

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Junk Fax Prevention Act of 2005) CG Docket No. 05-338
)
Rules and Regulations Implementing the) CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)

**TCPA Plaintiffs’ Comments on Petitions for Retroactive Waiver filed by
Warner Chilcott Corp. and Wedgewood Village Pharmacy, Inc.**

Commenters, St. Louis Heart Center, Inc., and Shaun Fauley, are Plaintiffs in private TCPA actions pending in federal courts in Missouri and Illinois against Petitioners Warner Chilcott Corporation (“Warner Chilcott”) and Wedgewood Village Pharmacy, Inc. (“Wedgewood”).¹ Petitioners seek “retroactive waivers” of 47 C.F.R. § 64.1200(a)(4)(iv), the rule requiring opt-out notice on fax advertisements sent with “prior express invitation or permission.”² The Consumer & Governmental Affairs Bureau sought comments on May 31, 2016.³

¹ *St. Louis Heart Ctr., Inc. v. Warner Chilcott Corp., et al.*, No. 15-cv-01826 (E.D. Mo.) (filed in state court Oct. 31, 2015, removed to federal court Dec. 10, 2015); *Fauley v. Wedgewood Village Pharmacy, Inc.*, No. 16-cv-03996 (N.D. Ill.) (filed Apr. 4, 2016).

² *Petition of Warner Chilcott for Waiver of Section 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed May 20, 2016) (“Warner Chilcott Petition”); *Petition of Wedgewood Village Pharmacy for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed May 24, 2016) (“Wedgewood Petition”).

³ *Consumer & Governmental Affairs Bureau Seeks Comment on Petitions Concerning Commission’s Rule on Opt-out Notices on Fax Advertisements*, CG Docket Nos. 02-278, 05-338 (May 31, 2016).

As argued below, the Commission should deny both petitions because (1) the Commission has no authority to “waive” a defendant’s statutory liability in a private right of action for violation of the “regulations prescribed under” the TCPA, and (2) the petitions are untimely, where neither Petitioner has demonstrated that it made “every effort” to file by April 30, 2015, as required by the October 30, 2014 Order. Warner Chilcott in particular was sued October 31, 2015, was served November 10, 2015, and removed the case to federal court on December 10, 2015, through counsel who filed one of the earliest waiver petitions before the Commission. Yet Warner Chilcott waited to file a petition until more than five months later, and its petition provides no explanation for the delay.

Procedural History

On October 30, 2014, the Commission issued its Order rejecting several challenges to the validity of § 64.1200(a)(4)(iv),⁴ but granting the covered petitioners “retroactive waivers.”⁵ The Commission allowed “similarly situated” parties to petition for waivers, but stressed that “in light of our confirmation here

⁴ *In re Rules & Regulations Implementing the Tel. Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005; Application for Review filed by Anda, Inc.; Petitions for Declaratory Ruling, Waiver, and/or Rulemaking Regarding the Commission’s Opt-Out Requirement for Faxes Sent with the Recipient’s Prior Express Permission*, 29 FCC Rcd. 13998, 13998 (rel. Oct. 30, 2014) ¶¶ 19–20, 32 & n.70 (ruling that Commission issued regulation under its statutory authority to “implement” the TCPA by empowering consumers to “halt unwanted faxes” and regulation is enforceable through the TCPA’s private right of action) (“Opt-Out Order”).

⁵ *Id.* ¶¶ 22–31.

that a fax ad sent with the recipient’s prior express permission must include an opt-out notice, we expect that parties will make every effort to file within six months of the release of this Order.”⁶ The Commission repeated, “[w]e expect parties making similar waiver requests to make every effort to file within six months of the release of this Order.”⁷ The same day, the Commission issued a public notice, which announced that “similarly situated parties” may seek waivers, but “emphasized that such parties should make every effort to file such requests prior to April 30, 2015,” and again repeated that the Commission “expect[s] these parties to make every effort to file such requests prior to April 30, 2015.”⁸

Argument

I. The Commission has no authority to “waive” violations of the regulations prescribed under the TCPA in a private right of action.

Numerous commenters in these proceedings, including both Plaintiffs here, have argued that the TCPA creates a private right of action to sue for “a violation of this subsection or the regulations prescribed under this subsection”⁹ and gives

⁶ *Id.* ¶ 2.

⁷ *Id.* ¶ 30.

⁸ *FCC Confirms Opt-Out Notice Requirements Applicable to All Fax Advertisements*, 29 FCC Rcd. 13498, 13498 (Oct. 30, 2014).

⁹ 47 U.S.C. § 227(b)(3).

the Commission no power to “waive” that right. Plaintiffs will not repeat those arguments here, but incorporate them by reference.¹⁰

II. Petitioners failed to “make every effort” to file by April 30, 2015.

As of the filing of these comments, the Commission has not yet denied a waiver request for failure to “make every effort” to file by April 30, 2015. The current Petitions should be denied on this basis because neither Petitioner provides any reason why it could not file by the deadline, and Warner Chilcott had actual knowledge of the ability to seek a waiver by December 10, 2015, at the latest, and waited more than five months to file.

¹⁰ See, e.g., TCPA Pls.’ Comments on Petitions Concerning the Commission’s Rule on Opt-Out Notices on Fax Advertisements, CG Docket Nos. 02-278, 05-338 at 20–23 (Feb. 14, 2014); TCPA Pls.’ Reply Comments at 3–6 (Feb. 21, 2014); TCPA Pls.’ Comments on Stericycle, Inc. Petition at 6–7 (July 11, 2014); TCPA Pls.’ Comments on American Caresource Petition at 1–3 (Aug. 8, 2014); TCPA Pls.’ Comments on Unique Vacations, Inc. Petition at 6–8 (Sept. 12, 2014); Beck Simmons LLC’s Comments on Francotyp-Postalia Petition at 2, n.6 (Nov. 18, 2014); Physicians Healthsource, Inc.’s Comments on Allscripts Petition at 2, n.6 (Nov. 18, 2014); TCPA Pls.’ Comments on Petitions by Alma Lasers, ASD Specialty Healthcare, Den-Mat Holdings, and Stryker Corp. at 23–31 (Dec. 12, 2014); TCPA Pls.’ Comments on Petitions by EatStreet Inc., McKesson Corp., Philadelphia Consolidated Holding Corp., St. Luke’s Center for Diagnostic Imaging, LLC, Sunwing Vacations, Inc., and ZocDoc, Inc. at 19–22 (Jan. 13, 2015); Physicians Healthsource, Inc.’s Comments on A-S Medication Solutions LLC’s Petition at 9–13 (Feb. 13, 2015); Christopher Lowe Hicklin, DC, PLC’s Comments on National Pen Petition at 7–11 (Mar. 13, 2015); TCPA Pls.’ Comments on Petitions by Boehringer Pharmaceuticals and Esaote North America at 10–14 (Apr. 10, 2015); TCPA Pls.’ Comments on Thirty-One Petitions Filed on or Before April 30, 2015 at 5–8 (May 22, 2015); TCPA Pls.’ Comments on Endo Pharms. Petition at 9–13 (June 12, 2015); TCPA Pls.’ Comments on Petitions by athenahealth, Inc. & Ohio Nat’l Mut., Inc. at 5–9 (Sept. 11, 2015); Wilder Chiropractic, Inc.’s Comments on Scrip Inc. Petition at 4–7 (Oct. 9, 2015); Shaun Fauley’s Comments on Petitions by Virbac Corp. and Petplan at 4–8 (Dec. 18, 2015); TCPA Pls.’ Comments on Petitions for Retroactive Waiver filed by C. Specialites, Inc and Legal & General America, Inc., CG Docket Nos. 02-278, 05-338 at 3 (May 13, 2016).

A. Wedgewood offers no good reason for its failure to file a petition by April 30, 2015.

In general, where a petitioner seeking relief from the Commission had “ample time” to comply with a deadline and “offers no reason for its failure to do so,” the Commission will deny the relief.¹¹ Wedgewood had ample time to file a petition by April 30, 2015, and it offers no reason for its failure to do so.¹² It does not, for example, claim it tried to file by that date but was somehow forced to wait until May 24, 2016.¹³ A petitioner filing more than a year after a deadline should be required to provide some explanation for why it could not comply. Wedgewood failed to do so, and the Commission should deny its petition on this basis alone.

Wedgewood argues that the Commission merely “request[ed]” that petitioners seek waivers by April 30, 2015.¹⁴ But the April 30, 2015 deadline was not a “request.” It was an “expectation” that the Commission repeatedly stressed, given the “temporary” nature of the availability of relief. The Commission should correct this misconception and deny the Wedgewood Petition.

¹¹ *In re Atlanta Channel, Inc.*, 27 FCC Rcd. 14541, 14545-46, ¶ 9 (rel. Nov. 9, 2012) (denying request to waive filing deadline).

¹² Wedgewood Pet. at 1–8.

¹³ *Id.*

¹⁴ *Id.* at 2.

Wedgewood argues it “made efforts to pursue this request as soon as possible after being served” with the Complaint April 4, 2016.¹⁵ It should make no difference for deciding the timeliness of a waiver petition when or even *if* a petitioner has been sued. Other petitioners complied with the deadline without having been sued. For example, on April 28, 2015, Truckers B2B, LLC, filed a petition explaining it sought a waiver because it was “concerned that it could one day face significant liability” for opt-out-notice violations.¹⁶ On April 29, 2015, Wells Fargo filed a petition explaining it sought a waiver “as a prophylactic measure.”¹⁷ Both petitions were granted.¹⁸ There was nothing preventing Wedgewood from doing the same, and its petition should be denied as untimely.

B. Warner Chilcott provides no explanation for its failure to file a petition by April 30, 2015, and it had actual knowledge of the opportunity to seek a waiver since December 10, 2015, at the latest, and chose to wait more than five months.

Warner Chilcott filed its Petition on May 20, 2016, nearly 13 months after the April 30, 2015 deadline, and yet it provides no explanation for the delay and does not claim it made any “effort” at all to meet the Commission’s expectations.

¹⁵ *Id.*

¹⁶ *Petition for Waiver by Truckers B2B, LLC*, CG Docket Nos. 02-278, 05-338, at 2 (filed Apr. 28, 2015).

¹⁷ *Petition of Wells Fargo & Co. for Waiver of Section 64.1200(a)(4)(iv) of the Commission’s Rules*, CG Docket Nos. 02-278, 05-338, at 5 (filed Apr. 29, 2015).

¹⁸ August 28, 2015 Bureau Order ¶ 24.

As with Wedgwood, the fact that Warner Chilcott was not sued until after April 30, 2015, should make no difference in the timeliness analysis.

Moreover, Plaintiff St. Louis Heart Center, Inc. sued Warner Chilcott in Missouri state court on October 31, 2015, and served Warner Chilcott on November 10, 2015, and Warner Chilcott removed the case to federal court on December 10, 2015, through its counsel SmithAmundsen LLC.¹⁹ That firm represented Power Liens, LLC, one of the petitioners covered by the October 30, 2014 Order. As of December 10, 2015, the same office of the same firm had filed at least nine waiver petitions pursuant to the October 30, 2014 Order, including the Power Liens petition.²⁰ Counsel's knowledge of the opportunity to seek a waiver as of that date is imputed to Warner Chilcott, requiring it to file a petition immediately in December 2015.²¹

In addition, Warner Chilcott's counsel filed a waiver petition on behalf of another petitioner on April 26, 2016.²² These petitions are nearly identical, but rather than file a petition as soon as possible, Warner Chilcott waited until May 20,

¹⁹ See Exhibit A, Warner Chilcott Notice of Removal, Doc. 1.

²⁰ See Petitions of A-S Medication Solutions, LLC (filed Jan. 5, 2015), Navinet, Inc. (filed Apr. 28, 2015), First Index, Inc. (filed Apr. 28, 2015), Integrated Pain Mgmt., S.C. (filed Apr. 28, 2015), American Homepatient, Inc. (filed Apr. 29, 2015), International Dental Supply Co. (filed Apr. 29, 2015), UBM LLC (filed Apr. 29, 2015), La-Z-Boy Global Ltd. (filed Apr. 29, 2015).

²¹ “[A]bsent compelling circumstances, notice sent to a party’s attorney imputes notice to the party.” *Crane v. Nat’l Cable Satellite Corp.*, 484 F. Supp. 2d 100, 103 (D.D.C. 2007).

²² Petition of C. Specialties for Retroactive Waiver, CG Nos. 02-278, 05-338 (filed Apr. 26, 2016).

2016, more than five months after it removed the case through counsel and nearly 13 months past the deadline. Warner Chilcott did not “make every effort” to file by the deadline, and its petition should be denied.

C. The August 28, 2015 and December 9, 2015 Bureau Orders do not help Petitioners here.

Both Petitioners point out that the Bureau granted several waiver petitions filed after April 30, 2015 in its orders of August 28, 2015, and December 9, 2015. But the latest of the petitions covered by the August 25, 2015 Order was filed June 16, 2015, less than two months after the deadline.²³ The latest of the petitions covered by the December 9, 2015 Order (Sourcemedia’s) was filed September 21, 2015, just under five months after the deadline.²⁴ The current petitions, in contrast, were filed nearly 13 months after the deadline.

