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9 Plaintiff Ivan Goldsmith

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

2009 SEP 29 PM 4:00
CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
802

FILED

12 **CV09-7088PSG (Ex)**

13 **IVAN GOLDSMITH**, on behalf of himself
14 and all others similarly situated,

Case No.
CLASS ACTION COMPLAINT

15 Plaintiff,

16 vs.

17 **ALLERGEN, INC.**, a Delaware
18 corporation,
19 Defendant.

DEMAND FOR JURY TRIAL

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22
23 Plaintiff Ivan Goldsmith ("Plaintiff"), on behalf of himself and all others similarly
24 situated ("Class Members"), alleges against Defendant Allergan, Inc. ("Allergan" or
25 Defendant) as follows:
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NATURE OF THE ACTION

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3 1. Allergan has, in combination, and in furtherance of its unlawful promotional
4 scheme, engaged in a series of intentional misrepresentations surrounding its product,
5 BOTOX® (Botulinum Toxin Type A) (the "Product") in order to increase sales to
6 doctors. To achieve its objective, Defendant has misrepresented to Plaintiff the true and
7 permissible use of the Product. Plaintiff relied on Defendant's misrepresentations,
8 incurring expenses for useless business development and discarding a substantial amount
9 of the product.
10
11

12 2. This Complaint arises out of numerous misrepresentations made by
13 Defendant regarding the use of vials of the Product. Allergan is one of the dominant and
14 controlling companies in the pharmaceutical industry. Allergan has formed a promotional
15 scheme, the purpose and effect of which is to falsely portray and misrepresent the use of
16 the Product and subsequently induce Plaintiff and the Class to purchase the Product. The
17 Defendant has, in combination, and in furtherance of its unlawful promotional scheme,
18 engaged in a series of intentional misrepresentations surrounding the Product. To achieve
19 its objective, Defendant has misrepresented to Plaintiff the true and permissible use of the
20 Product. Defendant purposefully and maliciously informed Plaintiff that the Product was
21 intended for multiple procedures and multiple patients. All of this illegal activity was
22 accomplished with the knowledge that the Product was neither intended nor permitted for
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1 such use. Plaintiff's reliance on Defendant's misrepresentations was open and well
2 known to Defendant.
3

4 **JURISDICTION AND VENUE**

5 3. This Court has personal jurisdiction over the parties in this case. Defendant
6 is a Delaware corporation with headquarters in this District.
7

8 4. This Court has subject matter jurisdiction over this action pursuant to the
9 Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class
10 member is of diverse citizenship from Defendant; there are more than 100 Class members
11 nationwide; and the aggregate amount in controversy exceeds \$5,000,000.
12

13 5. Venue is proper in this District under 28 U.S.C. § 1391(a) because Defendant
14 maintains its headquarters within this District; a substantial part of the events or
15 omissions giving rise to the claim occurred within this District; and Defendant has caused
16 harm to Class members residing within this District.
17
18

19 **PARTIES**

20 6. Plaintiff is a resident and citizen of Nevada and at all relevant times utilized
21 the Product marketed by the Defendant.
22

23 7. Defendant Allergan is a Delaware corporation with its principle place of
24 business in Irvine, California, which is in the County of Orange. With 2006 BOTOX®
25 (Botulinum Toxin Type A) sales crossing the billion-dollar market, Allergan is one of the
26 largest pharmaceutical companies in the world. Allergan designed, developed,
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28

1 manufactured, tested, marketed, promoted, distributed, and sold the Product as,
2 BOTOX® (Botulinum Toxin Type A), a product designed to decrease muscle activity
3 blocking overactive nerve impulses that trigger excessive muscle contractions or
4 glandular activity. In doing so, Allergan placed the Product in the stream of commerce in
5 California and throughout the United States. Allergan has received, and will continue to
6 receive, substantial benefits and income through its activities. Allergan authorized the
7 actions attributed to it herein through its officers, directors, and managing agents.

FACTUAL BACKGROUND

Composition

8. Botulinum Toxin Type A (“Botox”) is a protein complex produced by the
bacterium *Clostridium botulinum*, which contains the same toxin that causes food
poisoning. When used in a medical setting as an injectable form of sterile, purified
botulinum toxin, small doses block the release of a chemical called acetylcholine by
nerve cells that signal muscle contraction.

9. Botox is supplied in a single use vial.¹ Each vial contains 100 Units of
vacuum-dried *Clostridium botulinum* type A neurotoxin complex.² The complex is

¹ “Single Use” refers to intravenous liquid medication vials that should not be punctured more than once or vials that should only be used once for one patient. http://www.cdc.gov/ncidod/dhqp/PS_SyringeReuseFS.html. A multi-dose vial is a bottle of liquid medication that contains more than one dose of medication and is often used by diabetic patients or for vaccinations. *Id.*

² RxList, <http://www.rxlist.com/botox-drug.htm>

1 dissolved in a sterile sodium chloride solution containing Albumin (the main protein in
 2 human blood) and is sterile filtered prior to filling and vacuum-drying.³ The specific
 3 activity of Botox is approximately 20 Units of neurotoxin protein complex. Botox is
 4 reconstituted with sterile, non-preserved saline prior to injection. Since the complex and
 5 diluent do not contain a preservative, once opened and reconstituted, Botox must be
 6 stored in a refrigerator and used within four hours.⁴ A new sterile needle and syringe
 7 should be used to enter the vial on each occasion for removal of Botox.⁵ Any remaining
 8 solution must be discarded.⁶

10. DocShop, an online resource connecting patients to healthcare professionals,
 11 estimated in 2005 that the Botox Cosmetic price paid by physicians was approximately
 12 \$400 for each vial.⁷ In a 2008 article on the study and investigation of headaches,
 13 Allergan said that Botox costs \$525 a vial.⁸ The University of Minnesota Ophthalmology
 14 department, treating patients with Botox since 1983, said that the actual wholesale cost of
 15 Botox exceeded \$1000 per vial of 100 units.

11. As the wholesale cost of Botox increases upwards of \$1000 per vial, the
 12 retail charge to patients has (depending on geographical markets) remained the same or

24 ³ RxList, <http://www.rxlist.com/botox-drug.htm>
 25 ⁴ RxList, <http://www.rxlist.com/botox-drug.htm>
 26 ⁵ RxList, <http://www.rxlist.com/botox-drug.htm>
 27 ⁶ RxList, <http://www.rxlist.com/botox-drug.htm>
 28 ⁷ DocShop.com, <http://www.docshop.com/education/dermatology/injectables/botox/cost/>
⁸ Plastic Surgery Practice, http://www.plasticsurgerypractice.com/news/2008-09-11_01.asp?frmTagFilePath=%2Fskin_care_aesthetics.asp

1 dropped. According to a brochure (featuring actress Virginia Madsen) promoting Botox,
2 the Product “typically ranges from \$300 to \$500 to treat the vertical lines between the
3 eyebrows[.]” Simple mathematics demonstrates that if a vial costs wholesale upwards of
4 \$1000 per vial, even a \$500 single-use retail procedure would not offset that purchase
5 price. Thus, Allergan promotes multi-use of single use vials as the sole means of
6 effectuating the wholesale purchase by Plaintiff and the Class.
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10 12. In February 2008, the Southern Nevada Health Department notified over
11 40,000 Nevada residents about a potential exposure to Hepatitis from multiple uses of
12 single use vials of Propofol, another drug product approved for single use administration
13 and often promoted and used in multiple procedures. Following this controversy, in May
14 2008, Allergan began importing and/or repackaging Botox in smaller 50 unit vials. Ex.
15 A. The smaller vials are still promoted for multi-use by Allergan.
16
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18 **FDA Approved Uses of Botox**

19 13. The use of botulinum toxin was initially used to treat strabismus (crossed
20 eyes) and blepharospasm (uncontrollable blinking). The patients that were administered
21 tiny doses of the toxin described other benefits such as the improvement of facial lines.
22 Although Botox brochures distributed through physician offices tout that Botox has been
23 approved for “20 different conditions in more than 75 countries worldwide,” there are
24 only four FDA approved indications for Botox in the United States: eye disorders
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1 (strabismus & blepharospasm), cervical dystonia, glabellar lines and primary axillary
2 hyperhidrosis.

