

1 Michael A. Amon (SBN 226221)  
2 amon@fr.com  
3 FISH & RICHARDSON P.C.  
4 555 West Fifth Street, 31<sup>st</sup> Floor  
5 Los Angeles, California 90013  
6 Tel: (213) 533-4240/Fax: (877) 417-2378

7 Jonathan E. Singer (SBN 187908)  
8 singer@fr.com  
9 FISH & RICHARDSON P.C.  
10 12390 El Camino Real  
11 San Diego, California 92130  
12 Tel: (858) 678-5070/Fax: (858) 678-5099

13 John M. Farrell (SBN 99649)  
14 farrell@fr.com  
15 FISH & RICHARDSON P.C.  
16 500 Arguello Street, Suite 500  
17 Redwood City, California 94063  
18 Tel: (858) 678-5070/Fax: (858) 678-5099

19 Attorneys for Plaintiffs  
20 ALLERGAN, INC. and ALLERGAN SALES, LLC  
21 (Additional counsel listed on signature page)

22 **UNITED STATES DISTRICT COURT**  
23 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
24 **SOUTHERN DIVISION**

25 ALLERGAN, INC., ALLERGAN  
26 SALES, LLC,

27 Plaintiffs,

28 v.

FERRUM FERRO CAPITAL, LLC;  
KEVIN BARNES,

Defendants.

Case No.

**COMPLAINT FOR CIVIL  
EXTORTION, MALICIOUS  
PROSECUTION, AND UNFAIR  
BUSINESS PRACTICES ARISING  
FROM U.S. PATENT LAWS**

**JURY TRIAL DEMANDED**

1 Plaintiffs Allergan, Inc. and Allergan Sales, LLC (collectively, “Allergan”), by  
2 their attorneys, alleges the following claims against Defendants Ferrum Ferro Capital,  
3 LLC (“FFC”) and Kevin Barnes (“Barnes”) (collectively “Defendants”):

4 **NATURE OF THE ACTION**

5 1. This is a civil action arising out of Defendants’ attempt to extort  
6 Allergan by misusing the Inter Partes Review (“IPR”) process established by the  
7 America Invents Act (“AIA”), H.R. 1249, enacted to reform 35 U.S.C. §§ 1 *et seq.*  
8 Defendants’ conduct raises substantial issues related to the misuse of the patent  
9 system and the processes established by the AIA, and constitutes attempted civil  
10 extortion and malicious prosecution under California law in addition to violating  
11 California’s Unfair Competition Law codified at California Bus. & Prof. Code §§  
12 17200 *et seq.*

13 **THE PARTIES**

14 2. Allergan, Inc. is a corporation organized and existing under the laws of  
15 the State of Delaware, with a principal place of business at 2525 Dupont Drive,  
16 Irvine, California 92612.

17 3. Allergan Sales, LLC is a limited liability company organized and  
18 existing under the laws of the State of Delaware, with a principal place of business at  
19 2525 Dupont Drive, Irvine, California 92612.

20 4. On information and belief, FFC is a Delaware limited liability company  
21 without any principal place of business. On information and belief, FFC maintains a  
22 mail drop box at 717 N. Union Street, #78, Wilmington, Delaware 19805.

23 5. On information and belief, Kevin Barnes is a citizen of the state of New  
24 York, who resides at 515 W. 59th Street, Apartment 19A, New York, New York  
25 10019.

## JURISDICTION AND VENUE

1  
2           6.       This Court has original jurisdiction over all causes of action asserted  
3 herein pursuant to 28 U.S.C. §§ 1331, 1338, or 1367. As described in detail below,  
4 this complaint necessarily raises issues related to Defendants' misuse of the patent  
5 laws of the United States of America, and the processes established by the AIA,  
6 which amended the patent laws of the United States.

7           7.       FFC has filed an objectively baseless IPR petition for the express  
8 purpose of monetizing the petition, including by attempting to extort compensation  
9 from Allergan. The objective baselessness of FFC's IPR petition necessarily raises  
10 federal issues that are actually disputed and substantial. Moreover, the issues raised  
11 by this complaint are not limited to the facts of or parties involved in this case, but  
12 rather apply to many other AIA petitioners attempting similar extortionate schemes.  
13 Indeed, the behavior complained of herein—the use of the IPR process in an effort to  
14 extract compensation from patent-holders—has been the subject of extensive debate  
15 in Congress and the national press, as evidenced by the attached recent op-ed in the  
16 Wall Street Journal. *See Ex. A*, attached. This Court's exercise of jurisdiction over  
17 these important and far-reaching federal issues will not disrupt the balance struck by  
18 Congress between the federal and state courts.