²³ *Petition of AEP Energy, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338, at 4 (filed May 7, 2015) (complaint filed May 1, 2015); *Petition of United Stationers Inc., et al. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338, at 5 & 7 (filed May 18, 2015) (complaint filed May 1, 2015); *Petition of Business Promotion LLC for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338, at 2 (filed May 20, 2015) (petitioner served with complaint May 13, 2015); *Petition of Northwood, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338, at 1 (filed June 2, 2015) (petitioner served with “demand letter on or about May 27, 2015”); *Petition of Joseph T. Ryerson & Son, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338, at 2 (filed June 4, 2015) (petitioner served with complaint May 14, 2015); *Petition of Reliant Services Group, LLC d/b/a Reliant Funding for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338, at 4 (filed June 16, 2015) (petitioner served with complaint May 22, 2015); *Petition of Meadowbrook Ins. Group, Inc. & Meadowbrook, Inc. for Waiver of Section 64.1200(a)(4)(iv) of the Commission’s Rules*, CG Docket Nos. 02-278, 05-338, at 2 (filed May 29, 2015) (petitioner served with complaint April 20, 2015).

²⁴ *Petition of Megadent, Inc. for Waiver of Section 64.1200(a)(4)(iv) of the Commission’s Rules*, CG Docket Nos. 02-278, 05-338 at 2 (June 24, 2015) (petitioner “served with the lawsuit at issue

Both Petitioners assume that they are entitled to waivers because the faxes were sent prior to April 30, 2015. Although that is a *necessary* condition for a waiver under the Opt-Out Order,²⁵ it is not a *sufficient* condition. If all that is required for a waiver is that the subject faxes be sent prior to April 30, 2015, then the Commission’s expectation that petitioners “make every effort” to file by that date would be superfluous. Plus, if Petitioners are right, the Commission will be entertaining opt-out waiver requests for many years into the future, when the relief was designed to be “temporary.” The Commission should start denying late-filed

on May 13, 2015”); *Petition of Dental Fix Rx LLC for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 at Ex. B, Complaint (Sep. 11, 2015) (complaint filed July 1, 2015); *Petition of Scrip Holding Co. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 at 8 (Sep. 17, 2015) (complaint “was not filed until June 30, 2015, and was not served on Petitioner until July 9, 2015”); *Petition of Ivoclar Vivadent, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 at 1 (June 24, 2015) (complaint filed “May 29, 2015”); *Petition of Renaissance Sys. & Servs., LLC for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 at 1 (June 25, 2015) (complaint filed “on June 17, 2015”); *Petition of Zimmer Dental, Inc. & Amy Beth Gerzog for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 at 3 (July 16, 2015) (petitioners “served with the lawsuit in issue on June 17, 2015”); *Petition of athenahealth, Inc. for Waiver of Section 64.1200(a)(4)(iv) of the Commission’s Rules*, CG Docket Nos. 02-278, 05-338 (Aug. 6, 2015) (acknowledging petition was “a bit beyond the April deadline,” but complaint was not filed until “July 10, 2015”); *Petition of Ohio Nat’l Mut., Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 at 5 (Aug. 21, 2015) (complaint filed “August 5, 2015”); *Petition of Prevention Pharms., Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 at 1 (Aug. 26, 2015) (complaint filed “June 11, 2015”); *Petition of Costco Wholesale Corp. for Retroactive Waiver or in the Alternative for Declaratory Ruling*, CG Docket Nos. 02-278, 05-338 at 3, n.9 (filed July 22, 2015); *Petition of SourceMedia LLC for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Sep. 21, 2015).

²⁵ Opt-Out Order ¶ 36 (waiver limited to faxes sent “prior to **April 30, 2015**”).

petitions if these aspects of the October 30, 2014 Order are to have any meaning going forward.

Conclusion

For the foregoing reasons, the Commission should deny the Petitions for Retroactive Waiver of § 64.1200(a)(4)(iv) filed by Warner Chilcott Corporation and Wedgewood Village Pharmacy, Inc.

Dated: June 14, 2016

Respectfully submitted,

By: s/Glenn L. Hara
Glenn L. Hara
Anderson + Wanca
3701 Algonquin Road, Suite 500
Rolling Meadows, IL 60008
Telephone: (847) 368-1500
Facsimile: (847) 368-1501

EXHIBIT A

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ST. LOUIS HEART CENTER, INC.,

Plaintiff,

v.

ALLERGAN USA, INC., WARNER
CHILCOTT CORPORATION, ACTAVIS,
INC. and JOHN DOES 1-10,

Defendants.

REMOVAL FROM CIRCUIT
COURT OF ST. LOUIS COUNTY,
MISSOURI

JURY TRIAL DEMANDED

**NOTICE OF REMOVAL TO FEDERAL COURT
BASED ON FEDERAL QUESTION JURISDICTION**

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446, Defendants, ALLERGAN USA, INC., WARNER CHILCOTT CORPORATION, and ACTAVIS, INC. (“Defendants”), by and through their attorneys, hereby submit this Notice of Removal to the United States District Court for the Eastern District of Missouri of the above-styled action, pending as Case No. 15SL-CC03750 in the Circuit Court of St. Louis County, Missouri. In support of this petition and as grounds for removal, Defendants state as follows:

PROCEDURAL BACKGROUND

1. On or about October 31, 2015, Plaintiff, St. Louis Heart Center, Inc. (“Plaintiff”) filed this action in the Circuit Court of St. Louis County, Missouri styled, *St. Louis Heart Center, Inc. v. Allergan USA, Inc., Warner Chilcott Corporation, Actavis, Inc. and John Does 1-10*, Case No. 15SL-CC03750. (Defendants attach as **Exhibit A** to this Notice of Removal to Federal Court based on Federal Question Jurisdiction a copy of the Class Action Petition, Motion for Class Certification, Memorandum of Law in Support of Class Certification, and Certificates of Service

for Discovery). No substantive proceedings have occurred in the Circuit Court of St. Louis County as of the date of this removal.

2. The summons were served upon Defendants Allergan USA, Inc. and Warner Chilcott Corporation on November 10, 2015¹. (*See Exhibit B*).

3. This Notice of Removal is timely under 28 U.S.C. § 1446(b), which provides that a defendant has 30 days after service to remove an action.

4. Pursuant to 28 U.S.C. § 1446(b), all defendants who have been served have consented to removal².

5. Venue lies in the United States District Court for the Eastern District of Missouri, pursuant to 28 U.S.C. § 1446(a), because the action was filed in the Circuit Court of St. Louis County, Missouri, which is located within this District and Division.

6. In accordance with 28 U.S.C. § 1446(d), written notice of this Notice of Removal is being served upon Plaintiff, and a copy of the Notice of Removal is being filed with the Circuit Court of St. Louis County, Missouri.

STATE COURT COMPLAINT

7. The Class Action Petition alleges three causes of action based on two claimed transmissions from Defendant to Plaintiff of purported unsolicited facsimile advertisements. Specifically, the Class Action Petition contains the following claims: violation of the Telephone Consumer Protection Act, 47 U.S.C. Section 227 (“TCPA”); conversion; and violation of the “Missouri Consumer Fraud and Deceptive Business Practices Act, Chapter 407,” Mo. Ann. Stat. § 407. Plaintiff purports to bring these claims on behalf of a class of persons. (*See Exh. A*).

8. This case is a civil action of which the United States District Court for the Eastern

¹ Defendant Actavis, Inc. has not been served. (*See Exhibit C*).

² Actavis, Inc. consents to removal, but in so doing, does not waive its right to object to personal jurisdiction and/or service.

District of Missouri has original jurisdiction under the provisions of 28 U.S.C. § 1331 and the United States Supreme Court decision in *Mims v. Arrow Financial Services, L.L.C.*, 132 S. Ct. 740, 181 L.Ed. 2d 881 (2012) because Plaintiff has alleged a cause of action under the TCPA, as indicated by not only Count I but by the “Preliminary Statement” of the Class Action Petition.

9. Removal to this federal court is authorized by 28 U.S.C. § 1441. The United States Supreme Court has held that claims pursuant to the TCPA arise under federal law; consequently, actions brought pursuant to the TCPA are removable under 28 U.S.C. § 1441. *See Mims*, 132 S. Ct. at 747, 753, n.15. (stating “nothing in...the TCPA calls for displacement of ...federal question jurisdiction;” and, noting the absence of any Congressional intent to prohibit the removal of TCPA actions to federal court pursuant to 28 U.S.C. § 1441).

10. This Court has supplemental jurisdiction over Plaintiff’s consumer fraud and conversion claims because they form part of the same case or controversy as the alleged TCPA violation. *See* 28 U.S.C. § 1367. Plaintiff’s claims do not raise novel or complex issues of Missouri law nor do Plaintiff’s state law claims predominate over its federal TCPA claim. *See* 28 U.S.C. § 1367(c). This Court also has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1441(c).

WHEREFORE, Defendants, MONITRONICS INTERNATIONAL, INC., petitions that the above-entitled action be removed and transferred from the Circuit Court of Cook County, Illinois to the United States District Court for the Northern District of Illinois.

Respectfully Submitted,

By: /s/ Eric L. Samore
One of the Attorneys for Defendants
ALLERGAN USA, INC., WARNER CHILCOTT
CORPORATION, and ACTAVIS, INC.

Eric L. Samore, ARDC # 6181345
SmithAmundsen LLC
150 North Michigan Avenue, Suite 3300
Chicago, Illinois 60601
Phone: (312) 894-3200
Fax: (312) 894-3210

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the Clerk of the Court and all counsel of record via electronic filing on December 10, 2015.

/s/ Eric L. Samore _____

STATE OF MISSOURI)
)
ST. LOUIS COUNTY)

**IN THE CIRCUIT COURT OF THE ST. LOUIS COUNTY
STATE OF MISSOURI**

ST. LOUIS HEART CENTER, INC., individually and on behalf of all others similarly-situated,	Cause No. _____
Plaintiff,	Division
v.	
ALLERGAN USA, INC.	PROCESS SERVER
Serve: Corporation Service Company CSC – Lawyers Incorporating Service 2710 Gateway Oaks Dr, Ste 150N, Sacramento, CA 95833 Sacramento County	
WARNER CHILCOTT CORPORATION,	PROCESS SERVER
Serve: The Corporation Trust Company 820 Bear Tavern Rd, Ewing, NJ 08628 Mercer County	
ACTAVIS, INC.,	HOLD SERVICE
Serve: United Corporate Services, Inc. 80Main Street 5 th Floor West Orange, NJ 07052 Mercer County	
JOHN DOES 1-10,	HOLD SERVICE
Defendants.	

CLASS ACTION PETITION

Plaintiff, ST. LOUIS HEART CENTER, INC. (“Plaintiff”), brings this action on behalf of itself and all others similarly situated, through its attorneys, and except as to those allegations

pertaining to Plaintiff or its attorneys, which allegations are based upon personal knowledge, alleges the following upon information and belief against Defendants, WARNER CHILCOTT CORPORATION, ACTAVIS, INC., and JOHN DOES 1-10 (“Defendants”):

PRELIMINARY STATEMENT

1. This case challenges Defendants’ practice of sending unsolicited facsimile advertisements.

2. The federal Telephone Consumer Protection Act, 47 USC § 227, prohibits a person or entity from sending or having an agent send fax advertisements without the recipient’s prior express invitation or permission (“advertising faxes” or “unsolicited faxes”) and without a proper opt out notice. The TCPA provides a private right of action and provides statutory damages of \$500 per violation.

3. Unsolicited faxes damage their recipients. An advertising fax recipient loses the use of its fax machine, paper, and ink toner. An unsolicited fax wastes the recipient’s valuable time that would have been spent on something else. An advertising fax interrupts the recipient’s privacy. Unsolicited faxes prevent fax machines from receiving authorized faxes, prevent their use for authorized outgoing faxes, cause undue wear and tear on the recipients’ fax machines, and require additional labor to attempt to discern the source and purpose of the unsolicited message. An advertising fax consumes a portion of the limited capacity of the telecommunications infrastructure serving the victims of advertising faxing.

4. On behalf of itself and all others similarly situated, Plaintiff brings this case as a class action asserting claims against Defendants under the TCPA, the common law of conversion and Missouri consumer and fraud and deceptive business practices act Chapter 407.

5. Plaintiff seeks an award of statutory damages for each violation of the TCPA.

JURISDICTION AND PARTIES

6. This court has personal jurisdiction over Defendants because Defendants transacts business within this state, have made contracts within this state, and/or have committed tortious acts within this state and otherwise have sufficient minimum contacts with the State of Missouri.

7. Plaintiff ST. LOUIS HEART CENTER, INC., is a Missouri corporation with its principal place of business in Missouri.

8. On information and belief, Defendant, ALLERGAN USA, INC., is a corporation with its principal place of business in Orange County, California and was formerly doing business as Actavis.

9. On information and belief, Defendant, WARNER CHILCOTT CORPORATION, is a corporation with its principal place of business in Mercer County, New Jersey.