3
4 14. Allergan now produces Botox in two sizes of vials: 100 units and 50 units.⁹
5 The typical dosage for these approved indications is less than 50 Units resulting in waste
6 per vial. For example, for blepharospasm, the initial recommended dose is 1.25 - 2.5
7 Units at each injection site,¹⁰ for glabellar lines, four units is injected intramuscular into
8 each of five sites, two in each corrugator muscle and one in the procerus muscle for a
9 total dose of approximately 20 Units.¹¹
10

12 **ALLERGAN MISREPRESENTATIONS IN ADVERTISING & PROMOTION**

13
14 15. Allergan launched its first Botox advertising campaign in 1991.

15 16. A month after the FDA's approval to treat glabellar lines, Allergan, stressing
16 the importance of marketing to physicians, launched a \$50 million advertising
17 campaign.¹² The ad campaign had two components: (1) targeting physicians with training
18 options; and (2) targeting consumers through television and print ads in women's
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23
24 ⁹ <http://www.aestheticmedicineneeds.com/syringe-sharing-will-you-get-more-than-you-bargained-for-the-next-time-you-get-a-botox-injection.htm> ("But the only FDA-approved
25 single dose is 20 units."). The article notes the risk of multi-use stems from the risk of
26 blood back flow and related contamination.

27 ¹⁰ RxList, <http://www.rxlist.com/botox-drug.htm>

28 ¹¹ FDA, <http://www.fda.gov/cder/biologics/review/botuall041202r2.pdf>

¹² AllBusiness.com, <http://www.allbusiness.com/north-america/united-states-california-metro-areas/1007804-1.html>

1 magazines, patient brochures, and in-office materials targeting young professional
2 women.

3
4 17. The *OC Register* reported in 2007 that only 3 percent of women who could
5 afford Botox injections actually got them.¹³ It became Allergan's resolve to persuade the
6 remaining 97 percent of women that "they're missing out on a good thing." The company
7 conducted research through consumer surveys and found that aside from safety issues,
8 "the real issue was that people didn't want a frozen face." Allergan later launched a
9 "Freedom of Expression" ad campaign. The campaign spotlights *Sideways* actress
10 Virginia Madsen, who discusses her own use of Botox and her ability to convey
11 emotions. *BrandWeek* dedicated an article on the campaign in July 2008.¹⁴ The campaign,
12 reportedly managed by Grey Healthcare Group, included 15 and 30 second spots on cable
13 channels such as Lifetime, TNT, HGTV and TLC; and network TV including *The Today*
14 *Show*, *The View* and *Good Morning America*. Print ads were also displayed in 20 national
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21 ¹³ OC Register, [http://www.ocreger.com/articles/allergan-botox-implants-1721972-](http://www.ocreger.com/articles/allergan-botox-implants-1721972-breast-says)
22 [breast-says](http://www.ocreger.com/articles/allergan-botox-implants-1721972-breast-says)

23 ¹⁴ In September 2002, the FDA accused Allergan's ads of misleading consumers. In a
24 September 5, 2002 letter to Allergan, the FDA said the glabellar line commercials
25 violated federal law, in part because they did not specify the particular wrinkles Botox is
26 approved to treat. The FDA singled out an advertisement that said Botox "can
27 dramatically reduce your toughest wrinkle within seven days." The FDA demanded that
28 Allergan withdraw the advertisements, and gave Allergan 10 days to respond. A
spokeswoman for Allergan said the company would not stop the campaign but would
work with the agency to "resolve the issue without having to pull the ads." *BrandWeek*,
[http://www.brandweek.com/bw/content_display/news-and-features/packaged-](http://www.brandweek.com/bw/content_display/news-and-features/packaged-goods/e3iff4fffbfb65a506fc7b0b0dbf0868fd5)
[goods/e3iff4fffbfb65a506fc7b0b0dbf0868fd5](http://www.brandweek.com/bw/content_display/news-and-features/packaged-goods/e3iff4fffbfb65a506fc7b0b0dbf0868fd5)

1 magazines. Web banners were posted on the sites of many of the broadcast outlets and
2 magazines. The campaign also included public service announcements such as an event
3 with Allergan, Madsen, and the League of Women Voters encouraging people to vote
4 and presumably, consider Botox. It was estimated that Allergan spent \$41 million in 2007
5 on ads for Botox, excluding online ads.
6
7

8 18. The FDA expressed concerns¹⁵ regarding Botox marketing multiple times as
9 it issued Warning Letters to Allergan on June 23, 2003 and August 22, 2001. The FDA
10 also issued Untitled Letters on November 7, 2000, February 14, 2000, April 12, 2001,
11 and September 5, 2002; and issued a Review Memoranda on December 12, 1998 and
12 September 25, 2000.¹⁶ Allergan has not heeded these warnings.
13
14

15 19. On March 3, 2008, Allergan received a subpoena from the United States
16 Department of Justice and the United States Attorney's Office for the Northern District of
17 Georgia requesting the production of documents regarding promotional practices
18 involving Botox for therapeutic indications. Allergan estimated spending \$25 million to
19 \$35 million in connection with a Department of Justice investigation of its marketing
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27 ¹⁵ *The New York Times*, <http://www.nytimes.com/2002/09/11/us/botox-commercials-mislead-consumers-government-says.html>

28 ¹⁶ *Drugs.com*, <http://www.drugs.com/news/cber-warns-allergan-again-botox-ads-3336.html>

1 operations.¹⁷ The federal investigation is focused on whether Allergan has promoted uses
2 of Botox beyond those that have been approved by the FDA.

3
4 20. Plaintiff is aware of countless instances of off label and misleading
5 promotion, both publicly and privately, by Allergan sales representatives. References to
6 “Botox parties” using a single 100 unit vial across numerous “party” attendees were
7 included in continuing medical education (“CME”) programs and other promotional
8 forums hosted or promoted by Allergan.

9
10
11 21. CME courses sponsored by Allergan were often provided by Aesthetic
12 Health Dimensions, a CME company to which Allergan donates money for injector
13 trainings. As Allergan’s Business Development Manager notes, Allergan is aware and
14 promotes these CME courses because they “are able to teach all techniques (outside of
15 the FDA approved glabellar for Botox)[.]” Ex. B.

16
17
18 22. Defendant provided physicians with a “Botox calculator” and “business plan
19 worksheet.” These materials include multiple references to Botox sales of less than 100
20 units. Ex. C. For example, in a monthly account statement prepared by “Botox cosmetic
21 development manager,” the estimated profit over a 12 month period performing an
22 average of 25 Botox procedures per week is listed as \$243,750.00. This estimate is based
23 on an average of 50 units per patient using 100 unit vials.
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¹⁷ *OC Register*, <http://inyourface.freedomblogging.com/2008/07/>

1 23. Allergen also has direct relationships with consulting firms that aid
2 physicians in building a cosmetic practice.
3

4 24. These agents also promoted multi-patient use of single-use Botox vials.
5

6 25. Allergan also provided complimentary staff vials to aid in the start-up of a
7 practice using Botox.

8 26. Allergen advised physicians to educate patients on diluting Botox because
9 "patients prefer a Botox price by the unit." Ex. D.
10

11 27. In short, Defendant falsely represented that a single-use vial of the Product
12 was suitable for multiple procedures and multiple patients, when in fact, the Product is
13 not suitable for multiple procedures and multiple patients. The label states:
14

15 **Dosage and Administration:**

16 Botox© is supplied in a single use vial. Because the product and diluent do
17 not contain a preservative, once opened and reconstituted, store in a
18 refrigerator and use within four hours. Discard any remaining solution. Do
19 not freeze reconstituted Botox©.

