in active concert or participation with Stella,  
13 PI, Metics, Nutra-Luxe, Athena Cosmetics, Pharma Tech, DMI, La Canada and  
14 Dr. Lin, from any further acts of infringement, inducement of infringement, or  
15 contributory infringement of the '029 patent;

16 M. An order, pursuant to 35 U.S.C. § 284, awarding Allergan and  
17 Dr. Johnstone damages adequate to compensate Allergan and Dr. Johnstone for SRL's,  
18 Lifetech's and Rocasuba's infringement of the '105 patent, in an amount to be  
19 determined at trial, but in no event less than a reasonable royalty;

20 N. An order, pursuant to 35 U.S.C. § 284, awarding Allergan damages  
21 adequate to compensate Allergan for Stella's, PI's, Metics', Nutra-Luxe's, La Canada's,  
22 Dr. Lin's, and PTR's infringement of the '404 patent, in an amount to be determined at  
23 trial, but in no event less than a reasonable royalty;

24 O. An order, pursuant to 35 U.S.C. § 284, awarding Allergan and Duke  
25 University damages adequate to compensate Allergan and Duke University for  
26 Stella's, PI's, Metics', Nutra-Luxe's, Athena Cosmetics', Pharma Tech's, DMI's, La  
27 Canada's and Dr. Lin's infringement of the '029 patent, in an amount to be determined  
28 at trial, but in no event less than a reasonable royalty;

1 P. An order, pursuant to 35 U.S.C. § 284, and based on SRL's, Lifetech's  
2 and Rocasuba's willful and wanton infringement of the '105 patent, trebling all  
3 damages awarded to Allergan and Dr. Johnstone under the '105 patent;

4 Q. An order, pursuant to 35 U.S.C. § 284, and based on Stella's, PI's,  
5 Metics', Nutra-Luxe's, La Canada's, Dr. Lin's, and PTR's willful and wanton  
6 infringement of the '404 patent, trebling all damages awarded to Allergan under the  
7 '404 patent;

8 R. An order, pursuant to 35 U.S.C. § 284, and based on Stella's, PI's,  
9 Metics', Nutra-Luxe's, Athena Cosmetics', Pharma Tech's, DMI's, La Canada's, and  
10 Dr. Lin's willful and wanton infringement of the '029 patent, trebling all damages  
11 awarded to Allergan and Duke University under the '029 patent;

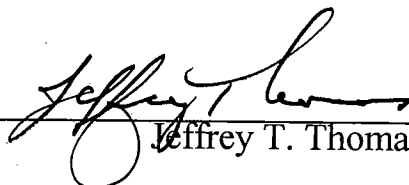
12 S. An order, pursuant to 35 U.S.C. § 284, awarding to Allergan,  
13 Dr. Johnstone and Duke University interest on the damages and their costs incurred in  
14 this action;

15 T. An order, pursuant to 35 U.S.C. § 285, finding that this is an exceptional  
16 case and awarding to Allergan, Dr. Johnstone and Duke University their reasonable  
17 attorneys' fees incurred in this action; and

18 U. Such other and further relief as this Court may deem just and proper.

19 Dated: March 13, 2009

20 JEFFREY T. THOMAS  
21 T. KEVIN ROOSEVELT  
22 GIBSON, DUNN & CRUTCHER LLP

23 By:   
24 Jeffrey T. Thomas

25 Attorneys for Plaintiffs ALLERGAN, INC.,  
26 MURRAY A. JOHNSTONE, M.D., and DUKE  
27 UNIVERSITY

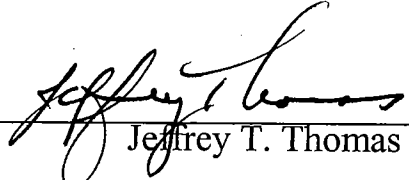
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**DEMAND FOR JURY TRIAL**

Allergan, Dr. Johnstone and Duke University demand trial by jury on all issues and causes of action properly tried to a jury, pursuant to Federal Rule of Civil Procedure 38.

Dated: March 13, 2009

JEFFREY T. THOMAS  
T. KEVIN ROOSEVELT  
GIBSON, DUNN & CRUTCHER LLP

By:  \_\_\_\_\_  
Jeffrey T. Thomas

Attorneys for Plaintiffs ALLERGAN, INC.,  
MURRAY A. JOHNSTONE, M.D., and DUKE  
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