10. On information and belief, Defendant, ACTAVIS, INC, is a corporation with its principal place of business in Mercer County, New Jersey.

11. On information and belief, on or about October 1, 2013 ACTAVIS, INC., acquired Warner Chilcott.

12. On information and belief, on or about March 17, 2015 ACTAVIS, INC. completed its acquisition of ALLERGAN USA, INC., and is continuing to do business as ALLERGAN USA, INC.

13. Defendant, John Does 1-10 will be identified through discovery, but are not presently known.

RELEVANT FACTS

14. On or about the dates of January 21, 2013 and February 14, 2013. Defendants sent 2 unsolicited facsimiles to Plaintiff in St. Louis County, Missouri. A true and correct copy of the facsimiles are attached as Exhibits A – B (excluding any handwritten notations). These are only examples of faxes sent to Plaintiff during the past 4 years.

15. The transmissions sent to Plaintiff on or about January 21, 2013 and February 14, 2013 constitutes material advertising the commercial availability of any property, goods or services.

16. On information and belief, Defendant has sent other facsimile transmissions of material advertising the commercial availability of property, goods, or services to Plaintiff and many other persons as part of a plan to broadcast fax advertisements, of which Exhibits A – B are examples.

17. Defendants approved, authorized and participated in the scheme to broadcast fax advertisements by (a) directing a list to be purchased or assembled; (b) directing and supervising employees or third parties to send the faxes; (c) creating and approving the form of fax to be sent; and (d) determining the number and frequency of the facsimile transmissions.

18. Defendants created or made Exhibits A – B and other fax advertisements, which Defendants distributed to Plaintiff and the other members of the class.

19. Exhibits A – B and the other facsimile advertisements are a part of Defendants' work or operations to market Defendants' goods or services which were performed by Defendants and on behalf of Defendants.

20. Exhibits A – B and the other facsimile advertisements constitute material furnished in connection with Defendants' work or operations.

21. The transmission of facsimile advertisements, including Exhibits A – B, to Plaintiff did not contain a notice that complied with the provisions of 47 U.S.C. § 227(b)(1)(C) and/or 47 C.F.R. 64.1200(a)(iii).

22. The transmission of facsimile advertisements, including Exhibits A – B, to Plaintiff was required to contain a notice that complied with the provisions of 47 U.S.C. § 227(b)(1)(C) and/or 47 C.F.R. 64.1200(a)(iii).

23. Defendants have never included any notice on any facsimile advertisements that complied with the provisions of 47 U.S.C. § 227(b)(1)(C) and/or 47 C.F.R. 64.1200(a)(iii) or (iv).

24. On information and belief, Defendants sent multiple facsimile advertisements to Plaintiff and members of the proposed classes throughout the time period covered by the class definitions.

25. On information and belief, Defendants faxed the same and other facsimile advertisements to the members of the proposed classes in Missouri and throughout the United States without first obtaining the recipients' prior express permission or invitation.

26. There is no reasonable means for Plaintiff (or any other class member) to avoid receiving unlawful faxes. Fax machines are left on and ready to receive the urgent communications their owners desire to receive.

27. Defendants knew or should have known that: (a) facsimile advertisements, including Exhibits A – B were advertisements; (b) Plaintiff and the other members of the class had not given their prior permission or invitation to receive facsimile advertisements; (c) No

established business relationship existed with Plaintiff and the other members of the class; and (d) Defendants did not display a proper opt out notice.

28. Defendants engaged in the transmissions of facsimile advertisements, including Exhibits A – B believing such transmissions were legal based on Defendants' own understanding of the law and/or based on the representations of others on which Defendants reasonably relied.

29. Defendants did not intend to send transmissions of facsimile advertisements, including Exhibits A – B to any person where such transmission was not authorized by law or by the recipient, and to the extent that any transmissions of facsimile advertisement was sent to any person and such transmission was not authorized by law or by the recipient, such transmission was made based on either Defendants' own understanding of the law and/or based on the representations of others on which Defendants reasonably relied.

30. Defendants failed to correctly determine the legal restrictions on the use of facsimile transmissions and the application of those restrictions to the transmission of facsimile advertisements, including Exhibits A – B both to others in general, and specifically to Plaintiff.

31. The transmissions of facsimile advertisements, including Exhibits A – B to Plaintiff and other members of the class caused destruction of Plaintiff's property.

32. The transmissions of facsimile advertisements, including Exhibits A – B to Plaintiff and other members of the class interfered with Plaintiff's and other members of the class' exclusive use of their property.

33. The transmissions of facsimile advertisements, including Exhibits A – B to Plaintiff and other members of the class interfered with Plaintiff's and other members of the class' business and/or personal communications.

COUNT I
TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227

34. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.
35. Plaintiff brings Count I pursuant to the Telephone Consumer Protection Act, 47

U.S.C. § 227, on behalf of the following class of persons:

All persons who (1) on or after four years prior to the filing of this action, (2) were sent by or on behalf of Defendants any telephone facsimile transmissions of material making known the commercial existence of, or making qualitative statements regarding any property, goods, or services (3) with respect to whom Defendants cannot provide evidence of prior express permission or invitation for the sending of such faxes, (4) with whom Defendants does not have an established business relationship or (5) which were sent an advertisement by fax which did not display a proper opt out notice.

36. A class action is warranted because:
 - a. On information and belief, the class includes more than forty persons and is so numerous that joinder of all members is impracticable.
 - b. There are questions of fact or law common to the class predominating over questions affecting only individual class members, including without limitation:
 - i. Whether Defendants engaged in a pattern of sending unsolicited fax advertisements;
 - ii. Whether Exhibits A – B and other faxes transmitted by or on behalf of Defendant contain material advertising the commercial availability of any property, goods or services;
 - iii. Whether Defendants' facsimiles advertised the commercial availability of property, goods, or services;

- iv. The manner and method Defendants used to compile or obtain the list of fax numbers to which they sent Exhibits A – B and other unsolicited faxed advertisements;
 - v. Whether Defendants faxed advertisements without first obtaining the recipients' prior express permission or invitation;
 - vi. Whether Defendants violated the provisions of 47 USC § 227;
 - vii. Whether Plaintiff and the other class members are entitled to statutory damages;
 - viii. Whether Defendants knowingly violated the provisions of 47 USC § 227;
 - ix. Whether Defendants should be enjoined from faxing advertisements in the future;
 - x. Whether the Court should award trebled damages; and
 - xi. Whether Exhibits A – B and the other fax advertisements sent by or on behalf of Defendants displayed the proper opt out notice required by 64 C.F.R. 1200.
- c. Plaintiff's claims are typical of the other class members.
- d. Plaintiff will fairly and adequately protect the interests of the other class members. Plaintiff's counsel are experienced in handling class actions and claims involving unsolicited advertising faxes. Neither Plaintiff nor Plaintiff's counsel has any interests adverse or in conflict with the absent class members.

e. A class action is the superior method for adjudicating this controversy fairly and efficiently. The interest of each individual class member in controlling the prosecution of separate claims is small and individual actions are not economically feasible.

37. Plaintiff will fairly and adequately protect the interests of the other class members. Plaintiff's counsel are experienced in handling class actions and claims involving unsolicited advertising faxes. Neither Plaintiff nor Plaintiff's counsel has any interests adverse or in conflict with the absent class members.

38. A class action is an appropriate method for adjudicating this controversy fairly and efficiently. The interest of each individual class member in controlling the prosecution of separate claims is small and individual actions are not economically feasible.

39. The TCPA prohibits the "use of any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine...." 47 U.S.C. § 227(b)(1).

40. The TCPA defines "unsolicited advertisement," as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's express invitation or permission." 47 U.S.C. § 227(a)(4).

41. The TCPA provides:

Private right of action. A person may, if otherwise permitted by the laws or rules of court of a state, bring in an appropriate court of that state:

(A) An action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) An action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) Both such actions.

42. The Court, in its discretion, may treble the statutory damages if the violation was knowing. 47 U.S.C. § 227.

43. The TCPA is a strict liability statute and the Defendants are liable to Plaintiff and the other class members even if their actions were only negligent.

44. Defendants' actions caused damages to Plaintiff and the other class members. Receiving Defendants' advertising faxes caused the recipients to lose paper and toner consumed in the printing of Defendants' faxes. Moreover, Defendants' actions interfered with Plaintiff's use of its fax machine and telephone line connected to that fax machine. Defendants' faxes cost Plaintiff time, as Plaintiff and/or its employees wasted their time receiving, reviewing and routing Defendants' unlawful faxes. That time otherwise would have been spent on Plaintiff's business activities. Finally, Defendants' faxes unlawfully interrupted Plaintiff's and the other class members' privacy interests in being left alone.

45. Defendants did not intend to cause damage to Plaintiff and the other class members, did not intend to violate their privacy, and did not intend to interfere with recipients' fax machines or consume the recipients' valuable time with Defendants' advertisements.

46. If the court finds that Defendants knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than three times the amount available under subparagraph (B) of this paragraph. 47 U.S.C. § 227(b)(3).

47. Defendants knew or should have known that: (A) Plaintiff and the other class members had not given express permission or invitation for Defendants or anyone else to fax advertisements about Defendants' goods or services, (B) Defendants did not have an established business relationship with Plaintiff and the other members of the class, (C) Exhibits A – B and the other facsimile advertisements were advertisements, and (D) Exhibits A – B and the other facsimile advertisements did not display the proper opt out notice.

48. Defendants violated 47 U.S.C. § 227 et seq. by transmitting Exhibits A – B and the other facsimile advertisements hereto to Plaintiff and the other members of the class without obtaining their prior express permission or invitation and not displaying the proper opt out notice required by 64 C.F.R. 1200.

49. Defendants knew or should have known that: (a) documents Exhibits A – B and the other facsimile advertisements were advertisements; (b) Defendants did not obtain prior permission or invitation to send facsimile advertisements, including Exhibits A – B; (c) Defendants did not have an established business relationship with Plaintiff or the other members of the class and (d) Exhibits A – B and the other facsimile advertisements did not display a proper opt out notice.

50. Defendants engaged in the transmissions of documents Exhibits A – B and the other facsimile advertisements believing such transmissions were legal based on Defendants' own understanding of the law and/or based on the representations of others on which Defendants reasonably relied.

51. Defendants did not intend to send transmissions of documents Exhibits A – B and the other facsimile advertisements to any person where such transmission was not authorized by

law or by the recipient, and to the extent that any transmissions of documents Exhibits A – B and the other facsimile advertisements were sent to any person and such transmission was not authorized by law or by the recipient, such transmission was made based on either Defendants' own understanding of the law and/or based on the representations of others on which Defendants reasonably relied.

52. Defendants failed to correctly determine the legal restrictions on the use of facsimile transmissions and the application of those restrictions to the transmission of documents Exhibits A – B and the other facsimile advertisements both to others in general, and specifically to Plaintiff.

53. Defendants' actions caused damages to Plaintiff and the other class members, because their receipt of Defendants' unsolicited fax advertisements caused them to lose paper and toner consumed as a result. Defendants' actions prevented Plaintiff's fax machine from being used for Plaintiff's business purposes during the time Defendants were using Plaintiff's fax machine for Defendants' unauthorized purpose. Defendants' actions also cost Plaintiff employee time, as Plaintiff's employees used their time receiving, routing and reviewing Defendants' unauthorized faxes and that time otherwise would have been spent on Plaintiff's business activities. Finally, the injury and property damage sustained by Plaintiff and the other members of the class occurred outside of Defendants' premises. Pursuant to law, Plaintiff, and each class member, instead may recover \$500 for each violation of the TCPA.

WHEREFORE, Plaintiff, ST. LOUIS HEART CENTER, INC., individually and on behalf of all others similarly situated, demand judgment in its favor and against Defendants, ALLERGAN

USA, INC., WARNER CHILCOTT CORPORATION, ACTAVIS, INC. and JOHN DOES 1-10, as follows:

A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the representative of the class, and appoint Plaintiff's counsel as counsel for the class;

B. That the Court award between \$500.00 and \$1,500.00 in damages for each violation of the TCPA;

C. That the Court enter an injunction prohibiting the Defendants from engaging in the statutory violations at issue in this action; and

D. That the Court award costs and such further relief as the Court may deem just and proper.

E. That the Court award pre-judgment and post-judgment interest at the statutory rate of 9%.

COUNT II
CONVERSION

54. Plaintiff incorporates Paragraphs 3 and 4, 14, 17 – 20, 24 – 26 and 28 – 33 as for its paragraph 53.

55. In accordance with Mo. S. Ct. Rule 52.08, Plaintiff brings Count II for conversion under the common law for the following class of persons:

All persons who on or after five years prior to the filing of this action, were sent telephone facsimile messages by or on behalf of Defendants with respect to whom Defendants cannot provide evidence of prior express permission or invitation.