20 ***

21 **Single Use Vial.**

22 **Storage:**

23 Unopened vials of Botox© should be stored in refrigerator (2° to 8° C) for
24 up to 36 months. Do not use after the expiration date on the vial.
25 Administer Botox© within 4 hours of reconstitution;
26

27 28. It is grossly unsafe and inappropriate to use a single use vial for multiple
28 procedures and multiple patients. In fact, it violates state Medical Practice Acts and

1 Center for Disease Control and medical board guidelines. In other words, Allergen
2 promotes and instructs physicians, like Plaintiff, to use the Product in a manner that could
3 pose potential exposure to HIV (Human immunodeficiency virus) and Hepatitis B and C
4 virus.
5

6
7 29. The Defendant purposefully and intentionally enticed Plaintiff to purchase
8 the Product by indicating that Plaintiff could use a single-use vial of the Product for
9 multiple procedures and multiple patients. Defendant sold Plaintiff the Product in 100
10 unit vials while concurrently informing Plaintiff that the vials could be used for multiple
11 procedures and multiple patients. In reality, the majority of procedures for which the
12 Plaintiff was purchasing the product required (at most) 20 units of the Product, thus
13 leaving 80 units (80%) of the product unusable.
14
15

16
17 30. Plaintiff was unaware of Botox single use indication until Spring 2008 when
18 it was called to his attention by another Nevada physician. Subsequently, Plaintiff
19 contacted several other physicians who were also admittedly unaware of the single use
20 indication for Botox vials.
21

22
23 31. The Label required Plaintiff to refrain from using the remaining unused
24 Product on multiple patients, and such use poses potential exposure to serious and
25 debilitating injuries and illnesses, including HIV and Hepatitis B and C.
26

27
28 32. Due to Defendants' misrepresentations, Plaintiff was forced to discard the
remaining and unnecessarily purchased 80 units (80%) of the Product. Additionally, the

1 remaining Product's approved shelf life is such that the Product must be used within
2 roughly four (4) hours as it contains no preservatives and roughly two (2) weeks if it
3 contains preservatives. Since subsequent dosages typically occur well after the two week
4 limit, this precludes Plaintiff from using the Product on the same patient during repeated
5 procedures as the Product is no longer safe or approved for such use.
6
7

8 33. As a result of the misrepresentations, Plaintiff and the proposed Class lost
9 profits in the form of the unusable and discarded liquid and/or lost money in the purchase
10 price of the unusable and discarded liquid. Moreover, Plaintiff and class members, upon
11 learning of, and abiding by, the single-use restriction, have suffered significant reduction
12 in profits.
13
14

15 34. Plaintiff devoted substantial resources to developing a Botox administration
16 practice at several locations, in part, using Allergan's business plans and profit
17 calculators which were all based on multi-vial uses. Plaintiff incurred marketing,
18 staffing, equipment, and various business planning expenses. When Plaintiff began to
19 see the volume of patients necessary to justify these business expenses, he learned that
20 his business model was in violation of the Label—a model promoted and supported by
21 Allergan and its marketing efforts. Plaintiff will never see a return on the vast majority
22 of his business development expenses.
23
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26 35. Plaintiff is aware of numerous other physicians incurring substantially
27 similar expenses while relying on Allergen's misrepresentations.
28

1 initially defined as follows: All licensed health care professionals who bought Botox
2 from Allergan.

3
4 42. Plaintiff reserves the right to amend or modify the Class definition with
5 greater specify or further division into subclasses or limitation to particular issues.
6

7 **A. Numerosity**

8 43. The potential members of the Class as defined are so numerous that joinder
9 of all members is unfeasible and not practicable. While the precise number of Class
10 Members has not been determined at this time, Plaintiff is informed and believes that
11 Defendant, during the relevant time period, wrongfully marketed the Product to hundreds
12 of medical professionals. Defendant's records will provide information as to the number,
13 location, and identification of all Class Members.
14
15

16 **B. Commonality**

17
18 44. There are questions of law and fact common to the Class, which
19 predominate over any questions affecting only individual Class Members. These common
20 questions of law and fact include, without limitation to:
21

- 22 a. Whether Defendant breach the implied warranty of fitness for a particular
23 purpose;
24
25 b. Whether Defendant breach the implied warranty of merchantability;
26
27 c. Whether Defendant was unjustly enriched; and
28
d. Whether Defendant violated Cal. Bus. & Prof. Code §§ 17200, *et seq.*

1 **C. Typicality**

2 45. The claims of the named Plaintiff are typical of the claims of the Class.
3
4 Plaintiff and all Class Members were exposed to uniform practices and sustained
5 damages arising out of and caused by Defendants' unlawful conduct.
6

7 **D. Adequacy of Representation**

8 46. Plaintiff will fairly and adequately represent and protect the interests of the
9 members of the Class. Counsel representing Plaintiff is competent and experienced in
10 litigating class actions.
11

12 **E. Superiority of Class Action**

13 47. A class action is superior to other available means for the fair and efficient
14 adjudication of this controversy. Individual joinder of all Class Members is not
15 practicable, and questions of law and fact common to the Class predominate over any
16 questions affecting only individual members of the Class.
17
18

19 48. Class action treatment will allow those similarly situated persons to litigate
20 their claims in the manner that is most efficient and economical for the parties and the
21 judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in
22 the management of this action that would preclude its maintenance as a class action.
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FIRST CAUSE OF ACTION

(Breach of Implied Warranty of Fitness for a Particular Purpose)

49. Plaintiff, on behalf of himself and all others similarly situated, repeats and re-alleges the foregoing paragraphs, inclusive, and incorporates the same as if set forth herein at length.

50. Before the time that Plaintiff used the Product, Defendant impliedly warranted to Plaintiff that the Product was suitable for multiple procedures among multiple patients.

51. Plaintiff reasonably relied entirely on the skill, judgment, and implied warranty of fitness for use of the Product on multiple procedures among multiple patients.

52. The Product was not approved for multiple procedures among multiple patients as guaranteed and promoted by Defendant. The Product's true use was directly contradictory to that guarantee, and promoted by Defendant.

53. As a result of Defendant's breach of warranty of fitness for a particular purpose, Plaintiff suffered the injuries and damages set forth herein.

SECOND CAUSE OF ACTION

(Breach of Implied Warranty of Merchantability)

54. Plaintiff, on behalf of himself and all others similarly situated, repeats and re-alleges the foregoing paragraphs, inclusive, and incorporates the same as if set forth herein at length.

1 55. Prior to the time that Plaintiff used the Product, Defendant impliedly
2 warranted to Plaintiff that the Product was of merchantable quality and safe and fit for the
3 use for which it was intended.
4

5 56. Plaintiff was and is not trained in the specific research, design, and
6 manufacture of the Product and reasonably relied entirely on the skill, judgment, and
7 implied warranty of the Defendant in using the Product.
8

9 57. The Product was neither safe nor viable for its intended (and promoted)
10 multi-vial use, as warranted by Defendant. The Product had dangerous propensities when
11 put to its intended and promoted use in that it could cause severe injuries to patients.
12

13 58. As a result of Defendant' breach of warranty, Plaintiff suffered the injuries
14 and damages set forth above.
15

16
17 **THIRD CAUSE OF ACTION**
18 *(Unjust Enrichment)*
19

20 59. Plaintiff, on behalf of himself and all others similarly situated, repeats and
21 re-alleges the foregoing paragraphs, inclusive, and incorporates the same as if set forth
22 herein at length. This count is pled in the alternative to Counts 1 and 2.
23

24 60. By virtue of the acts and conduct of the Defendant as herein alleged,
25 Plaintiff and the Class unjustly enriched Defendant through monies paid.
26

27 61. Defendant has collected sums of money from Plaintiff in excess of the
28 amounts actually due it and it would be unconscionable to permit Defendant to retain

1 such sums of money. Therefore such sums collected by Defendant in excess of the
2 amounts actually earned and due them should be returned to the Plaintiff.
3

