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

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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? 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 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) A. Arise from the same or closely related transactions, happenings, or events; or
 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; or
 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).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
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).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
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.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
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) J. Kevin Rose 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:

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. (g))

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. Prostanoids 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^(TM) and Travatan^(TM). 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^(TM) (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^(TM), PGs, PGF esters and
15 prostanoids 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;

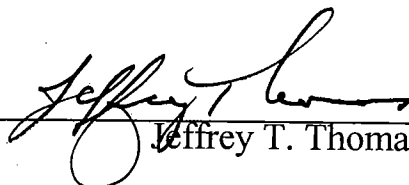
12 S. An order, pursuant to 35 U.S.C. § 284, awarding to Allergan,
13 Dr. Johnstone and Duke University interest on the damages and their costs incurred in
14 this action;

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

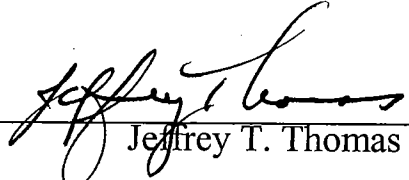
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DEMAND FOR JURY TRIAL

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
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By:  _____
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Attorneys for Plaintiffs ALLERGAN, INC.,
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UNIVERSITY

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