56. A class action is proper in that:
- a. On information and belief the class is so numerous that joinder of all members is impracticable.
 - b. There are questions of fact or law common to the class predominating over all questions affecting only individual class members, including:
 - i. Whether Defendants engaged in a pattern of sending unsolicited faxes;
 - ii. Whether Defendants sent faxes without obtaining the recipients' prior express permission or invitation of the faxes;
 - iii. The manner and method Defendants used to compile or obtain the list of fax numbers to which it sent Exhibits A – B and other unsolicited faxes;
 - iv. Whether Defendants committed the tort of conversion; and
 - v. Whether Plaintiff and the other class members are entitled to recover actual damages and other appropriate relief.
 - c. Plaintiff's claims are typical of the other class members.
 - d. Plaintiff will fairly and adequately protect the interests of the other class members. Plaintiff's counsel are experienced in handling class actions and claims involving unsolicited advertising faxes. Neither Plaintiff nor Plaintiff's counsel has any interests adverse or in conflict with the absent class members.
 - e. A class action is the superior method for adjudicating this controversy fairly and efficiently. The interest of each individual class member in controlling the

prosecution of separate claims is small and individual actions are not economically feasible.

57. Plaintiff will fairly and adequately protect the interests of the other class members. Plaintiff has retained counsel who is experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiff nor Plaintiff's counsel have any interests adverse or in conflict with the class.

58. A class action is an appropriate method for adjudicating this controversy fairly and efficiently. The interest of the individual class members in individually controlling the prosecution of separate claims is small and individual actions are not economically feasible.

59. By sending Plaintiff and the other class members unsolicited faxes, Defendants improperly and unlawfully converted their fax machines, toner and paper to its own use. Defendants also converted Plaintiff's employees' time to Defendants' own use.

60. Immediately prior to the sending of the unsolicited faxes, Plaintiff, and the other class members owned an unqualified and immediate right to possession of their fax machine, paper, toner, and employee time.

61. By sending the unsolicited faxes, Defendants permanently misappropriated the class members' fax machines, toner, paper, and employee time to Defendants' own use. Such misappropriation was wrongful and without authorization.

62. Defendants knew or should have known that its misappropriation of paper, toner, and employee time was wrongful and without authorization.

63. Plaintiff and the other class members were deprived of the use of the fax machines, paper, toner, and employee time, which could no longer be used for any other purpose. Plaintiff

and each class member thereby suffered damages as a result of the sending of unsolicited fax advertisements from Defendants.

64. Each of Defendants' unsolicited faxes effectively stole Plaintiff's employees' time because persons employed by Plaintiff were involved in receiving, routing, and reviewing Defendants' unlawful faxes. Defendants knew or should have known employees' time is valuable to Plaintiff.

65. Defendants' actions caused damages to Plaintiff and the other members of the class because their receipt of Defendants' unsolicited faxes caused them to lose paper and toner as a result. Defendants' actions prevented Plaintiff's fax machines from being used for Plaintiff's business purposes during the time Defendants was using Plaintiff's fax machines for Defendants' unlawful purpose. Defendants' actions also cost Plaintiff employee time, as Plaintiff's employees used their time receiving, routing, and reviewing Defendants' unlawful faxes, and that time otherwise would have been spent on Plaintiff's business activities.

WHEREFORE, Plaintiff, ST. LOUIS HEART CENTER, INC., individually and on behalf of all others similarly situated, demand judgment in its favor and against Defendants, ALLERGAN USA, INC., WARNER CHILCOTT CORPORATION, ACTAVIS, INC. and JOHN DOES 1-10, as follows:

A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the representative of the class, and appoint Plaintiff's counsel as counsel for the class;

B. That the Court award appropriate damages;

C. That the Court award costs of suit; and

- D. Awarding such further relief as the Court may deem just and proper.

COUNT III
MISSOURI CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT
Chapter 407

66. Plaintiff incorporates Paragraphs 3 and 4, 14, 17 – 20, 24 – 26 and 28 – 33 as for its paragraph 65.

67. In accordance with Chapter 407, Plaintiff, on behalf of the following class of persons, bring Count III for Defendants' unfair practice of sending unsolicited and unlawful fax advertisements:

All persons who on or after four years prior to the filing of this action, were sent telephone facsimile messages by or on behalf of Defendants with respect to whom Defendants cannot provide evidence of prior express permission or invitation.

68. A class action is proper in that:
- a. On information and belief the class consists of over 40 persons in Missouri and throughout the United States and is so numerous that joinder of all members is impracticable.
 - b. There are questions of fact or law common to the class predominating over all questions affecting only individual class members including:
 - i. Whether Defendants engaged in a pattern of sending unsolicited faxes;
 - ii. The manner and method Defendants used to compile or obtain the list of fax numbers to which it sent Exhibits A – B and other unsolicited faxes;

- iii. Whether Defendants' practice of sending unsolicited faxes violates Missouri public policy;
 - iv. Whether Defendants' practice of sending unsolicited faxes is an unfair practice under the Missouri Merchandising Practices Act (MMPA), Chapter 407 RSMO; and
 - v. Whether Defendants should be enjoined from sending unsolicited fax advertising in the future.
- e. Plaintiff's claims are typical of the other class members.
 - d. Plaintiff will fairly and adequately protect the interests of the other class members. Plaintiff's counsel are experienced in handling class actions and claims involving unsolicited advertising faxes. Neither Plaintiff nor Plaintiff's counsel has any interests adverse or in conflict with the absent class members.
 - e. A class action is the superior method for adjudicating this controversy fairly and efficiently. The interest of each individual class member in controlling the prosecution of separate claims is small and individual actions are not economically feasible.

69. Plaintiff will fairly and adequately protect the interests of the other class members. Plaintiff has retained counsel who are experienced in handling class actions and claims involving lawful business practices. Neither Plaintiff nor Plaintiff's counsel have any interests adverse or in conflict with the class.

70. A class action is an appropriate method for adjudicating this controversy fairly and efficiently. The interest of the individual class members in individually controlling the prosecution of separate claims is small and individual actions are not economically feasible.

71. Defendants' unsolicited fax practice is an unfair practice, because it violates public policy, and because it forced Plaintiff and the other class members to incur expense without any consideration in return. Defendants' practice effectively forced Plaintiff and the other class members to pay for Defendants' advertising campaign.

72. Defendants violated the unfairness predicate of the Act by engaging in an unscrupulous business practice and by violating Missouri statutory public policy, which public policy violations in the aggregate caused substantial injury to hundreds of persons.

73. Defendants' misconduct caused damages to Plaintiff and the other members of the class, including the loss of paper, toner, ink, use of their facsimile machines, and use of their employees' time.

74. Defendants' actions caused damages to Plaintiff and the other class members because their receipt of Defendants' unsolicited faxes caused them to lose paper and toner consumed as a result. Defendants' actions prevented Plaintiff's fax machine from being used for Plaintiff's business purposes during the time Defendants were using Plaintiff's fax machine for Defendants' unlawful purpose. Defendants' actions also cost Plaintiff employee time, as Plaintiff's employees used their time receiving, routing, and reviewing Defendants' unlawful faxes and that time otherwise would have been spent on Plaintiff's business activities.

WHEREFORE, Plaintiff, ST. LOUIS HEART CENTER, INC., individually and on behalf of all others similarly situated, demand judgment in its favor and against Defendants, ALLERGAN

USA, INC., WARNER CHILCOTT CORPORATION, ACTAVIS, INC. and JOHN DOES 1-10,
as follows:

A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the class representative, and appoint Plaintiff's counsel as counsel for the class;

B. That the Court award damages to Plaintiff and the other class members;

C. That the Court award treble damages to Plaintiff and the other class members for knowing violations of the TCPA;

D. That the Court declare that Defendants' conduct violated the TCPA and that this action is just and proper;

E. That the Court award damages for conversion of the plaintiffs and the class for violation of their rights;

F. That the Court award damages and attorney fees for violation of Chapter 407;

G. That the Court award attorney fees and costs;

H. That the Court award all expenses incurred in preparing and prosecuting these claims;

I. That the Court enter an injunction prohibiting Defendants from sending faxed advertisements; and

J. Awarding such further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Max G. Margulis
Max G. Margulis, #24325
MARGULIS LAW GROUP
28 Old Belle Monte Rd.
Chesterfield, MO 63017
P: (636) 536-7022 – Residential
F: (636) 536-6652 – Residential
E-Mail: MaxMargulis@MargulisLaw.com
Attorneys for Plaintiff

Of Counsel

Brian J. Wanca
ANDERSON + WANCA
3701 Algonquin Road, Suite 500
Rolling Meadows, IL 60008
Phone: (847) 368-1500
Fax: (847) 368-1501
E-Mail: bwanca@andersonwanca.com

Jan 21 2013 18:01:35 GMT FROM: F2M/06642591898

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PAGE 001 OF 001

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Sample Request Fax Form
 To receive your complimentary samples
 complete this form and fax it to:
 973-807-1618

Request ID

983066

Request Date

1/21/2013

INSTRUCTIONS FOR REQUESTING SAMPLES:

Following these steps will ensure efficient delivery of your samples: (1) Verify that all information is correct, including state license information, complete shipping address, phone and fax numbers; (2) Sign your name and date the form; (3) Fax the form by 2/20/2013 to 973-807-1618. (4) This fax form is good for one time use only. Please call the Warner Chilcott customer service line at 877-345-4478 for additional samples.

PRACTITIONER NAME: Ronald Weiss		PROFESSIONAL DESIGNATION: MD
PHONE #: (314) 781-5900		FAX #: (314) 781-5900
STREET ADDRESS: 1031 Bellevue Ave Suite 206 <i>(Samples will not be issued or delivered to a PO Box)</i>		
CITY: Saint Louis	STATE: MO	ZIP CODE: 63117
NDC Code	Description	Quantity
0430-0979-95	Atelvia® (risedronate sodium) delayed-release tablets	15
0430-0478-95	Actonel® (risedronate sodium), 150mg	6
<i>Please see Important Safety Information and full Prescribing Information at www.wcrx.com/products.jsp</i>		
By signing this form I request the drug samples listed herein and certify that I am a licensed practitioner currently authorized under applicable federal and state law to request, receive and dispense these samples. I also certify that I have requested these samples for the legitimate medical needs of my patients. I understand that the sale or offer to sell a sample is a federal offense. I certify that I will not seek payment from any patient or third-party payor for these samples and I will not sell, resell, trade, barter, return for credit or seek reimbursement for any sample.		
AUTHORIZED PRACTITIONER SIGNATURE: _____		DATE: _____
STATE LICENSE #: _____		

Manufacturer: Warner Chilcott
 Authorized distributor: MYSTRO Logistics Solutions, LLC
 Form Code: EWC003v1-VT

You have the right to opt-out of receiving unsolicited communications by fax. You may contact us with your opt-out request, along with the fax number to which your request relates, by telephone at 800-767-7107, by fax at 800-767-7105, or online at <http://www.warnerchilcott.com>. A failure to comply with an opt-out request within 30 days is unlawful.

Electronically Filed - St Louis County - October 31, 2015 - 11:35 AM

EXHIBIT A

Static



880

Sample Request Fax Form
 To receive your complimentary samples
 complete this form and fax it to:
 973-807-1618

Request ID
1002871
 Request Date
2/14/2013

INSTRUCTIONS FOR REQUESTING SAMPLES:

Following these steps will ensure efficient delivery of your samples: (1) Verify that all information is correct, including state license information, complete shipping address, phone and fax numbers; (2) Sign your name and date the form; (3) Fax the form by 3/16/2013 to 973-807-1618. (4) This fax form is good for one time use only. Please call the Warner Chilcott customer service line at 877-345-4478 for additional samples.

PRACTITIONER NAME: Ronald Weiss		PROFESSIONAL DESIGNATION: MD
PHONE #: (314) 781-7800		FAX #: (314) 781-5900
STREET ADDRESS: 1031 Bellvue Ave Ste 206 <i>(Samples will not be issued or delivered to a PO Box)</i>		
CITY: Chicago	STATE: IL	ZIP CODE: 603117
NDC Code	Description	Quantity
0430-0979-95	Atelvia® (risedronate sodium) delayed-release tablets	15
0430-0478-95	Actonel® (risedronate sodium), 150mg	6
<i>Please see Important Safety Information and full Prescribing Information at www.wcpx.com/products.jsp</i>		
By signing this form I request the drug samples listed herein and certify that I am a licensed practitioner currently authorized under applicable federal and state law to request, receive and dispense these samples. I also certify that I have requested these samples for the legitimate medical needs of my patients. I understand that the sale or offer to sell a sample is a federal offense. I certify that I will not seek payment from any patient or third-party payor for these samples and I will not sell, resell, trade, barter, return for credit or seek reimbursement for any sample.		
AUTHORIZED PRACTITIONER SIGNATURE: _____		DATE: _____
STATE LICENSE #: _____		

Manufacturer: Warner Chilcott
 Authorized distributor: MYSTRO Logistics Solutions, LLC
 Form Code: EWC003v1-VT

You have the right to opt-out of receiving unsolicited advertisements by fax. You may contact us with your opt-out request, along with the fax number to which your request relates, by telephone at 800-707-7507, by fax at 800-707-7505, or online at <http://www.warnerchilcott.com> 1/8/5/78. A failure to comply with an opt-out request within 30 days is unlawful.