19           8.       Given the importance and potential impact of this dispute on the federal  
20 system and the laws governing the AIA, this Court can and should exercise  
21 jurisdiction over this case under 28 U.S.C. §§ 1331 and 1338.

22           9.       This Court has personal jurisdiction over FFC because FFC specifically  
23 reached out to Allergan, which is resident in this Judicial District, for the purposes of  
24 extorting Allergan under the guise of settlement of an IPR petition authorized under  
25 the AIA. FFC has hired counsel based in this Judicial District for the purpose of  
26 aiding in its efforts to extort Allergan under the guise of settlement from Allergan.  
27 The harm caused by FFC and suffered by Allergan has occurred in this district and  
28 was directed at this district by FFC. In addition, through its conduct, FFC has sought

1 to allegedly do business in this Judicial District and to avail itself of the laws in this  
2 Judicial District.

3 10. This Court has personal jurisdiction over Kevin Barnes because Mr.  
4 Barnes, acting through FFC, specifically reached out to Allergan, which is resident in  
5 this Judicial District, for the purposes of extorting Allergan under the guise of  
6 settlement of an IPR petition authorized under the AIA. Mr. Barnes, through FFC,  
7 has hired counsel based in this Judicial District for the purpose of aiding in its efforts  
8 to extort Allergan under the guise of settlement from Allergan. The harm caused by  
9 Mr. Barnes and suffered by Allergan has occurred in this district and was directed at  
10 this district by Mr. Barnes. In addition, Mr. Barnes, through FFC, has sought to  
11 allegedly do business in this Judicial District and to avail himself of the laws of the  
12 state in this Judicial District.

13 11. Allergan's complaint originates from Defendants' attempts to extort  
14 Allergan under the guise of settlement, and Defendants' associated conduct and  
15 activities in this Judicial District. As such, this Court has specific personal  
16 jurisdiction over Defendants.

17 12. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and/or  
18 1391(c).

19 **FACTUAL ALLEGATIONS REGARDING ALLERGAN'S INNOVATIVE**  
20 **TREATMENT FOR GLAUCOMA AND OCULAR HYPERTENSION**

21 13. Allergan incorporates and realleges Paragraphs 1-12 of this Complaint as  
22 if repeated verbatim in this Paragraph.

23 14. Allergan is one of the world's leading and most innovative  
24 pharmaceutical companies. One of the specialties of Allergan is research and  
25 development of products for treating diseases of the eye.

26 15. Glaucoma is an incurable disease of the eye that damages the optic nerve  
27 over time, resulting in vision loss, and often, blindness. It afflicts approximately 70  
28 million patients worldwide. While the cause of glaucoma is unknown, a symptom

1 of the disease is a dramatic escalation of the pressure inside the eye, known as  
2 intraocular pressure. Elevated intraocular pressure is known as ocular hypertension.

3 16. While incurable, the elevated intraocular pressure found in glaucoma  
4 and ocular hypertension patients can be treated with eye drops to control pressure,  
5 slowing the progression of the diseases. For many patients, one type of drop a day is  
6 not enough—these patients must administer multiple medications, many of which  
7 require multiple doses taken at different times of day.

8 17. In part to solve this problem, Allergan developed COMBIGAN®, which  
9 is a combination of brimonidine and timolol for “topical ophthalmic use” in treating  
10 patients suffering from glaucoma and/or ocular hypertension. The development of  
11 COMBIGAN® required the investment of tens of millions of dollars by Allergan and  
12 thousands of hours in research and development.

13 18. Allergan is the holder of an approved New Drug Application (“NDA”)  
14 No. 21-398 for brimonidine tartrate/timolol maleate ophthalmic solution 0.2%/0.5%,  
15 sold under the COMBIGAN® trademark.

16 19. COMBIGAN® has proven to be a significant improvement for treating  
17 glaucoma and ocular hypertension due, in part, to its having comparable efficacy to  
18 brimonidine and timolol administered separately and to its superior safety profile.

19 20. NDA No. 21-398 for COMBIGAN® is associated with at least six  
20 patents duly issued to Chin-Ming Chang, Gary J. Beck, Cynthia C. Pratt, and Amy L.  
21 Batoosingh, including U.S. Patent Nos. 7,030,149 (“the ’149 patent”), 7,320,976,  
22 7,642,258, 8,133,890, 8,354,409, and 8,748,425.

23 21. Allergan, as assignee, owns the entire right, title, and interest in each of  
24 these six patents, including the ’149 patent.

25 22. COMBIGAN® or approved methods of using COMBIGAN® are  
26 covered by at least one claim of each of the six patents listed above, including the  
27 ’149 patent.

28 23. Because of its success in the marketplace, numerous generic

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.