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

7 Attorneys for Plaintiff
ALLERGAN, INC.

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FILED

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION
11

12
13 ALLERGAN, INC., a Delaware
corporation,
14
15 Plaintiff,

16 v.

17 CAYMAN CHEMICAL COMPANY, a
Colorado corporation; JAN MARINI
18 SKIN RESEARCH INC., a California
corporation; ATHENA COSMETICS
19 CORPORATION, a Nevada corporation;
20 DERMAQUEST, INC., a Pennsylvania
corporation; INTUIT BEAUTY, INC., a
21 Nevada corporation; CIVIC CENTER
PHARMACY, an Arizona corporation;
22 and PHOTOMEDEX, INC., a Delaware
corporation,
23
24 Defendants.

CASE NO. SACV07-1316 JVS (PMBx)
**COMPLAINT FOR PATENT
INFRINGEMENT AND DEMAND
FOR JURY TRIAL**

I/s
S-20
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26 Plaintiff, Allergan, Inc. ("Allergan"), for its Complaint against defendants,
27 Cayman Chemical Company ("Cayman"); Jan Marini Skin Research Inc. ("Jan
28 Marini"); Athena Cosmetics Corporation ("Athena"); DermaQuest, Inc.

1 ("DermaQuest"); Intuit Beauty Inc. ("Intuit"); Civic Center Pharmacy ("Pharmacy");
2 and PhotoMedex, Inc. ("PhotoMedex") (collectively "Defendants"), alleges upon
3 personal knowledge with respect to itself and its own acts, and upon information and
4 belief with respect to all other matters, as follows:

5 **JURISDICTION AND VENUE**

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

9 2. Venue is proper in this district and division under 28 U.S.C. §§ 1391 and
10 1400.

11 3. This Court has personal jurisdiction over Defendants by virtue of
12 Defendants' offers for sale, sales and distribution of products, including the products
13 which are the subject of this Complaint, throughout the State of California, in this
14 District and in this Division. Defendants have also placed, and are continuing to
15 place, products into the stream of commerce within the United States, within
16 California, in this District and in this Division, and it is reasonable to expect that such
17 products will continue to enter and be used by consumers in California, including in
18 this District and in this Division. In addition, this Court has personal jurisdiction over
19 Jan Marini by virtue of its incorporation in California.

20 **THE PARTIES**

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

24 5. Cayman is a corporation organized and existing under the laws of the
25 State of Colorado, with its principal place of business at 1180 East Ellsworth Road,
26 Ann Arbor, Michigan.

1 angle glaucoma or ocular hypertension: Xalatan and Travatan. Neither of these
2 medications uses bimatoprost as its active ingredient, but both are PGF-based. These
3 products have been approved by the FDA only for the treatment of glaucoma, and both
4 require a physician's prescription before they may be sold.

5 15. PGFs have only been approved by the FDA for use as a prescription
6 medicine to lower intraocular eye pressure in people with open-angle glaucoma or
7 ocular hypertension.

8 16. In or around 1996, Murray A. Johnstone, M.D. ("Johnstone"), a glaucoma
9 specialist, observed that patients receiving PGF-based solutions demonstrated an
10 increase in eyelash growth. Based on this discovery, Johnstone filed a patent
11 application claiming the use of PGs to grow hair, and specifically eyelashes.
12 Specifically, Application No. 09/366,656 was filed in the United States Patent and
13 Trademark Office on August 3, 1999, following the filing of Provisional Application
14 No. 60/037,237 on February 4, 1997.

15 17. On July 17, 2001, the United States Patent and Trademark Office duly
16 and legally issued United States Patent No. 6,262,105 (the "'105 patent"), entitled
17 "Method of Enhancing Hair Growth" to Johnstone. A true and correct copy of the
18 '105 patent is attached hereto as Exhibit A. At that time, Johnstone became the sole
19 and exclusive owner of the '105 patent.

20 18. On June 29, 2006, Allergan entered into a Patent License Agreement with
21 Johnstone, which grants to Allergan the whole '105 patent, including the exclusive
22 right to make, use, and vend the patented invention throughout the world. The Patent
23 License Agreement also grants to Allergan the first right to prosecute alleged
24 infringers of the '105 patent. Allergan is thus the current assignee of the '105 patent.
25 A true and correct copy of the Patent License Agreement is attached hereto as
26 Exhibit B.

27 19. Despite the fact that the FDA has only approved PGFs for use as a
28 prescription medicine to lower intraocular eye pressure in people with open-angle

1 glaucoma or ocular hypertension, Defendants Jan Marini, Athena, DermaQuest, Intuit,
2 Pharmacy and PhotoMedex have been marketing and selling eyelash growth products
3 with PGF as the active ingredient. For example, Intuit is selling a product named
4 MassiveLash; DermaQuest is selling a product named DermaLash; Pharmacy is
5 selling a product named Luxette; Athena is selling a product named Revitalash; Jan
6 Marini is selling a product named Age Intervention; and PhotoMedex is selling a
7 product called MD Lash Factor. These products are promoted for use in growing
8 eyelashes and contain PGFs. Cayman manufactures PGs, including PGFs, and is
9 promoting the use of PGs for use in eyelash growth products. In violation of federal
10 laws regulating the manufacture and sale of prescription medicines, Defendants are
11 manufacturing and selling these products without FDA approval and without requiring
12 a prescription.

13 20. Defendants, by marketing and selling eyelash growth products with a
14 PGF as the active ingredient (and in the case of Cayman, by supplying others with
15 PGFs for use in eyelash growth products and promoting the use of PGFs in such
16 products), infringe the '105 patent. They are also responsible for marketing and
17 selling products without prescriptions that have not been approved by the FDA for
18 eyelash growth or for over-the-counter sales.

19 **COUNT I**

20 **(Patent Infringement – United States Patent No. 6,262,105)**

21 21. In violation of 35 U.S.C. § 271(a), Defendants have made, used, offered
22 for sale and/or sold in the United States products that infringe one or more claims of
23 the '105 patent.

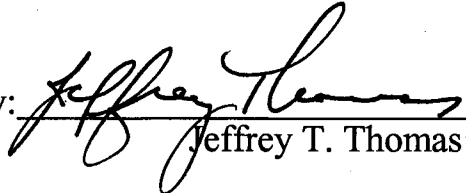
24 22. Defendants also have actively induced the infringement of, and/or
25 contributed to the infringement of, one or more claims of the '105 patent in violation
26 of 35 U.S.C. §§ 271(b) & (c).

27 23. The infringement of the '105 patent by Defendants has been willful and
28 wanton.

1 H. Such other and further relief as this Court may deem just and proper.

2 Dated: November 7, 2007

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

6 By:  Jeffrey T. Thomas

7 Attorneys for Plaintiff
8 ALLERGAN, INC.

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