EXHIBIT B

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

ST. LOUIS HEART CENTER, INC., individually and
on behalf of all others similarly-situated,

Plaintiff,

v.

ALLERGAN, INC., WARNER CHILCOTT
CORPORATION, ACTAVIS, INC., and
JOHN DOES 1-10,

Defendants.

Cause No. _____

Division _____

MOTION FOR CLASS CERTIFICATION

COMES NOW Plaintiff, individually and on behalf of all others similarly situated, by and through its undersigned counsel, and for its Motion for Class Certification, states

1. This cause should be certified as a class because all of the necessary elements of Rule 52.08 are met.

2. Plaintiff requests that the Court certify a class, so the common claims of the Class members, based on a uniform legal theory and factual allegations applicable to all Class members, can be resolved on a class-wide basis.

3. Plaintiff proposes the following Class definition:

All persons who (1) on or after four years prior to the filing of this action, (2) were sent by or on behalf of Defendants any telephone facsimile transmissions of material making known the commercial existence of, or making qualitative statements regarding any property, goods, or services (3) with respect to whom Defendants cannot provide evidence of prior express permission or invitation for the sending of such faxes, (4) with whom Defendants does not have an established business relationship or (5) which were sent an advertisement by fax which did not display a proper opt out notice.

4. Under Rule 52.08(a)(1), to bring a Class action, the Class must be "so numerous that joinder of all members is impracticable." Rule 52.08(a)(1). Here, there are at least hundreds

of persons who fall within the Class definition. Thus, the numerosity requirement of Rule 52.08(a)(1) is satisfied.

5. There are questions of law or fact common to the Class members.

6. The claims or defenses of the representative parties are typical of the claims or defenses of this Class.

7. Plaintiff and its counsel will fairly and adequately protect the interest of the Class.

8. Common issues of law or fact predominate over any individual issues, and a class action is the superior method for the fair and efficient adjudication of this controversy.

9. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the party opposing the class.

10. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

11. Plaintiff requests additional time to file an Amended Class Certification Motion and Memorandum of Law after the Court sets up an appropriate discovery schedule. Written discovery related to class certification issues is presently outstanding.

WHEREFORE, Plaintiff prays that this Court certify this case as a class action, grant statutory injunctive relief prohibiting Defendants from sending advertising materials via fax to members of the class, and further pray that the Court appoint Plaintiff as Class Representative, appoint Plaintiff's attorneys Class Counsel; that this Court allow Plaintiff additional time, for completion of discovery related to class certification issues, to file an Amended Class Certification Motion and Memorandum of Law; and for such other and further relief as the Court

deems appropriate under the circumstances.

In the alternative if the Court determines that this class certification motion be dismissed without prejudice as being premature, the Plaintiff requests that the Court issue an order that Defendant not be allowed to make an offer of judgment or a settlement offer until the Court sets a scheduling order and the Plaintiff is allowed time to conduct discovery and file a future class certification motion pursuant to the Court's scheduling order and that the future class certification motion will relate back to the filing of the original class certification motion.

Respectfully submitted,

/s/ Max G. Margulis
Max G. Margulis, #24325
MARGULIS LAW GROUP
28 Old Belle Monte Rd.
Chesterfield, MO 63017
P: (636) 536-7022 – Residential
F: (636) 536-6652 – Residential
E-Mail: MaxMargulis@MargulisLaw.com

Of Counsel
Brian J. Wanca
ANDERSON + WANCA
3701 Algonquin Road, Suite 500
Rolling Meadows, IL 60008
P: (847) 368-1500
F: (847) 368-1501
E-Mail: bwanca@andersonwanca.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the Defendants Allergan, Inc. and Warner Chilcott Corporation at the same time as the petition.

/s/ Max G. Margulis

IN THE CIRCUIT COURT
FOR THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

ST. LOUIS HEART CENTER, INC., individually and
on behalf of all others similarly-situated,

Plaintiff,

v.

ALLERGAN, INC., WARNER CHILCOTT
CORPORATION, ACTAVIS, INC., and
JOHN DOES 1-10,

Defendants.

Cause No. _____

Division _____

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT
OF ITS MOTION FOR CLASS CERTIFICATION**

NOW COMES Plaintiff, pursuant to Rule 52.08 of the Missouri Supreme Court Rules,
and submits this Memorandum of Law in Support of its Motion for Class Certification.

INTRODUCTION

Recent developments in class action practice make necessary the filing of this motion with the petition. Defendants in class litigation have resorted to making individual settlement offers to named plaintiffs before a class action is certified in an attempt to “pick-off” the putative class representative and thereby derail the class action litigation. Most courts have rejected these pick-off attempts and have held that the filing of a motion for class certification with the initial petition or within a number of days after service of any settlement offer to a named plaintiff staves off offers of judgment to the named plaintiff. Any settlement offer made after the filing of the motion for class certification must be made on a class-wide basis. *See Alpern v. UtiliCorp United*, 84 F.3d 1525 (8th Cir. 1996); *March v. Medcredit*, 2013 WL 6265070 at *4 (E.D. Mo. Dec. 4, 2013)(“Putative class action plaintiffs would be wise to immediately file such motions to

protect the class from similar motions to dismiss based on offers of judgment”); *Geismann v. Be-Thin, Inc.*, No. 4:15CV00615 ERW (E.D. Mo. May 11, 2015); *Lafollette v. Liberty Mut. Fire Ins. Co.*, 2015 No. 2:14CV04147 NKL (W.D. Mo. Jan. 9, 2015) (Order striking a defendant’s Rule 68 offer of judgment to only the named plaintiff prior to class certification and denying the defendant’s motion to dismiss the named plaintiff’s claims as moot); *Prater v Mediacredit*, 2014 WL 3973863, at *6-7 (E.D. Mo. Aug. 14, 2014) (citing *March*, 2013 WL 6265070, at *4); *Goans Acquisition, Inc. v. Merch. Solutions, LLC*, 12-00539-CV-S-JTM, 2013 WL 5408460 at *6 n.4 (W.D. Mo. Sept. 26, 2013) (quoting *Damasco v. Clearwater Corp.*, 662 F.3d 891, 896 (7th Cir. 2011)). *E.g. Damasco v. Clearwire Corp.*, 662 F.3d 891, 896 (7th Cir. 2011), replaced with *Chapman v. First Index, Inc.*, 2015 WL 4652878, ---F.3d--- (7th Cir. 2015); *Hooks v. Landmark Industries, Inc.*, 797 F.3d 309 (U.S. 5th Crt Appeals 2015), *Weiss v. Regal Collections*, 385 F. 3d 337, 344 n.12 (3d Cir. 2004); *see Jancik v. Cavalry Portfolio Servs.*, 2007 WL 1994026, at *2–3 (D. Minn. July 3, 2007) *Harris v. Messerli & Kramer, P.A.*, 2008 WL 508923, at *2–3 (D. Minn. Jan. 2, 2008) (same); *Johnson v. U.S. Bank Nat’l Assn.*, 276 F.R.D. 330, 333-335 (D. Minn. 2011) (same). *See also Lucero v. Bureau of Collection Recovery, Inc.*, 639 F.3d 1239, 1249 (10th Cir. 2011); *Mey v. Monitronics Int’l, Inc.*, 2012 WL 983766, at *4-5 (N.D. W.Va. Mar. 22, 2012); *Hrivnak v. NCO Portfolio Mgmt., Inc.*, 723 F.Supp.2d 1020, 1029 (N.D. Ohio 2010); *McDowall v. Cogan*, 216 F.R.D. 46, 48-50 (E.D. N.Y. 2003). The issue is presently pending before the United States Supreme Court, *Gomez v. Campbell-Ewald Co.*, 768 F.3d 871 (9th Cir.2014), cert. Granted, ---U.S.---, 135 S.Ct 2311, 191 L.Ed.2d 977 (2015).

Plaintiff has served discovery but no responses have been filed. Plaintiff has not been afforded the opportunity to develop a full factual record in this case. Plaintiff will supplement its motion and brief in support of class certification after class wide discovery has been completed

and as directed by a scheduling order entered by the court. Until then, Plaintiff cites to its Class Action Petition.

ARGUMENT

I. Standards governing class certification.

The Missouri Supreme Court has noted that class actions are “designed to promote judicial economy by permitting the litigation of the common questions of law and fact of numerous individuals in a single proceeding.” *State ex rel. Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729, 735 (Mo.banc 2004). “Class actions ... permit the plaintiffs to pool claims which would be uneconomical to litigate individually. [M]ost of the plaintiffs would have no realistic day in court if a class action were not available.” *Phillips Petroleum v. Shutts*, 472 U.S. 797, 808-809 (1985). Moreover, “[b]ecause class certification can be modified as the case progresses, courts should err in favor of, and not against, certifying a class.” *Doyle v. Fluor Corp.*, 199 S.W.3d 784, 787-88 (Mo. App. 2006).

II. The weight of authority favors certification.

Courts in Missouri have certified TCPA cases. *See Fun Services of Kansas City, Inc. v. Parrish Love d/b/a Asphalt Wizards* Case No. 0816CV00064 (Cir. Ct. Jackson Cty, Mo. May 24, 2010), Interlocutory Appeal #WD72566 was denied by Missouri Court of Appeals on June 23, 2010, writ was filed by Defendant in the Missouri Supreme Court #SC91037 and was denied on August 31, 2010; *Clean Carton Co., Inc., et al. v. Prime TV, LLC, et al.* Case No 01AC-11582 2004 TCPA Rep. 1294 (Mo. Cir. July 13, 2004). Judge Nixon certified a TCPA class and appellate review was denied. *Missouri Information Solutions, Inc. v. KC Subs, Inc.*, Case No. 0516-CV17319, 2008 WL 5631046 (Cir. Ct. Jackson, Cty, Mo. Dec. 16, 2008), *petition for interlocutory appeal denied*, (Jan. 22, 2009 Mo. Ct. of Appeals, Western Dist., Class Action Division). See also *Karen S. Little, LLC v. Drury Inns, Inc.*, 2010 WL 98002 (Mo. App. E.D.

Jan. 12, 2010).

III. The proposed class.

Plaintiff proposes the following class definitions:

All persons who (1) on or after four years prior to the filing of this action, (2) were sent by or on behalf of Defendants any telephone facsimile transmissions of material making known the commercial existence of, or making qualitative statements regarding any property, goods, or services (3) with respect to whom Defendants cannot provide evidence of prior express permission or invitation for the sending of such faxes, (4) with whom Defendants does not have an established business relationship or (5) which were sent an advertisement by fax which did not display a proper opt out notice.

The Court should certify the Class, so this controversy can be resolved in a single action, rather than through separate individual actions.

IV. The Court should certify the TCPA claims for classwide resolution.

In order to maintain a class action, Plaintiff must show (1) that the class is so numerous that joinder of all members is impracticable, (2) that there are questions of law or fact common to the class, (3) that the representative party's claims are typical to those of the class, (4) that the representative party will fairly and adequately protect the interests of the class, and (5) only one of three 52.08(b) elements, which are risks of inconsistent adjudications; the appropriateness of final injunctive or declaratory relief with respect to the class as a whole; and predominance of common questions of fact or law. *See* Rule 52.08 of the Missouri Supreme Court Rules. Each of the elements is satisfied here.

A. Numerosity.

Under Rule 52.08(a)(1), to bring a class action, the class must be "so numerous that joinder of all members is impracticable." Rule 52.08(a)(1). Plaintiff must show only that joinder is impracticable through some evidence or reasonable, good faith estimate of the number of purported class members. *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 167 (Mo. App.

2006). See Class Action Petition, ¶¶ 11-21, 37.a and Exhibits A1a through B14. Rule 52.08(a)(1)'s numerosity requirement is satisfied because individual joinder of those persons would be impracticable.

B. Commonality.

While relief to the various members of a class need not be uniform, the requisite commonality of law or fact must be present. *Grosser, Inc.*, 647 S.W.2d 911. This does not mean that all class members must be identically situated. *Renstcher v. Carnahan*, 160 F.R.D. 114, 116 (E.D. Mo. 1995). Further, factual differences are not fatal to maintenance of the class action if common questions of law or fact exist. Because a single issue common to all class members is all that is required, commonality is easily met in most cases. *Renstcher*, 160 F.R.D. at 116; *Crain v. Missouri State Employees Retirement System*, 613 S.W.2d 912 (Mo. App. 1981). See Class Action Petition, ¶¶ 37.b. i-x.

- a. Whether Defendants violated the TCPA by faxing advertisements without first obtaining express invitation or permission to do so;
- b. Whether Plaintiff and the other class members are entitled to statutory damages;
- c. Whether Defendants violated the TCPA by faxing advertisements without a compliant opt-out notice; and
- d. Whether Defendants' acts were "willful" or "knowing" under the TCPA and, if so, whether Plaintiff and the other class members are entitled to trebled damages.