4 **FOURTH CAUSE OF ACTION**

5 *(Violation of Cal. Bus. & Prof. Code §§ 17200, et seq.)*

6
7 62. Plaintiff, on behalf of himself and all others similarly situated, repeats and
8 re-alleges the foregoing paragraphs, inclusive, and incorporates the same as if set forth
9 herein at length.
10

11 63. Defendant has engaged in unfair and unlawful competition within the
12 meaning of Cal. Bus. & Prof. Code §17200, *et seq.* based on the conduct herein alleged.
13 As a result of Defendant's conduct, Plaintiff suffered injury in fact and lost money or
14 property.
15

16
17 64. Defendant's wrongful business acts constitute a continuing course of conduct
18 of unfair and unlawful competition because Defendant is selling its Product and
19 marketing it in a manner that is likely to deceive the public. Plaintiff suffered actual and
20 monetary injury because he was deprived of the ability to use all of the Botox in each vial
21 purchased.
22

23
24 65. Defendant's business practices are unfair because they offend established
25 public policy and/or are immoral, unethical, oppressive, unscrupulous and or
26 substantially injurious to Plaintiff and Class members in that they are led to believe that
27 the Botox vials are for multi-use when this is not true.
28

1 66. Defendant's business practices are unlawful in that its conduct constitutes a
2 breach of the warranties alleged herein, unjust enrichment, and a violation of FDA
3 Regulations which prohibit off-label marketing. *See* 21 U.S.C. § 331(d).
4

5 67. The acts and practices engaged in by Defendant, and described herein,
6 further constitute unlawful and unfair business practices in that the justification for
7 Defendant's conduct is outweighed by the gravity of the consequences to Plaintiff and
8 Class members and/or Defendant's conduct constitutes untrue or misleading actions in
9 that such conduct has a tendency to deceive a reasonable person, including Plaintiff and
10 Class members.
11
12

13 68. Defendant's unlawful and unfair business practices include, but are not
14 limited to, the following:
15

- 16 a. Promoting Botox for unsafe and hazardous uses;
- 17 b. Promoting Botox contrary to its label; and
- 18 c. Failing to disclose and/or adequately disclose material information,
19 including the nature of the vials as single-use and not multi-use.
20

21 69. Plaintiff has standing to pursue this claim because he has suffered injury in
22 fact and loss of money and/or property as a result of the wrongful conduct alleged herein.
23 Defendant's business acts and practices, as alleged herein, have caused injury to Plaintiff,
24 the Class, and the public.
25
26

27 70. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff and Class members
28 are therefore entitled to equitable relief, in the form of return of moneys received by

1 Defendant for Botox the Plaintiff and Class members could not use because of unlawful
2 and unfair business practices, and/or disgorgement of all revenues, earnings, profits,
3
4 Defendants' compensation and benefits which may have been obtained by Defendants as
5 a result of such business acts or practices, and an injunction enjoining Defendant from its
6
7 unlawful and unfair business activities as alleged herein.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for himself and on behalf of a Class similarly all
11 situated, against Defendant as follows:

12 1. For restitution, disgorgement and/or compensatory damages as permitted by
13
14 law in an amount to be determined at trial;

15 2 For an order pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* enjoining
16
17 Allergan's conduct in improperly promoting, marketing, and selling Botox contrary to its
18 label or to California law;

19 3. For prejudgment and post judgment interest on all damages as is allowed by
20
21 the laws of the State of California;

22 4. For punitive damages against the Defendant pursuant to Civil Code §§ 1709
23
24 and 1710, according to proof;

25 5. For an order certifying the proposed Class herein under Federal Rule of
26
27 Civil Procedure 23(a) and (b)(3) and appointing Plaintiff, and his counsel to represent
28 said Class, under Federal Rule of Civil Procedure 23(g);

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Fax: (202) 337-8090
E-mail: trezvani@finkelsteinthompson.com

EXHIBIT A

From: Damore_Tina
Sent: Friday, May 16, 2008 12:41 AM
To: Damore_Tina
Subject: Botox 50 unit available to order on Monday, May 19th

Hey there,

Hope you are well.

Just wanted to let you know...I received confirmation that the 50 unit Botox vial will be available to order on Monday, May 19th. You can call 800-377-7790 to place your orders on Monday morning, May 19th. (If you are ordering the 50 unit vial...it was suggested that you clarify with the order desk at the time of your call, that you specifically want the 50 unit vial - to be assured there are no mistakes and that the order desks ships out the 50 unit per your request.)

Only 19,000 vials are available in this first production (it is being shipped from Ireland)...A second production will most likely be available from Ireland in 1-2 months.

Vegas customers are able to place orders two days prior to the availability for the rest of the nation (It will be available to the rest of the nation for orders on Wednesday, May 21st).

If you would like to purchase the 50 unit vial...it has been suggested that customers order an "ample" amount for their practice (prior to available for the rest of the nation)...as we are unsure on the exact dates when the next production from Ireland will be completed and available once again...Allergan is trying to manufacture as fast as possible...but after this first shipment received on Monday of 19,000 vials -- it may be 1-2 months before our order center receives the next shipment of 50 unit vials.

Just wanted to let everyone know on the dates.

Thanks for everything. Please let me know if I can help you with anything at anytime.

Very Best Regards,

Tina Damore
Business Development Manager
Allergan Facial Aesthetics
South West Las Vegas/Northern Arizona
Email: damore_tina@allergan.com
Cell: 702-271-7585
Fax: 702-446-0342

To Order Botox, Juvederm Ultra or Ultra Plus, please call 800-377-7790 or 800-44-BOTOX
To Order Any Product Patient Literature Brochures, please call 800-377-7790
For Any Medically Related Product Questions, please call 866-269-4468

EXHIBIT B

From: Damore_Tina
Sent: Sunday, November 23, 2008 08:58 PM
To: Ivan Goldsmith
Subject: RE: hey dr. goldsmith (can you attend this program??)
Attachments: Tina's Zip Codes.xls

Ok - sounds good

For getting your 3 providers some injector training - I definitely want to help you --- unfortunately I as a rep have no idea of how to inject (: but I can definitely help in providing product for your provider's classes.

I'm not sure --- but I don't think allergan has any Strata med CME injection courses coming up in vegas for a while?? - unless you see something on www.aesthetichealthdimensions.com - (strata med 866-736-7633) ?? -that is the CME company that allergan donates money to for injector trainings.

A few times per year, the Strata Med courses are in vegas - but other classes may be nearby in California or Arizona (if your providers are willing to travel) - small group classes (5 per class) are free/complimentary. One on one training (individual training) is \$500 each student vs. the \$2500 that the organization normally charges. Students must bring botox and juvederm, and a model to the class - but I'll provide the product for you guys from my supplies, if your providers find a class they are interested in registering for.

The CME courses are usually more beneficial for students vs. the "round-table dinner/injector trainings" that the allergan sponsors or pays speakers to do directly. The CME courses are able to teach all techniques (outside of the FDA approved glabellar for botox and NLF's for Juvederm) - whereas the allergan directly paid instructors (at these dinner programs) have to stay on label (glabellar and NLF's).

Jason (my manager) said he has a little \$\$ left in his budget to sponsor one more juvederm speaker/training meeting in vegas prior to the end of the year (sometime in December) - We usually do 2 or 3 of these types of meetings per year - if this is the case, each rep will be allowed to invite one attendee - the attendee for this program however will be given 2 free boxes of juvederm to use at the class, but must purchase 5 boxes from the company to enroll in the class. (and the class will be Nasal Labial fold training only - all "on label" training...so I'm not sure if this would be helpful or "worth it" for you guys or not??) If so, I'll save you a spot for this one too (just let me know - otherwise, I have to reserve the spot for another student.) - since you have 3 providers, and this class will only have one spot, it may not be something that you'd be interested in - but if so, just let me know...and I'd be happy to save this spot for you as well. And I'll offset the 3 extra juvederm that allergan requires the attendee to purchase to enroll/register for this "round table" with my samples too.