C. Typicality.

In order to meet the typicality requirement, a class representative must "be part of the class and possess the same interest and suffer the same injury as the class members." *Koger v. Hartford Life Ins. Co.*, 28 S.W.3d 405, 410 (Mo. App. 2000). The named plaintiff and the other members of the class need only share an interest in prevailing on similar legal claims. *Phillips v.*

Hallmark Cards, Inc., 722 S.W.2d 86 (Mo. App. 1986). Here, typicality is inherent in the class definition. Each of the class members was subjected to the same conduct. Each member's claim is based on the same legal theory as Plaintiff's.

D. Adequacy of representation.

Because a class action affects the rights of absent class members, Missouri Rule 52.08 (a)(4), like its federal counterpart, requires the trial court to determine whether the representative party will fairly and adequately represent the interests of the class. *Rule 52.08(a)(4); Kendrick*, 142 S.W.3d at 735. Adequacy of representation is a fact issue that must be determined under the circumstances of each case. *Craft v. Philip Morris Cos., Inc.*, 190 S.W.3d 368, 379 (Mo. App. 2005), citing *City of O'Fallon v. Bethman*, 569 S.W.2d 295, 299 (Mo. App. 1978).

Here, Plaintiff and the other class members seek statutory damages under the TCPA. Plaintiff understands its obligations and the nature of the claims, is involved in the litigation, and is interested in representing the class and enforcing the TCPA. Further, Plaintiff's counsel are experienced TCPA class action lawyers and they are adequate counsel for the class. Plaintiff's counsel have been litigating TCPA claims for many years. They have prosecuted dozens of these cases to successful resolution. They have successfully litigated insurance coverage actions about TCPA claims as well. Plaintiff's counsel will continue to commit adequate resources (staffing and monetary) to ensure that the class is properly represented. *See Class Action Petition*, ¶ 38. Therefore, Rule 52.08 (a)(4)'s "adequacy" requirement is satisfied.

E. Rule 52.08(b) requirements.

To maintain a class action in Missouri, plaintiff must prove only one of the three 52.08(b) elements. These elements are identical to those in Federal Rule 23, and involve the risks of inconsistent adjudications ((b)(1)); the appropriateness of final injunctive or declaratory relief with respect to the class as a whole ((b)(2)); and predominance of common questions of fact or

law ((b)(3)). Plaintiff seeks certification under (b)(1) and (b)(3). *See* Class Action Petition, ¶¶ 37-39.

Common fact issues predominate in this case because the class members' claims are focused on Defendant's fax advertising campaigns. Further, from the perspective of the court system and the class members, a class action is superior to individual actions because the maximum recovery for each class member is \$1,500 and the TCPA does not allow for fee shifting. Certification of this case as a class action would further the purposes of Rule 52.08. *See* Class Action Petition, ¶¶ 37-39.

CONCLUSION

All the class members were treated the same by the same course of conduct by Defendant. The mandatory elements of Rule 52.08" are met. *Missouri Information*, 2008 WL 5631046 at 15.

Here, the circumstances are nearly identical. The proposed class meets the requirements of Rules 52.08. Therefore, Plaintiff requests that the Court certify the class, appoint Plaintiff as the class representative, and appoint Plaintiff's attorneys as class counsel.

Respectfully submitted,

/s/ Max G. Margulis

Max G. Margulis, #24325

MARGULIS LAW GROUP

28 Old Belle Monte Rd.

Chesterfield, MO 63017

P: (636) 536-7022

F: (636) 536-6652

E-Mail: MaxMargulis@MargulisLaw.com

Attorney for Plaintiff

Of Counsel
Brian J. Wanca
ANDERSON + WANCA
3701 Algonquin Road, Suite 500
Rolling Meadows, IL 60008
P: (847) 368-1500
F: (847) 368-1501
E-Mail: bwanca@andersonwanca.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the Defendants Allergan, Inc. and Warner Chilcott Corporation at the same time as the petition.

/s/ Max G. Margulis

1 the
CIRCUIT COURT
of St. Louis County, Missouri



For File Stamp Only

St. Louis Heart Center, Inc., Individually and
Plaintiff/Petitioner
on behalf of all others similarly-situated

October 30, 2015

Date

Allergan USA, Inc., Warner Chilcott Corp.,
Defendant/Respondent

Case Number

Actavis, Inc. and John Does 1-10

Division

REQUEST FOR APPOINTMENT OF PROCESS SERVER

Comes now Max G. Margulis, Attorney for Plaintiff, pursuant
Requesting Party

to Local Rule 28, and at his/her/its own risk requests the appointment of the Circuit Clerk of
Robert Allen or Laura Allen, Subpoenas Plus, Inc., 9 Oakland Rd, Old Bridge NJ 08857

Name of Process Server Address Telephone

P: 888-607-1082 or 732-607-1082

Name of Process Server Address or in the Alternative Telephone

Name of Process Server Address or in the Alternative Telephone

Natural person(s) of lawful age to serve the summons and petition in this cause on the below
named parties. This appointment as special process server does not include the authorization
to carry a concealed weapon in the performance thereof.

SERVE: Warner Chilcott Corporation
The Corporation Trust Company
Name
820 Bear Tavern Rd
Address
Ewing, NJ 08628
City/State/Zip Mercer County

SERVE:
Name
Address
City/State/Zip

SERVE:
Name
Address
City/State/Zip

SERVE:
Name
Address
City/State/Zip

Appointed as requested:
JOAN M. GILMER, Circuit Clerk

By _____
Deputy Clerk

Date

Max G. Margulis
Attorney/Plaintiff/Petitioner **Max G. Margulis** 24325
Bar No. **28 Old Belle Monte Rd. Chesterfield, MO 63017**
Address **(636) 536-7022** **(636) 536-6652**
Phone No. **MaxMargulis@Margulislaw.com** Fax No.



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: MICHAEL T JAMISON	Case Number: 15SL-CC03750
Plaintiff/Petitioner: ST. LOUIS HEART CENTER, INC.	Plaintiff's/Petitioner's Attorney/Address: MAX GEORGE MARGULIS 28 OLD BELLE MONTE ROAD CHESTERFIELD, MO 63017
Defendant/Respondent: ALLERGAN USA, INC.	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Injunction	(Date File Stamp)

**Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)**

The State of Missouri to: **WARNER CHILCOTT CORPORATION**
 Alias: **SERVE: THE CORPORATION TRUST COMPANY**

820 BEAR TAVERN RD
 EWING, NJ 08628

COURT SEAL OF

 ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739 or TTY at 314-615-4567, at least three business days in advance of the court proceeding.

02-NOV-2015
 Date
 Further Information:
 ALD

Janet G. Hilary
 Clerk

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is _____ of _____ County, _____ (state).
- I have served the above summons by: (check one)
 - delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
 - leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.
 - (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 - other (describe) _____

Served at _____ (address)
 in _____ County, _____ (state), on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and Sworn To me before this _____ (day) _____ (month) _____ (year)

- I am: (check one)
- the clerk of the court of which affiant is an officer.
 - the judge of the court of which affiant is an officer.
 - authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
 - authorized to administer oaths. (use for court-appointed server)

(Seal)

Signature and Title

Service Fees, if applicable

Summons \$ _____
 Non Est \$ _____
 Mileage \$ _____ (_____ miles @ \$ _____ per mile)
 Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.

Directions to Clerk

Personal service outside the State of Missouri is permitted only upon certain conditions set forth in Rule 54. The clerk should insert in the summons the names of only the Defendant/Respondent or Defendants/Respondents who are to be personally served by the officer to whom the summons is delivered. The summons should be signed by the clerk or deputy clerk under the seal of the court and a copy of the summons and a copy of the petition for each Defendant/Respondent should be mailed along with the original summons to the officer who is to make service. The copy of the summons may be a carbon or other copy and should be signed and sealed in the same manner as the original but it is unnecessary to certify that the copy is a true copy. The copy of the motion may be a carbon or other copy and should be securely attached to the copy of the summons but need not be certified a true copy. If the Plaintiff's/Petitioner has no attorney, the Plaintiff's/Petitioner's address and telephone number should be stated in the appropriate square on the summons. This form is not for use in attachment actions. (See Rule 54.06, 54.07 and 54.14)

Directions to Officer Making Return on Service of Summons

A copy of the summons and a copy of the motion must be served on each Defendant/Respondent. If any Defendant/Respondent refuses to receive the copy of the summons and motion when offered, the return shall be prepared accordingly so as to show the offer of the officer to deliver the summons and motion and the Defendant's/Respondent's refusal to receive the same.

Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion to the individual personally or by leaving a copy of the summons and motion at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the Defendant/Respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. Upon a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory of the United States. If served in a territory, substitute the word "territory" for the word "state."

The office making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.

Service must not be made less than ten days nor more than 30 days from the date the Defendant/Respondent is to appear in court. The return should be made promptly and in any event so that it will reach the Missouri Court within 30 days after service.

THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

Twenty First Judicial Circuit

NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES

Purpose of Notice

As a party to a lawsuit in this court, you have the right to have a judge or jury decide your case. However, most lawsuits are settled by the parties before a trial takes place. This is often true even when the parties initially believe that settlement is not possible. A settlement reduces the expense and inconvenience of litigation. It also eliminates any uncertainty about the results of a trial.

Alternative dispute resolution services and procedures are available that may help the parties settle their lawsuit faster and at less cost. Often such services are most effective in reducing costs if used early in the course of a lawsuit. Your attorney can aid you in deciding whether and when such services would be helpful in your case.

Your Rights and Obligations in Court Are Not Affected By This Notice

You may decide to use an alternative dispute resolution procedure if the other parties to your case agree to do so. In some circumstances, a judge of this court may refer your case to an alternative dispute resolution procedure described below. These procedures are not a substitute for the services of a lawyer and consultation with a lawyer is recommended. Because you are a party to a lawsuit, you have obligations and deadlines which must be followed whether you use an alternative dispute resolution procedure or not. **IF YOU HAVE BEEN SERVED WITH A PETITION, YOU MUST FILE A RESPONSE ON TIME TO AVOID THE RISK OF DEFAULT JUDGMENT, WHETHER OR NOT YOU CHOOSE TO PURSUE AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.**

Alternative Dispute Resolution Procedures

There are several procedures designed to help parties settle lawsuits. Most of these procedures involve the services of a neutral third party, often referred to as the "neutral," who is trained in dispute resolution and is not partial to any party. The services are provided by individuals and organizations who may charge a fee for this help. Some of the recognized alternative dispute resolutions procedures are:

(1) Advisory Arbitration: A procedure in which a neutral person or persons (typically one person or a panel of three persons) hears both sides and decides the case. The arbitrator's decision is not binding and simply serves to guide the parties in trying to settle their lawsuit. An arbitration is typically less formal than a trial, is usually shorter, and may be conducted in a private setting at a time mutually agreeable to the parties. The parties, by agreement, may select the arbitrator(s) and determine the rules under which the arbitration will be conducted.

(2) Mediation: A process in which a neutral third party facilitates communication between the parties to promote settlement. An effective mediator may offer solutions that have not been considered by the parties or their lawyers. A mediator may not impose his or her own judgment on the issues for that of the parties.

(3) Early Neutral Evaluation (“ENE”): A process designed to bring the parties to the litigation and their counsel together in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process.

(4) Mini-Trial: A process in which each party and their counsel present their case before a selected representative for each party and a neutral third party, to define the issues and develop a basis for realistic settlement negotiations. The neutral third party may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding.

(5) Summary Jury Trial: A summary jury trial is a non binding, informal settlement process in which jurors hear abbreviated case presentations. A judge or neutral presides over the hearing, but there are no witnesses and the rules of evidence are relaxed. After the “trial”, the jurors retire to deliberate and then deliver an advisory verdict. The verdict then becomes the starting point for settlement negotiations among the parties.

Selecting an Alternative Dispute Resolution Procedure and a Neutral

If the parties agree to use an alternative dispute resolution procedure, they must decide what type of procedure to use and the identity of the neutral. As a public service, the St. Louis County Circuit Clerk maintains a list of persons who are available to serve as neutrals. The list contains the names of individuals who have met qualifications established by the Missouri Supreme Court and have asked to be on the list. The Circuit Clerk also has Neutral Qualifications Forms on file. These forms have been submitted by the neutrals on the list and provide information on their background and expertise. They also indicate the types of alternative dispute resolution services each neutral provides.

A copy of the list may be obtained by request in person and in writing to: Circuit Clerk, Office of Dispute Resolution Services, 7900 Carondelet Avenue, 5th Floor, Clayton, Missouri 63105. The Neutral Qualifications Forms will also be made available for inspection upon request to the Circuit Clerk.

The List and Neutral Qualification Forms are provided only as a convenience to the parties in selecting a neutral. The court cannot advise you on legal matters and can only provide you with the List and Forms. You should ask your lawyer for further information.

Electronically Filed - St Louis County - November 19, 2015 - 05:45 PM



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: MICHAEL T JAMISON	Case Number: 15SL-CC03750
Plaintiff/Petitioner: ST. LOUIS HEART CENTER, INC.	Plaintiff's/Petitioner's Attorney/Address: MAX GEORGE MARGULIS 28 OLD BELLE MONTE ROAD CHESTERFIELD, MO 63017
Defendant/Respondent: ALLERGAN USA, INC.	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Injunction	(Date File Stamp)

**Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)**

The State of Missouri to: **WARNER CHILCOTT CORPORATION**
Alias: **SERVE: THE CORPORATION TRUST COMPANY**

820 BEAR TAVERN RD
EWING, NJ 08628

COURT SEAL OF

ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739 or TTY at 314-615-4567, at least three business days in advance of the court proceeding.

02-NOV-2015
Date
Further Information:
ALD

Janet S. [Signature]
Clerk

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is Process Server of _____ County, New Jersey (state).
- I have served the above summons by: (check one)
 - delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
 - leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.
 - (for service on a corporation) delivering a copy of the summons and a copy of the petition to Breon Thompson (name) Corporate Operations Spec. (title).
 - other (describe) _____

Served at The Corporation Trust Co., 820 Bear Tavern Road, West Trenton, NJ (address) in Mercer County, New Jersey (state), on 11/10/2015 (date) at 12:03 pm (time).
ROBERT ALLEN Printed Name of Sheriff or Server ROBERT ALLEN Signature of Sheriff or Server

Subscribed and Sworn To me before this 10th (day) November (month) 2015 (year)

- I am: (check one)
- the clerk of the court of which affiant is an officer.
 - the judge of the court of which affiant is an officer.
 - authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
 - authorized to administer oaths. (use for court-appointed server)
- [Signature]*
Signature of Notary Public

(Seal)

Notary Public of New Jersey
My Commission Expires March 19, 2018

Service Fees, if applicable

Summons \$ _____
Non Est \$ _____
Mileage \$ _____ (_____ miles @ \$ _____ per mile)
Total \$ _____

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Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion to the individual personally or by leaving a copy of the summons and motion at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the Defendant/Respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. Upon a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory of the United States. If served in a territory, substitute the word "territory" for the word "state."

The officer making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.

Service must not be made less than ten days nor more than 30 days from the date the Defendant/Respondent is to appear in court. The return should be made promptly and in any event so that it will reach the Missouri Court within 30 days after service.

THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

Twenty First Judicial Circuit

NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES

Purpose of Notice

As a party to a lawsuit in this court, you have the right to have a judge or jury decide your case. However, most lawsuits are settled by the parties before a trial takes place. This is often true even when the parties initially believe that settlement is not possible. A settlement reduces the expense and inconvenience of litigation. It also eliminates any uncertainty about the results of a trial.

Alternative dispute resolution services and procedures are available that may help the parties settle their lawsuit faster and at less cost. Often such services are most effective in reducing costs if used early in the course of a lawsuit. Your attorney can aid you in deciding whether and when such services would be helpful in your case.

Your Rights and Obligations in Court Are Not Affected By This Notice

You may decide to use an alternative dispute resolution procedure if the other parties to your case agree to do so. In some circumstances, a judge of this court may refer your case to an alternative dispute resolution procedure described below. These procedures are not a substitute for the services of a lawyer and consultation with a lawyer is recommended. Because you are a party to a lawsuit, you have obligations and deadlines which must be followed whether you use an alternative dispute resolution procedure or not. **IF YOU HAVE BEEN SERVED WITH A PETITION, YOU MUST FILE A RESPONSE ON TIME TO AVOID THE RISK OF DEFAULT JUDGMENT, WHETHER OR NOT YOU CHOOSE TO PURSUE AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.**

Alternative Dispute Resolution Procedures

There are several procedures designed to help parties settle lawsuits. Most of these procedures involve the services of a neutral third party, often referred to as the "neutral," who is trained in dispute resolution and is not partial to any party. The services are provided by individuals and organizations who may charge a fee for this help. Some of the recognized alternative dispute resolutions procedures are:

(1) Advisory Arbitration: A procedure in which a neutral person or persons (typically one person or a panel of three persons) hears both sides and decides the case. The arbitrator's decision is not binding and simply serves to guide the parties in trying to settle their lawsuit. An arbitration is typically less formal than a trial, is usually shorter, and may be conducted in a private setting at a time mutually agreeable to the parties. The parties, by agreement, may select the arbitrator(s) and determine the rules under which the arbitration will be conducted.

(2) Mediation: A process in which a neutral third party facilitates communication between the parties to promote settlement. An effective mediator may offer solutions that have not been considered by the parties or their lawyers. A mediator may not impose his or her own judgment on the issues for that of the parties.

CCADM73

(3) Early Neutral Evaluation (“ENE”): A process designed to bring the parties to the litigation and their counsel together in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process.

(4) Mini-Trial: A process in which each party and their counsel present their case before a selected representative for each party and a neutral third party, to define the issues and develop a basis for realistic settlement negotiations. The neutral third party may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding.

(5) Summary Jury Trial: A summary jury trial is a non binding, informal settlement process in which jurors hear abbreviated case presentations. A judge or neutral presides over the hearing, but there are no witnesses and the rules of evidence are relaxed. After the “trial”, the jurors retire to deliberate and then deliver an advisory verdict. The verdict then becomes the starting point for settlement negotiations among the parties.

Selecting an Alternative Dispute Resolution Procedure and a Neutral

If the parties agree to use an alternative dispute resolution procedure, they must decide what type of procedure to use and the identity of the neutral. As a public service, the St. Louis County Circuit Clerk maintains a list of persons who are available to serve as neutrals. The list contains the names of individuals who have met qualifications established by the Missouri Supreme Court and have asked to be on the list. The Circuit Clerk also has Neutral Qualifications Forms on file. These forms have been submitted by the neutrals on the list and provide information on their background and expertise. They also indicate the types of alternative dispute resolution services each neutral provides.

A copy of the list may be obtained by request in person and in writing to: Circuit Clerk, Office of Dispute Resolution Services, 7900 Carondelet Avenue, 5th Floor, Clayton, Missouri 63105. The Neutral Qualifications Forms will also be made available for inspection upon request to the Circuit Clerk.

The List and Neutral Qualification Forms are provided only as a convenience to the parties in selecting a neutral. The court cannot advise you on legal matters and can only provide you with the List and Forms. You should ask your lawyer for further information.

CCADM73

SUBPOENAS PLUS, INC.

9 Oakland Road
 Old Bridge, New Jersey 08857
 (732) 607-1082
 Tax ID #22-3453610

INVOICE

DATE	INVOICE NO.
11/10/2015	6373

PAID

BILL TO
Margulis Law Group 28 Old Belle Monte Road Chesterfield, MO 63017

TERMS
Due on receipt

REFERENCE
St. Louis Hear vs. Wamer Chi

DESCRIPTION	AMOUNT
Service of Summons and Complaint upon Warner Chilcott, c/o The Corporation Trust Company, 820 Bear Tavern Road, Trenton, New Jersey on November 10, 2015 - served: Breon Thompson, Core Ops Specialist	65.00
Payment made on account - Thank you!	-65.00

	Total	\$0.00
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of the
CIRCUIT COURT
of St. Louis County, Missouri



For File Stamp Only

St. Louis Heart Center, Inc., Individually and
Plaintiff/Petitioner
on behalf of all others similarly-situated

October 30, 2015

Date

Allergan USA, Inc., Warner Chilcott Corp.,
Defendant/Respondent

Case Number

Actavis, Inc. and John Does 1-10

Division

REQUEST FOR APPOINTMENT OF PROCESS SERVER

Comes now Max G. Margulis, Attorney for Plaintiff, pursuant
Requesting Party

to Local Rule 28, and at his/her/its own risk requests the appointment of the Circuit Clerk of
Tyler DiMaria or Jim Wardlow, ALL PRO Attorney Service, 2410 Fair Oaks Blvd. ste 125

Name of Process Server Address Telephone
Sacramento, CA 95825 P:916-974-7421

Name of Process Server Address or in the Alternative Telephone

Name of Process Server Address or in the Alternative Telephone

Natural person(s) of lawful age to serve the summons and petition in this cause on the below
named parties. This appointment as special process server does not include the authorization
to carry a concealed weapon in the performance thereof.

SERVE: Allergan USA, Inc.
Corp Serv Comp CSC-Lawyers Inc Service
Name
2710 Gateway Oaks Dr, Ste 150 N
Address
Sacramento, CA 95833
City/State/Zip Sacramento County

SERVE:
Name
Address
City/State/Zip

SERVE:
Name
Address
City/State/Zip

SERVE:
Name
Address
City/State/Zip

Appointed as requested:
JOAN M. GILMER, Circuit Clerk

By _____
Deputy Clerk

Date

Max G. Margulis
Attorney/Plaintiff/Petitioner 24325
Bar No
28 Old Belle Monte Rd. Chesterfield, MO 63017
Address
(636) 536-7022 (636) 536-6652
Phone No. MaxMargulis@Margulislaw.com Fax No.



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: MICHAEL T JAMISON	Case Number: 15SL-CC03750
Plaintiff/Petitioner: ST. LOUIS HEART CENTER, INC.	Plaintiff's/Petitioner's Attorney/Address: MAX GEORGE MARGULIS 28 OLD BELLE MONTE ROAD CHESTERFIELD, MO 63017
Defendant/Respondent: ALLERGAN USA, INC.	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Injunction	(Date File Stamp)

**Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)**

The State of Missouri to: **ALLERGAN USA, INC.**
 Alias:
 2710 GATEWAY OAKS DR. STE 150N
 SACRAMENTO, CA 95833

SERVE: CORPORATION SERVICE
 COMPANY CSC- LAWYERS
 INCORPORATING SERVICE

COURT SEAL OF

 ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739 or TTY at 314-615-4567, at least three business days in advance of the court proceeding.

02-NOV-2015
 Date
 Further Information:
 ALD

James P. Silvey
 Clerk

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is _____ of _____ County, _____ (state).
- I have served the above summons by: (check one)
 - delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
 - leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.
 - (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 - other (describe) _____

Served at _____ (address)
 in _____ County, _____ (state), on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and Sworn To me before this _____ (day) _____ (month) _____ (year)

- I am: (check one)
- the clerk of the court of which affiant is an officer.
 - the judge of the court of which affiant is an officer.
 - authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
 - authorized to administer oaths. (use for court-appointed server)

(Seal)

Signature and Title

Service Fees, if applicable

Summons \$ _____
 Non Est \$ _____
 Mileage \$ _____ (_____ miles @ \$ _____ per mile)
 Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.

Directions to Clerk

Personal service outside the State of Missouri is permitted only upon certain conditions set forth in Rule 54. The clerk should insert in the summons the names of only the Defendant/Respondent or Defendants/Respondents who are to be personally served by the officer to whom the summons is delivered. The summons should be signed by the clerk or deputy clerk under the seal of the court and a copy of the summons and a copy of the petition for each Defendant/Respondent should be mailed along with the original summons to the officer who is to make service. The copy of the summons may be a carbon or other copy and should be signed and sealed in the same manner as the original but it is unnecessary to certify that the copy is a true copy. The copy of the motion may be a carbon or other copy and should be securely attached to the copy of the summons but need not be certified a true copy. If the Plaintiff's/Petitioner has no attorney, the Plaintiff's/Petitioner's address and telephone number should be stated in the appropriate square on the summons. This form is not for use in attachment actions. (See Rule 54.06, 54.07 and 54.14)

Directions to Officer Making Return on Service of Summons

A copy of the summons and a copy of the motion must be served on each Defendant/Respondent. If any Defendant/Respondent refuses to receive the copy of the summons and motion when offered, the return shall be prepared accordingly so as to show the offer of the officer to deliver the summons and motion and the Defendant's/Respondent's refusal to receive the same.

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THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

Twenty First Judicial Circuit

NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES

Purpose of Notice

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(2) Mediation: A process in which a neutral third party facilitates communication between the parties to promote settlement. An effective mediator may offer solutions that have not been considered by the parties or their lawyers. A mediator may not impose his or her own judgment on the issues for that of the parties.

CCADM73

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A copy of the list may be obtained by request in person and in writing to: Circuit Clerk, Office of Dispute Resolution Services, 7900 Carondelet Avenue, 5th Floor, Clayton, Missouri 63105. The Neutral Qualifications Forms will also be made available for inspection upon request to the Circuit Clerk.

The List and Neutral Qualification Forms are provided only as a convenience to the parties in selecting a neutral. The court cannot advise you on legal matters and can only provide you with the List and Forms. You should ask your lawyer for further information.

<i>Attorney or Party without Attorney:</i> MARGULIS LAW GROUP 28 Old Belle Monte Road Chesterfield, MO 63017 Telephone No: 636 536-7022 FAX No: 636 536-6652			<i>For Court Use Only</i>		
<i>Attorney for:</i> Plaintiff			<i>Ref. No. or File No.:</i>		
<i>Insert name of Court, and Judicial District and Branch Court:</i> In The 21st Judicial Circuit Court, St. Louis County, Missouri					
<i>Plaintiff:</i> ST. LOUIS HEART CENTER, INC.					
<i>Defendant:</i> ALLERGAN USA, INC.					
AFFIDAVIT OF SERVICE		<i>Hearing Date:</i>	<i>Time:</i>	<i>Deput/Div:</i>	<i>Case Number:</i> 15SL-CC03750

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Summons For Personal Service Outisde The State Of Missouri; Notice Of Alternative Dispute Resolution Services; Class Action Petition; Motion For Class Certification; Plaintiff's Memorandum Of Law In Support Of Its Motion For Class Certification; (Plaintiff's First Set Of Interrogatories Directed To Defendant Allergan Usa, Inc.; Plaintiff's First Set Of Requests For Production Of Documents Directed To Defendant Allergan Usa, Inc.; Plaintiff's First Request For Admissions Directed To Defendant Allergan Usa, Inc.)