Also...if Francesca Reese (the injector Ali is hiring) is willing to share some of her techniques with your 3 new providers, that may be a nice idea for you --- she would be a great instructor. She is very, very experienced. I used to call on her when she was at MAYA - and Ali raves about her. Let me know - and I'll try to get some botox and juvederm samples over to you for your providers to train with Francesca. That is probably the best way to go for your providers to learn the most.

Michelle Maisto (is the allergan rep for your galleria office on sunset and whitney ranch in 89074) - so I'll let michelle know I'm sending you some samples.

I am the rep for you other offices - in anthem and west trop. (I've attached all the zip codes I am responsible for -I'm not sure who the rep would be for your centennial office - what is the zip code of that office? I will let you know.)

There are 3 allergan reps - michelle maisto, Kristine gougeon, and me...amongst the 3 of us, we'll make sure we take care of you guys.

(:

Have fun in florida.

tina

From: Ivan Goldsmith [mailto:IGoldsmith@ihnv.com]
Sent: Saturday, November 22, 2008 6:31 PM
To: Damore Tina
Subject: RE: hey dr. goldsmith (can you attend this program??)

i can any other time, because going to florida for a bat mitzvah. actually very flattered that you asked. how bout we do a dinner together sometime in december to repair our relationship. i have like 3 new providers starting in the clinics. have this guy dr. eric miller (single?) that needs to learn botox too. really want to help get botox in a major way at galleria. i need to get some promotion there asap! tropicana runs on auto-pilot with denise, but she is out of town alot.

ivan

From: Damore Tina [mailto:Damore Tina@Allergan.com]
Sent: Saturday, November 22, 2008 2:57 PM
To: Ivan Goldsmith
Subject: hey dr. goldsmith (can you attend this program??)
Hey dr. goldsmith,

There is a special dinner program at a restaurant called Tableau at the WYNN casino, at 6:30pm on Friday December 5th sponsored by allergan.

Each rep in vegas is allowed to invite one person - so, unfortunately, I can only invite one person (can you make it?)

The speaker is from San Diego (Dr. Moriadi - I think that's how to spell his name) - and he is going to share all his practice implementation strategies - and what has made his practice successful (he's a diamond account).

I wanted to invite you first -

if you can't make it, no worries.

But let me know either way.

Best Regards

Tina

EXHIBIT C

From: Damore_Tina
Sent: Monday, August 04, 2008 12:24 AM
To: Damore_Tina
Subject: Interesting - Calculators for your Injectable Business
Attachments: Marketing - Botox Calculator and Business Plan Worksheet.xls; Marketing Juvederm Calculator and Business Plan Worksheet.xls; Marketing - Ideas and Goals for 2008.doc

I thought these may be of interest to you (?) Click on the Attachment - and click on "Disable macros" to enter view the calculator tool, and to customize your numbers.

Here are some interesting calculator tools - to project profits on your injectable business in your practice -- you can enter in your own #'s, and see your personalized projections regarding your injectable business. (It's interesting to see how the calculator can vary by increasing patient visits each week - increasing patient returns and referrals.)

Let me know if I can help out in the funding toward printing any mailers, catering open houses/patient events, etc.

Best Regards,

Tina Damore
Allergan Facial Aesthetics
South West Las Vegas/Northern Arizona
Email: damore_tina@allergan.com
Cell: 702-271-7585
Fax: 702-446-0342

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EXHIBIT D

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Front of Card

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
25	<p>* Save \$100* A Special Gift Just For You. Save \$100 when you purchase 1 syringe of Juvederm and 30 units of BOTOX Cosmetic.</p> <p>Valid only until March 1, 2008. Call today to schedule your appointment! 714-XXX-XXXX</p> <p>Call to reserve your appointment today!</p> <p>Special Offer TREAT YOURSELF!</p>													
26	<p>Give Yourself a Gift this Valentine's TREAT YOURSELF!</p>													
27	<p>Save \$100 when you purchase 1 syringe of Juvederm and 30 units of BOTOX Cosmetic.</p>													
28	<p>Valid only until March 1, 2008. Call today to schedule your appointment! 714-XXX-XXXX</p>													
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33	<p>Call to reserve your appointment today!</p>													
34	<p>Special Offer TREAT YOURSELF!</p>													
35	<p>Save \$100 when you purchase 1 syringe of Juvederm and 30 units of BOTOX Cosmetic.</p>													
36	<p>Valid only until March 1, 2008. Call today to schedule your appointment! 714-XXX-XXXX</p>													
37	<p>Overview: and 20U of BOTOX-C (For appropriate patients)</p>													
38	<p>5. Syringe Offer</p>													
39	<p>6. Holiday Offer</p>													
40	<p>Save \$100 when you purchase 1 syringe of Juvederm and 30 units of BOTOX Cosmetic.</p>													
41	<p>Valid only until March 1, 2008. Call today to schedule your appointment! 714-XXX-XXXX</p>													
42	<p>Call to reserve your appointment today!</p>													
43	<p>Special Offer TREAT YOURSELF!</p>													
44	<p>Save \$100 when you purchase 1 syringe of Juvederm and 30 units of BOTOX Cosmetic.</p>													
45	<p>Valid only until March 1, 2008. Call today to schedule your appointment! 714-XXX-XXXX</p>													

(404) 555-1212
www.drlookgood.com

Dr. Lookgood and Allergan Medical are offering a Fall Promotion on Juvederm injectable gel from October 15th through November 15th!

Buy one syringe of Juvederm Ultra Plus, get the second one at half price! This is a savings of over \$250!!!

You will also receive a complimentary gift of Allergan physician-strength topical antioxidant, pro-vitamin MD, aging treatment (\$115 value).

Call to reserve your appointment today!



Give Yourself a Gift this Valentine's
TREAT YOURSELF!

Special Offer
TREAT YOURSELF!

October 15th - November 15th, 2007

5. Syringe Offer

BOTOX
Cosmetic
Allergan, Inc.
San Mateo, CA 94401
www.allergan.com

BOTOX
Cosmetic
Allergan, Inc.
San Mateo, CA 94401
www.allergan.com

6. Holiday Offer

BOTOX
Cosmetic
Allergan, Inc.
San Mateo, CA 94401
www.allergan.com

SONA
Cosmetics
1610 PASHAN ISLAND BLVD
San Mateo, CA 94401

Tips for Success

Always remember.....Focus on Building your REFERRAL Base and RETAINING your existing customer base (through #1 patient education, and #2 advanced optimal injection patient treatment outcomes.) **Imagine every 1 patient as 100 patients (in word of mouth – positive or negative.)** If you currently have a large patient database, utilize this to your advantage, and utilize **Botox as a TOOL** to bring a patient in every 3-4 months, to establish a strong relationship with your patients through consistent, regular visits, to cross-sell (cross-educate) other products and services (ie: surgeries), and to increase patient referrals.

1. Make sure your **telephone receptionist is trained on "telephone skills,"** and trained on how to answer questions about Botox and Fillers. (**75-90% is telephone contact & first impression,** and the receptionist has 15 seconds to make a positive or negative impression for your practice.) 68% of patients cited staff discourteousness for seeking care else where. Answer the phone by the 2nd ring; check back every 20-30 seconds to patients on hold. Be skilled at **credentialing the qualifications of the injector,** be skilled and **qualified to answer all questions (what it is, how it works, where it goes),** be able to clearly verbalize the prices of each product, as well as how long each product lasts (**under-promise and over-deliver.**) (Patients are savvy --- reconstitute to package insert protocol standards, and sell by the unit vs. the area.)
2. Please inquire if you are interested in my emailing your practice the "telephone skills/telephone etiquette" power point presentations.
3. Play a **pre-recorded "On-Hold" message** advertising your aesthetics practice and treatments. (www.televox.com, greerm@televox.com, www.mjdcpc.com/products/messages-on-hold, www.usadata.com, www.infousa.com, www.acculeads.com, comonhold@aol.com, www.commercialsonhold.com,)
4. **Pro-Actively Dispel the Myths of Botox and Fillers** – be able to answer "**What it is, How it Works, and Where it Goes**" for every product. **Pro-Actively** answer questions about **safety and the affects of long-term use (establish the educational foundation for every patient).** The **most common myths** are: expressionless, frozen face, can't move your eyebrows, accumulation of botulism or toxins in the body, permanently alter the facial structure, won't look natural, will look like you've had "work done." Avoid words like paralyze or freeze, poison or toxin (utilize words like "relax" and "purified protein" – explain that Botox is processed into a purified protein – and is not a botulism. – Make the comparison to how Penicillin is a "purified" form of mold – an antibiotic that revolutionized medicine.) **69% of patients have safety concerns, and 39% of users still have safety concerns. (Patient Education is Key.)**
5. **Make sure your practice is listed on the www.botoxcosmetic.com and www.juvederm.com websites.** To be listed your practice must first enroll in APP (Allergan Partner Privileges at www.allergannetwork.com, enter your account # as your username and password.) (Need to purchase 10 vials of Botox, and 10 boxes of Juvederm to be on each website, respectively.)
6. **Set aside specific Aesthetic Treatment Days** (so patients can be seen in an organized, systematic, uniform way)– Set aside specific days to inject Botox and Fillers – Aesthetics Patients need to be able to **book an appointment in a convenient timely manner (be able to offer an appointment within 48 hours of their phone call).**
7. Aesthetics Patients **don't like to be kept waiting in the waiting room** (schedule your patients appropriately – remember "new" patients take longer to consult and treat.)
8. Make the Aesthetics **environment peaceful, pleasing, neat, and organized.**
9. Offer great bedside manner, and **take time (20-30 minutes) with each "new" patient** to properly assess their needs (create a "customized treatment plan" for every patient -- and update this plan regularly as their interests may change from month to month.)

10. Always call two days prior to remind patients of their appointments (on cell phones and home phones).
11. Always call patient after treatment (within 48 hours) to check how they are doing.
12. Collect Email Addresses from patients – in order market by “E-Blasts” – promotional specials, and patient educational newsletters, and send treatment reminders. (Redi-Mail Direct Email Marketing – for assistance on setting up E-blasts – contact, Vince Stallone vstallone@redimail.com 973-808-4500, ext. 216) (also, www.televox.com, greem@televox.com).
13. Only 3% of the 27 million patients (who meet the aesthetic demographic of 35-55 yrs of age with a 55K income per year) are utilizing Botox. (Patient Education, dispelling the myths of Botox, will grow the aesthetics market as a whole, which will ultimately help your practice most.) Differentiating Botox from fillers is essential (what it is, how it works, where it goes – know each product and “the science” behind each product very well.)
14. Include a Credentialing Bio in the front insert of your Brochure describing your injection training.
15. Include Before and After Pictures in your Brochure of Treatments (a picture is worth a 1000 words.)
16. Include Prices of Services in your Brochure (as an interchangeable insert) (Patients want to see Prices; otherwise, they feel “speculative” about the value for services/treatments they are receiving.) (Patients want to know how you reconstitute/dilute Botox, and patients prefer a Botox price by the unit.)
17. Print a “referred by” empty, blank, white box on the back of every Brochure you have (especially on the brochures of your “menu of services”) – and have printed “\$25 Gift Card for Every Person You Refer.” This will allow the person to write in their name, and you can reward the person who has sent you the referral with a \$25 gift card to use for any product/service in your practice. Turn your patients into your own personal “sales force” by incentivizing them to send you referrals. The \$25 gift cards will also bring in the existing patients more often, and they will in-turn spend even more on products/services within your practice. They will also be more inclined to “tip” their injectors, aestheticians, laser techs more (which will keep your staff happy & motivated to offer optimal customer service to your patients.).
18. Have a solid referral program in place (\$25 Referral Gift card specific to your practice – to encourage your existing patients to send you more referrals. This also show Customer Appreciation – it shows that you value their loyalty and their referrals – a win-win relationship).
19. Have a Blank \$ Amount “Gift Card” set up in a stand directly at your cash register/check out desk – a gift card that your existing patients/clientele can purchase for gifts for their friends and family, to use within your practice.
20. Send out Treatment Reminder Cards every 3 months (Have patients fill out their name and address on the treatment reminder card, and keep these cards in a tickler file, to be mailed out every 3 months – similar to a dentist sending treatment reminders for dental cleanings. – also E-Blast treatment reminders by email.)
21. Always remember to have your receptionist Re-Book your Botox or Filler patient’s next appointment BEFORE they leave the office. Always call, and send Treatment Reminder Cards to your Botox and Filler patients – consider adding a little incentive (perhaps offering \$off one of the other services in your practice, or a \$special for Botox, to get them coming back consistently every 3-4 months. 41% of patients who come back every 3-4 months for their Botox appointment will eventually purchase other services in your practice (this is called “conversion”). Botox has a 98% patient Satisfaction Rate – it is a great tool – to help build your practice, and build your conversion (cross-selling) business for other products, services, and surgeries in your practice.
22. Offer you patients “complimentary” re-applications of their make-up after their treatments with your exclusive make-up line that you sell within your practice. This will help patients “feel and experience” your make-up line; and help you sell more make-up. It is also a nice customer service gesture, to re-apply their make-up after their treatments.

21. If a patient calls to schedule a laser appointment, while the patient is on the phone, have the receptionist immediately pull up "last injection history" from the computer, and ask them if they want to re-book their Botox and Filler appointment for the same day as their laser treatment, or another day if they chose.
23. Search your database for patients who have not yet returned for their Botox treatments in 3-4 months, and send them treatment reminder cards, emails or phone calls. Consider rewarding a staff member with \$5 for every patient they re-book who actually follows through with a treatment (generated from the staff member's phone call.)
24. Have your Allergan Rep run a "Botox Retention/Return Rate Analysis" Spreadsheet for your practice (do this regularly – so you can track and maintain your Botox retention/return rates.)
25. Search your database for Botox patients who haven't tried fillers, and Filler Patients who haven't tried Botox, and cross market to them by sending out promotional mailers, educational newsletters, etc. Consider rewarding a staff member with \$5 for every patient they book who actually follows through with a new "conversion" treatment.
26. Have a "Botox-Bounce-Back Promotion"- Consider offering patients an incentive—for example, \$25-50 off their Botox if they pre-book their Botox appointments every 3-4 months, and actually keep their appointments and get treated.
27. Consider offering patients \$25-50 off each Botox treatment – if they keep their Botox appointments, and do not cancel or change their appointments, and actually follow through with treatment.
28. Also consider offering to pre-book patients' Botox appointments for the entire year. Perhaps consider tying in an incentive for patients – for those patients willing pre-book or even pre-pay for their Botox treatments/appointments for the entire year.
29. Utilize Botox as a TOOL to bring patients back to your office every 3-4 months – utilize Botox as a TOOL to its full potential to cross-sell other products, services, surgeries within your practice. Botox is a "business-builder" Botox has "drawing power." It has a 98% customer satisfaction rate, and it is a "household" name. \$55 million in DTC ads are put behind the Botox per year, and \$16 million behind Juvederm per year, to drive patients into your practice, and create more educated aesthetics patients – more educated patients who are more knowledgeable on the safety, efficacy, and benefits of each product.
30. Have Patients fill out an Aesthetic Cosmetic Interest Questionnaire to identify their needs, and follow up with having them fill out a customized, Personalized Aesthetic Treatment Plan for the year (breaking down their "personalized treatment plan" into a monthly plan for the entire year). Have the questionnaire with a pencil – laying on top of the coverlet/gown for patients to fill out after they change – this will help laser techs and aestheticians engage the patient about their interests in products and treatments – it will serve as a door opener for conversation and patient education. Have patients fill out this questionnaire every 3-4 months; their needs may change from quarter to quarter – perhaps they will be interested in a treatment/procedure next quarter, that they weren't interested in prior – this will help uncover their needs, and help you address their needs.
31. Offer Patients Two Separate Treatment Plans to chose from: 1. Correction, and/or 2. "Total Correction" – Give Patients the prices and treatment suggestions for each plan – and let the patient decide on which personalized treatment plan they want to

- purchase or eventually "graduate" to. Sell the idea of **"Total Facial Enhancement or Total Facial Rejuvenation."**
32. Aesthetically minded patients want to be educated, and they want solutions to meet their individual preventative skin care needs. **Set your practice apart – as giving the best education to each and every patient** (get your entire staff involved in this education process.) This will build credibility with your patients.
 33. **Consider rewarding Aestheticians and Laser techs for educating patients and booking Botox and Filler Patients** who actually follow through with an actual treatment –for those Laser or Aesthetics patients who have not tried either Botox or Filler before.
 34. **Incentivise your Staff to Pro-Actively Educate patients and Cross-Sell (Cross-Educate) in some way, shape or form – this will grow your business, and create a Positive Environment FOCUSED on education, and Optimal Patient Outcomes/Satisfaction** – establish this foundation, and success will follow.
 35. If you have an aesthetician or laser tech on staff...consider setting up your **credit card machine to have a "tip line" printed on the receipt.** Sometimes patients may forget to tip their aestheticians, laser techs or injector simply because they are in a "medical setting" and forget to tip. This "tip line" on the credit card receipt can be a great tool to increase optimal customer service and patient care.
 36. Hang **"Before and After" pictures on the backs of every door (or the side wall) of every treatment and exam room with a small mirror hanging underneath** – when patients look into the mirror they will "visualize" their potential "after picture." (also put before and after pictures, and brochures in the restrooms.)
 37. Place **Botox and Juvederm Patient Brochures and Posters in every Treatment room.** (Always have treatment brochures in EVERY exam room at all times; put your "practice stamp" on every brochure – call 800-377-7790 or 714-246-6484 at anytime to have Botox and Juvederm patient brochures mailed to you.
 38. Play a **Botox and Juvederm DVD Loop** on the TV in the waiting room, and at Open Houses or patient education seminars.
 39. Coordinate your messaging and marketing to your patients with the **Allergan DTC campaigns:** Lose your Elevens, Keep the Wisdom Lose the Lines, Express Yourself, There is a Place for Parenthesis but not on your Face, Look as Good as You Feel, Everyone will Notice but No-one will Know.
 40. **Relax (Botox), Fill (Juvederm Ultra), and Volumize (Juvederm Ultra Plus).** Juvederm Ultra Plus is 20% thicker than Juvederm Ultra. For optimal treatment outcomes, utilize both Juvederm Ultra and Juvederm Ultra Plus to address the specific treatment outcomes desired by your patients.
 41. Send out a **monthly or quarterly Educational Newsletter** to Patients. **Hand the Monthly or Quarterly Newsletter to patients to read while they are in the waiting room** and send a copy home with them to read. (Get your staff involved, your aestheticians, laser techs, injectors – have each person contribute a segment to each month's newsletter – this will help personalize and credential each staff member.) Address topics such as Daily Home Preventative Skin Care Regimens, the importance of a daily manual exfoliant, the lifecycle of the epithelial skin cell and importance of cellular turnover, The role of Hyaluronate in our bodies/skin/joints and depletion with age, Importance of Hydration, Descriptions of the various skin-types (talk about overproductive oil glands caused by "dehydration" which is quite prevalent in the desert climate), Hyper-pigmentation, Melasma (caused by pregnancy and/or Abrupt Hormonal Fluctuation), Chloasma, the best "types" of Sun-Screen Protection UVA/UVB protection/parasol 1789/titanium dioxide, Importance of Antioxidants to protect against UV Rays/Environmental Pollution/Cigarette Smoke/free radical damage, how to prevent telangiectasia (broken facial capillaries), Explain the purpose of each ingredient in a Daily Skincare line, Explain the importance of pharmaceutical/medical grade skincare line vs. a department store line, Explanation of the protocol and importance of regular Chemical Peels, Explaining the differences between light, medium and deep chemical peels, Explain the Ingredients and purpose of glycolic, salicylic, lactic, trichloroacetic Chemical

- Peels and appropriate skin types for each, Explanation of Enzyme Peels, Explanation of Retinoic Acid, Explanation of Laser treatments, Explanation of Botox (topics such as dispelling the myths of Botox, Botox reconstitution technique, Botox pricing by unit vs. area, Danger of illegal Neuro-toxins), Explanation of Fillers, Explanation of the preventative science behind Hyaluronate gel – not just filling but working on a “cellular level”, Discussion about the science behind the “duration” of fillers, Explaining ingredients in each filler– topics such as “what’s in a syringe” – explaining “relevant” product that lasts vs. the anticipatory volume loss of “needle-extrusion-additives,” Explanation of the science behind enzymatic breakdown and the body’s metabolism of fillers, Discussion on combination/multiple filler usage for various purposes, Explanation of where fillers are injected and why (deep dermis, reticular layer, etc.), Discuss the importance of Advanced Injection Technique. ----- Patients are so overwhelmed, so confused –they are starving for education – any aesthetically minded patient who finds his/her way into your practice truly desires knowledge about preventative skin care. Set your practice apart – and offer this knowledge. **Always explain, 1. what it is, 2. how it works, 3. where it goes for every product and treatment offered in your practice.**
42. Consider hosting a **weekly or monthly Patient Educational Seminar** at your office or reach out to the community — make this an open forum for patients to learn and ask questions.
 43. **72% of Botox users hear about Botox through a friend** (Patient Education is Key – the “friend” should have the foundational knowledge and proper education to pass on the “proper” information about Botox and Fillers.
 26. If your Practice has great **“drive-by-visibility”** – **capitalize on this advantage** – hang vinyl banners advertising a price per unit that has “drawing power,” and set up A Frame Stand & Signs near the road, advertising a price per unit – for drive by traffic to see.
 27. **Purchase Zip code lists** to market and to recruit new customers--there is a 3% return rate on investment rate. (www.USDataCorp.net/MailingLists, www.infousa.com, www.usadata.com, www.mailing-lists-direct.com), and Dunn Hill International.
 44. **Advertise on the radio, and/or TV.** (especially for Patient Educational Seminars held weekly “on Preventative Skin Care,” etc...) Patients are starving for information – and proper education (to diminish “confusion”) on preventative skincare.
 45. **Advertise in country clubs or community center newsletters, and rent display booths on their “vendor days.”**
 46. **Partner with Aesthetic/Cosmetology Schools, Salon Stylists, and Make-up Artists.**
 47. **Partner with Hotel Resort Spa Directors – for local resident referrals.**
 48. **Offer special “discount cards” for hotel employees, hotel aestheticians, cocktail waitresses, aesthetic students/teachers, etc – in addition to offering them your brochure (with the \$25 Referral Ad printed on your brochure). This will surely bring in more referrals.**
 49. **Rent Display booths, and advertise in Fitness Centers.**
 50. **Place your brochures (with the \$25 Referral Ad printed on your Brochure) with business owners (partner with anyone with a database of potential patients).** Boutiques, Yoga Studios, Make-up Artists, etc.
 51. **Do as many promo/event mailers as you possibly can, and host as many “injection days, weeks or months” events, seasonal open houses/patient educational seminars as you possibly can.**
 52. **Do “live injections demos” for patients to observe at any and all open houses/patient education events.**
 53. **Allow your staff, patient consultants, and injectors to “experience” the products for themselves. If they personally experience Botox and Juvederm, they can truly more effectively communicate their experiences with patients – and in-turn, sell more product.** Personal “testimonials” are an incredible TOOL to grow your business, and instill “confidence” within your patients from “experienced” staff member about the

products and services offered within your practice. You will have a "happier staff" who is willing to SELL more for you. Botox and Filler injections for your staff perhaps can be tied into some sort of "incentivizing program" for your staff – encouraging your ENTIRE staff to Sell and Educate. (Anyone from the receptionist who answers the phones, to each and every aesthetic team member.) Consider, setting aside a portion of "product rebates" to use for an incentive program for your staff members. (The #1 Botox Accounts in the Nation do this very effectively, and have utilized a solid Staff Incentive Program to build their Practices.)

54. A strong Staff Incentive Program, a Strong Patient Referral Program with \$25 off for every patient sent, Patient Education, and Advanced Optimal Injection Outcomes – will and has effectively built successful aesthetics practices across the nation.
55. Always Have Patients "bring a friend" to each and every event or open house – and reward them for bringing their friends with referral gift cards to utilize on future visits within your practice.
56. Utilize the resources of your Allergan Rep – to support you with printing for your event mailers, catering for your events/patients educational seminars, and to provide any Botox/juvederm give-a-aways or goodie bags for these events. I am also happy to print up any mailers, invitations, or posters that you may need for these events.
57. Remember to plan ahead, and maximize your promotional efforts, and strategically coordinating your marketing efforts with the peak seasonal time frames throughout the year— have your printing, promos, and open houses strategically set in place. Remember, ideally, all event mailers, and seasonal mailers should go out 3 weeks prior to the event (to get a maximum return and RSVPs.)
58. Consider creating a Quarterly Business Plan—a clearly devised marketing strategy set in place for the ENTIRE year; correlating with the 4 quarters of the year (Encourage your staff to attend these planned events to Promote your Practice as a TEAM – "Together, Everyone Achieves More.) ... 1st Q (Christmas, New Years, and Valentines day), 2nd Q (Spring, Mother's Day, Memorial Day Weekend, Graduations, Weddings, Preparing for Summer vacations), 3rd Q (Father's Day, Back to School Specials, Summer Vacations, Class Reunions), 4th Q (Labor Day, Fall Specials "Fall into Beauty," Halloween "Scare away the lines," Thanksgiving, Winter Specials.) And most importantly, always have a way to "measure" your success – measure the return on your investment.
59. Strive to Reach Platinum Rebate Status with Allergan, which will qualify your practice for the Botox Benefits \$25 off card (a \$25 off card to be used exclusively in your practice for up to 3 visits of \$75 for the year.) This is a great resource to offer your patients to keep them coming back every 3 months to cross sell other products and services. Your Juvederm Purchases can greatly contribute to your achieving this Platinum Status to qualify your practice for the Botox Benefits \$25 off card. (The entire Allergan Aesthetics portfolio contributes toward achieving a Platinum Status – each Natrelle Implant, each \$500 purchase of a combination of PreVageMd/Vivite/MdForte Skin Care, each vial of Botox, and each box of Juvederm.)
60. Promote Juvederm as the "Next Generation" Smooth Dermal Filler (as a product "made from the same company who makes of Botox" to help build credibility with patients.) Juvederm has captured 45% market share of the filler market after only one year since its FDA approval (Juvederm is Highly Patient Satisfying – it is long lasting, and has a smooth and natural feel.) Juvederm can be injected to full optimal fill from day one – no volume loss is seen from dissipation of "needle-extrusion-additives" as is seen with other dermal filler products.
61. Consider promoting Juvederm as the Next Generation Smooth Hyaluronate Dermal Filler that last 2 times longer than the older fillers on the market, for the same price or even priced less. (This will surely gain the attention of patients, and make patients feel they are getting the Most for their Money – and giving patients a long term "treatment plan" they can stick with and afford.) The highly interwoven Hyaluronate

- Cross-linkages (Hylacross technology) make Juvederm last longer, and makes Juvederm more resistance to enzymatic breakdown and metabolism.
62. Statistical National average show that only 21% of the targeted aesthetic demographic get treated with "BOTH" Botox and Fillers in aesthetic practices nationwide--- there is quite an opportunity to increase your filler conversion business (& it begins with patient education "what it is, how it works, where it goes", and on preventative skin care in general.) Educating patients on "preventative skin care" and getting them truly excited and passionate about preventative skin care is essential.
63. Educate patients on how the hyaluronic gel fillers work on a "cellular level." This will get them excited about preventative skin care. Educating patients on how hyaluronic gel fillers not only help with plumping and filling fine lines, wrinkles and folds, but also due to the very "nature" of the plant derived product (which "mimics" the bodies own natural Hyaluronate"), hyaluronate gel fillers help hydrate, moisturize, bind and lock in the moisture in the skin-- aiding in preventative skin care process. One single molecule of hyaluronate can bind 1000x's it's weight in water, and as we age, our skin and bodies lose the natural levels of this natural hyaluronate; hence the need to replenish hyaluronate for preventative skin care. Juvederm Hyaluronate Gel Dermal Filler -- The "Next Generation," Smooth Hyaluronate Gel Dermal Filler--now has an official FDA approval to last out to one year (touch-ups at 8-9 months) -- utilize this data to market and sell more product to your patients. According to national statistics, the one year duration, with touch ups at 8-9 months, is an optimal time frame for a dermal filler, assuring optimal patient satisfaction -- patients feel they are getting the "most value" for the money that they are spending; and this will keep patients "coming back."

EXHIBIT E

To: ivan(igoldsmith@ihnv.com);
Subject: Fwd: Complimentary Botox Staff Vials (from Tina)
Sent: Tue 5/13/2008 6:34:18 PM
From: Jill Oliver

----- Forwarded Message -----

From: Jgarciamd@aol.com
To: "Damore Tina" <Damore_Tina@Allergan.com>
Cc: DRMOMM@aol.com, deb@weilandgroup.com, jlance@accentmedspa.com, drrobertoledo@yahoo.com, "lea spiegel" <lea_spiegel@yahoo.com>, facesrx@gmail.com, shamu1103@cox.net, sandie@lvcosmeticsurgery.com, jgoldsmith@ihnv.com, denisesantoli@cox.net, jillymed@embarqmail.com, makai7@cox.net, cindy@surgispa.net, anilpatelmd@yahoo.com, "med spadoc" <med_spadoc@yahoo.com>, radiancemedspa@aol.com, sdelangis@cox.net, Ltovar@puremedspa.com, sairuko@yahoo.com, "mcps laura" <mcps_laura@yahoo.com>, naomi@arianasurgery.com, Carmen954@aol.com, Michelle6888@aol.com
Sent: Tuesday, May 13, 2008 6:33:06 AM (GMT-0800) America/Tijuana
Subject: Re: Complimentary Botox Staff Vials (from Tina)

does this mean we will get a bottle of Botox Cosmetic for each individual employee as the bottle is labeled single use single patient and the sharing of a single vial between multiple patients is likely a health department violation and could potentially end up in one losing their business and or medical license?

Julio L Garcia, MD FACS

This message and any files transmitted with it are intended for the sole use of the individual and entity to whom it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended addressee, nor authorized to receive for the intended addressee, you are hereby notified that you may not use, copy, disclose or distribute to anyone this message or any information contained in or with this message. If you have received this message in error, please advise me immediately by reply email and delete this message.

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ORIGINAL

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

I (a) PLAINTIFFS (Check box if you are representing yourself)
Ivan Goldsmith

DEFENDANTS
Allergen, Inc.

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
Rosemary M. Rivas (State Bar No. 209147), FINKELSTEIN THOMPSON LLP
100 Bush Street, Suite 1450, San Francisco, CA 94104
Tel: (415) 398-8700

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. ORIGIN (Place an X in one box only.)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify):
6 Multi-District Litigation
7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint)

CLASS ACTION under F.R.C.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.)
Class Action Fairness Act, 28 U.S.C. § 1332(d)

Table with 6 columns: OTHER STATUTES, CONTRACT, REAL PROPERTY, TORTS, PRISONER PETITIONS, LABOR. Contains various legal categories and checkboxes for selection.

FOR OFFICE USE ONLY: Case Number: CV09-7088
AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**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): _____

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
	Nevada

(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
Orange County	

(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 County	

* 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): Rosey Jim Date 9-29-09

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))