3. a. Party served: ALLERGAN USA, INC.
 b. Person served: BECKY DeGEORGE, a person authorized to accept for the party in item 3.a.

4. Address where the party was served: CSC LAWYERS INCORPORATING SERVICE
 2710 GATEWAY OAKS DRIVE, SUITE 150N
 Sacramento, CA 95833

5. I served the party:
 a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Tue., Nov. 10, 2015 (2) at: 2:20PM

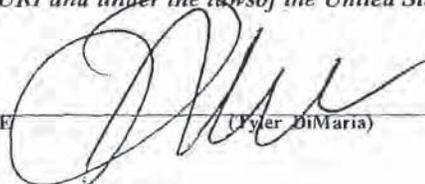
7. Person Who Served Papers: *Fee for Service:* \$33.00

- a. Tyler DiMaria
- b. **ALL PRO ATTORNEY SERVICES**
 2410 Fair Oaks Boulevard
 Suite 125
 Sacramento, CA 95825
- c. (916) 974-7421, FAX (916) 974-7442

8. I declare under penalty of perjury under the laws of the State of MISSOURI and under the laws of the United States Of America that the foregoing is true and correct.

Tue, Nov. 12, 2015

AFFIDAVIT OF SERVICE



(Tyler DiMaria)

margulis.74159

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Sacramento

Subscribed and sworn to (or affirmed) before me on this 13th
day of NOVEMBER, 2015, by Tyler DiMaria

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature

A handwritten signature in black ink, appearing to read "Tyler DiMaria", written over a horizontal line.

ALL PRO ATTORNEY SERVICES

Thursday November 12, 2015	INVOICE	MARGULIS.74159
----------------------------	----------------	----------------

2410 Fair Oaks Boulevard
Suite 125
Sacramento, CA 95825

Telephone: (916) 974-7421 , FAX: (916) 974-7442 Tax ID: 68-0327003

MARGULIS LAW GROUP
28 Old Belle Monte Road
Chesterfield MO 63017

Case #: 15SL-CC03750

Court: IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Title: ST. LOUIS HEART CENTER, INC. vs. ALLERGAN USA, INC.

Documents: SUMMONS FOR PERSONAL SERVICE OUTSIDE THE STATE OF MISSOURI; NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES; CLASS ACTION PETITION; MOTION FOR CLASS CERTIFICATION; PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR CLASS CERTIFICATION; (PLAINTIFF'S FIRST SET OF INTERROGATORIES DIRECTED TO DEFENDANT ALLERGAN USA, INC.; PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT ALLERGAN USA, INC.; PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS DIRECTED TO DEFENDANT ALLERGAN USA, INC.)

Date	Description	Amount
11/10/15	Personal Service: ALLERGAN USA, INC., AT Business CSC LAWYERS 02:20PM INCORPORATING SERVICE 2710 GATEWAY OAKS DRIVE, SUITE 150N Sacramento, CA 95833, by serving: BECKY DeGEORGE, a person authorized to accept for the party in item 3.a., Served By: Tyler DiMaria.	
11/10/15	Service fee, area 1	33.00
11/10/15	Notary fee	10.00
11/10/15	Deposit On Services Check Number: 2532, Thank You!	-43.00
	PLEASE PAY FROM THIS INVOICE	0.00

STATE OF MISSOURI)
)
COUNTY OF ST. LOUIS)

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI**

ST. LOUIS HEART CENTER, INC.,
individually and on behalf of all others
similarly-situated,

Plaintiff,

v.

ALLERGAN, INC., WARNER CHILCOTT
CORPORATION, ACTAVIS, INC., and
JOHN DOES 1-10,

Defendants.

Cause No. 15SL-CC03750

Division 10

**CERTIFICATE OF SERVICE OF DISCOVERY ISSUED TO
DEFENDANT WARNER CHILCOTT CORPORATION**

The undersigned certifies that Plaintiff's First Set of Interrogatories to Defendant, Plaintiff's First Request for Admissions Directed to Defendant and Plaintiff's First Request for Production of Documents Directed to Defendant were served on the Defendant, WARNER CHILCOTT CORPORATION, by the process server on the 10th day of November, 2015.

/s/ Max G. Margulis
Max G. Margulis, #24325
MARGULIS LAW GROUP
28 Old Belle Monte Rd.
Chesterfield, MO 63017
P: (636) 536-7022 - Residential
F: (636) 536-6652 - Residential
E-Mail: MaxMargulis@MargulisLaw.com

STATE OF MISSOURI)
)
COUNTY OF ST. LOUIS)

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI**

ST. LOUIS HEART CENTER, INC.,
individually and on behalf of all others
similarly-situated,

Plaintiff,

v.

ALLERGAN, INC., WARNER CHILCOTT
CORPORATION, ACTAVIS, INC., and
JOHN DOES 1-10,

Defendants.

Cause No. 15SL-CC03750

Division 10

**CERTIFICATE OF SERVICE OF DISCOVERY ISSUED TO
DEFENDANT ALLERGAN, INC.**

The undersigned certifies that Plaintiff's First Set of Interrogatories to Defendant, Plaintiff's First Request for Admissions Directed to Defendant and Plaintiff's First Request for Production of Documents Directed to Defendant were served on the Defendant, ALLERGAN, INC., by the process server on the 10th day of November, 2015.

/s/ Max G. Margulis
Max G. Margulis, #24325
MARGULIS LAW GROUP
28 Old Belle Monte Rd.
Chesterfield, MO 63017
P: (636) 536-7022 - Residential
F: (636) 536-6652 - Residential
E-Mail: MaxMargulis@MargulisLaw.com



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GrantedPublicAccess Logoff JMUSKOPF2013

15SL-CC03750 - ST. LOUIS HEART CENTER, V ALLERGAN USA, INC. ET AL (E-CASE)

- | | | | | | | | | |
|-------------|---------------------|----------------|--------------------------------|---------------------|-------------|-----------------------------|-----------------|-------------------------|
| Case Header | Parties & Attorneys | Docket Entries | Charges, Judgments & Sentences | Service Information | Filings Due | Scheduled Hearings & Trials | Civil Judgments | Garnishments/ Execution |
|-------------|---------------------|----------------|--------------------------------|---------------------|-------------|-----------------------------|-----------------|-------------------------|

This information is provided as a service and is not considered an official court record. Further information may be available in the docket entries portion of Case.net. Because service of process may establish legal obligations, you may want to examine the original case file in the clerk's office.

Displaying 1 thru 2 of 2 service records returned for case 15SL-CC03750.

Issuance

Issued To: ALLERGAN USA, INC.
Document Summons Outside St-To Dft-
Issued: Res
Document ID: 15-SMOS-984

Date Issued: 11/02/2015
Due Date: 12/02/2015

Additional Text: ALD

Return (Information not yet on file)

Issuance

Issued To: WARNER CHILCOTT CORPORATION
Document Summons Outside St-To Dft-
Issued: Res
Document ID: 15-SMOS-985

Date Issued: 11/02/2015
Due Date: 12/02/2015

Additional Text: ALD

Return

Type Of Service: Agent Served
Service/Attempt Date: 11/10/2015

Served To: WARNER CHILCOTT CORPORATION
CORPORATION TRUST COMPANY
820 BEAR TAVERN RD
EWING , NJ 08628

Displaying 1 thru 2 of 2 service records returned for case 15SL-CC03750.



Your Missouri Courts



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GrantedPublicAccess Logoff JMUSKOPF2013

15SL-CC03750 - ST. LOUIS HEART CENTER, V ALLERGAN USA, INC. ET AL (E-CASE)

- Case Header
- Parties & Attorneys
- Docket Entries
- Charges, Judgments & Sentences
- Service Information
- Filings Due
- Scheduled Hearings & Trials
- Civil Judgments
- Garnishments/Execution

This information is provided as a service and is not considered an official court record.

[Click here to eFile on Case](#)

[Click here to Respond to Selected Documents](#)

Sort Date Entries:

Descending

Ascending

Display Options:

11/25/2015

Certificate of Service

Certificate of Service of Discovery issued to Defendant Allergan Inc.

Filed By: MAX GEORGE MARGULIS

On Behalf Of: ST. LOUIS HEART CENTER, INC.

Affidavit Filed

Affidavit of service for Allergan USA on 11.10.15 2.20pm.

Filed By: MAX GEORGE MARGULIS

On Behalf Of: ST. LOUIS HEART CENTER, INC.

11/18/2015

Certificate of Service

Certificate of Service of Discovery issued to Defendant Warner Chilcott Corporation.

Filed By: MAX GEORGE MARGULIS

On Behalf Of: ST. LOUIS HEART CENTER, INC.

11/16/2015

Notice of Service

Affidavit for proof of service of Warner Chilcott Corp on 11.10.15 at 12.03pm.

Filed By: MAX GEORGE MARGULIS

On Behalf Of: ST. LOUIS HEART CENTER, INC.

Agent Served

Document ID - 15-SMOS-985: Served To - WARNER CHILCOTT CORPORATION; Server - ; Served Date - 10-NOV-15; Served Time - 00:00:00; Service Type - Special Process Server; Reason Description - Served

11/02/2015

Summ Issd- Circ Pers Serv O/S

Document ID: 15-SMOS-985, for WARNER CHILCOTT CORPORATION. Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

Summ Issd- Circ Pers Serv O/S

Document ID: 15-SMOS-984, for ALLERGAN USA, INC.. Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

10/31/2015

 **Filing Info Sheet eFiling**

Filed By: MAX GEORGE MARGULIS

 **Note to Clerk eFiling**

Filed By: MAX GEORGE MARGULIS

 **Motion Special Process Server**

Request for Appointment of Process Server for wamer chilcott. APPROVED NOVEMBER 2, 2015

Filed By: MAX GEORGE MARGULIS

On Behalf Of: ST. LOUIS HEART CENTER, INC.

 **Motion Special Process Server**

Request for Appointment of Process Server for Allergan USA. APPROVED NOVEMBER 2, 2015

Filed By: MAX GEORGE MARGULIS

 **Motion Filed**

Plaintiff Memorandum of Law in Support of its Motion for Class Certification.

Filed By: MAX GEORGE MARGULIS

 **Motion Filed**

Motion for Class Certification.

Filed By: MAX GEORGE MARGULIS

 **Pet Filed in Circuit Ct**

Class Action Petition with Exhibits A-B.

 **Judge Assigned**

DIV 10

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

St. Louis Heart Center,)	
Inc.)	
)	
Plaintiff,)	
)	
v.)	Case No.
Allergan USA, Inc., Warner Chilcott)	
Corporation, Actavis and John Does 1-10,)	
)	
Defendant,)	
)	

ORIGINAL FILING FORM

THIS FORM MUST BE COMPLETED AND VERIFIED BY THE FILING PARTY WHEN INITIATING A NEW CASE.

THIS SAME CAUSE, OR A SUBSTANTIALLY EQUIVALENT COMPLAINT, WAS PREVIOUSLY FILED IN THIS COURT AS CASE NUMBER _____ AND ASSIGNED TO THE HONORABLE JUDGE _____

THIS CAUSE IS RELATED, BUT IS NOT SUBSTANTIALLY EQUIVALENT TO ANY PREVIOUSLY FILED COMPLAINT. THE RELATED CASE NUMBER IS _____ AND THAT CASE WAS ASSIGNED TO THE HONORABLE _____, THIS CASE MAY, THEREFORE, BE OPENED AS AN ORIGINAL PROCEEDING.

NEITHER THIS SAME CAUSE, NOR A SUBSTANTIALLY EQUIVALENT COMPLAINT, HAS BEEN PREVIOUSLY FILED IN THIS COURT, AND THEREFORE MAY BE OPENED AS AN ORIGINAL PROCEEDING.

The undersigned affirms that the information provided above is true and correct.

Date: 12/10/2015

/s/ Eric L. Samore
Signature of Filing Party

CIVIL COVER SHEET

The 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ST. LOUIS HEART CENTER, INC.

(b) County of Residence of First Listed Plaintiff St. Louis County, MO (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Max Margulis, Margulis Law Group 28 Old Belle Monte Rd., Chesterfield, MO 63017 (636) 536-7022

DEFENDANTS

ALLERGAN USA, INC., WARNER CHILCOTT CORPORATION, ACTAVIS, INC. and JOHN DOES

County of Residence of First Listed Defendant Orange County, CA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Eric I. Samore SmithAmundsen LLC, 150 N. Michigan Ave. #3300, Chicago, IL 60601 (312) 894-3200

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. 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 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 USC 227
Brief description of cause: Alleged violation of the TCPA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE December 10, 2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Eric L. Samore

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE