

EXHIBIT 1 TO KATRIEL DECLARATION

CLASS ACTION SETTLEMENT AGREEMENT

WHEREAS, this Settlement Agreement (the “Settlement Agreement”) is made and entered into on February 6, 2018, by and between the Defendant, Allergan, Inc., and the Plaintiffs, Adel Tawfilis, DDS d/b/a Carmel Valley Center for Oral and Maxillofacial Surgery, and Hamid A. Towhidian, M.D. (collectively, “Plaintiffs”), individually and on behalf of the certified class (the “Class”), by and through Roy A. Katriel and Ralph B. Kalfayan, in their capacity as Class Counsel for the Class¹ (“Class Counsel”), in the Class Action (as herein defined). On June 26, 2017, the Court entered its Order granting the Plaintiffs’ Motion for Class Certification. As certified, the Class is defined as:

All purchasers within the United States who purchased Botox Cosmetic directly from Defendant Allergan, Inc. during the Class Period for a price that was based on Allergan’s list price. Excluded from the class definition are all judicial officers assigned to this case, as well as their staff and immediate relatives. The class definition also excludes all employees, agents, or officers of Defendant Allergan, Inc., and all federal, state, and local government employees.²

WHEREAS, Plaintiffs comprise all of the named plaintiffs in *Tawfilis v. Allergan, Inc.*, Civil Action No. 8:15-cv-00307 (the “Class Action”), pending in the United States District Court for the Central District of California before the Honorable Josephine L. Staton (the “Court”);

WHEREAS, the parties acknowledge that the Court has jurisdiction over these actions, each of the parties hereto, and all members of the Class for all purposes related to the Class Action, including this Settlement Agreement;

WHEREAS, Plaintiffs have alleged, among other things, that Allergan violated federal antitrust law and California state antitrust and unfair competition law by entering into an

¹ Order Granting Plaintiffs’ Motion for Class Certification § IV, Doc. No. 251 (“Class Certification Order”).

² Class Certification Order § IV.

exclusive license agreement with Medytox, Inc., in violation of the Sherman Act, 15 U.S.C. §§ 1 & 2, California's Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*, and that Plaintiffs and members of the Class incurred significant damages as a result;

WHEREAS, Allergan denies each and every one of Plaintiffs' allegations of unlawful conduct, has not conceded or admitted any liability, asserts defenses to Plaintiffs' claims, and asserts that the conduct challenged by Plaintiffs did not delay the United States market entry of any Medytox product or cause any injury or damage to any member of the Class;

WHEREAS, Plaintiffs and Allergan agree that neither this Settlement Agreement nor the settlement it embodies nor any actions taken in furtherance of either the Settlement Agreement or the settlement shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Allergan or of the truth of any claim or allegation alleged in the Class Action, or a waiver of any defenses thereto;

WHEREAS, Plaintiffs and Allergan, through counsel and under the auspices of an experienced private mediator, have engaged in extensive arm's-length negotiations concerning settlement of the Class Action;

WHEREAS, Plaintiffs and their counsel have concluded, after extensive fact and expert discovery, and after carefully considering the claims in the Class Action, including the claims asserted in the First Amended Complaint dated May 29, 2015 (the "Complaint"), and the possible and asserted legal and factual defenses thereto, that it would be in the best interests of the Class to settle the Class Action to avoid the uncertainties of litigation, particularly complex litigation such as this, and to assure a certain and immediate benefit to the Class, and further that

Class Counsel consider the settlement set forth herein to be fair, reasonable, and adequate and in the best interests of the Class;

WHEREAS, Allergan has concluded, despite its belief that it is not liable for the claims asserted and that it has good defenses thereto, that it would be in its best interests to enter into this Settlement Agreement to avoid the risks and uncertainties of litigation and to obtain a release from all claims relating to the Class Action;

WHEREAS, the parties have reached a settlement of the Class Action (the “Settlement”), all terms and conditions of which are embodied in this Settlement Agreement, subject to the final approval of the Court;

WHEREAS, persons who fall within the definition of the Class, who desire, may elect to opt out of this Settlement and the Class, or object to the final terms of the Settlement Agreement, all pursuant to their rights under this Settlement Agreement; and

NOW, THEREFORE, it is agreed by the undersigned, on behalf of Allergan, Plaintiffs, and the Class, that the Class Action and all claims of Plaintiffs, individually and on behalf of the Class, be settled, compromised, and dismissed with prejudice (and, except as hereinafter provided in paragraph 10 hereof, without costs to any party) subject to the approval of the Court, on the following terms and conditions:

1. **Reasonable Best Efforts to Effectuate This Settlement.** Each of the parties hereto agrees to use their best efforts to expedite approval of the Settlement. Class Counsel agrees to recommend approval of this Settlement by the Court. Each of the parties hereto agrees to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other reasonable steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to secure approval and to carry out the terms of this Settlement,

and to secure the prompt, complete, and final dismissal with prejudice of all claims in the Class Action. This includes Defendant serving notice on those entities required to receive notice pursuant to 28 U.S.C. § 1715.

2. **Motion for Preliminary Approval.** On or before February 12, 2018, Plaintiffs shall file with the Court a motion for preliminary approval of the Settlement. The motion for preliminary approval shall request the entry of a preliminary approval order (the “Preliminary Approval Order”). The Preliminary Approval Order shall include: (i) a proposed finding that preliminary approval of the Settlement is fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure; (ii) approval of a notice plan, including appointment of a notice administrator, to provide notice of the settlement to members of the Class; (iii) approval of an escrow agreement (the “Escrow Agreement”) and appointment of an escrow agent (the “Escrow Agent”); and (iv) a schedule for a final approval hearing by the Court, after the notice period has expired, to approve the settlement and to consider Plaintiffs’ counsel’s applications for attorneys’ fees and expenses and service awards as set forth in this Settlement Agreement. Allergan will not oppose the grant of the Preliminary Approval Order and shall not be required to play any role in the preparation and submission of the motions for approval of the settlement (either preliminary or final approval) other than to review and approve the motion papers and to state, if requested by the Court or Plaintiffs to do so, that (a) the settlement negotiations were at arm’s length at all times, (b) there were several back-and-forth offers of settlement and counter-offers between the parties over a multi-week period in person, and by telephone, (c) there was no discussion of attorneys’ fees, and (d) there were no commitments to Plaintiffs or to Class Counsel other than what is set forth in this Settlement Agreement. In the event that the Court preliminarily approves the Settlement, Plaintiffs shall, in

accord with the Preliminary Approval Order, provide Class members with notice of the Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure in the form and manner approved by the Court.

3. **Motion for Final Approval and Entry of Final Judgment.** If the Court preliminarily approves this Settlement Agreement, Plaintiffs shall submit a motion for final approval of the Settlement Agreement by the Court, after appropriate notice to the Class, and shall seek entry of a final judgment and order (the “Final Judgment and Order”). The Final Judgement and Order shall:

- a. find that this Settlement Agreement and the terms of the Settlement are fair, reasonable, and adequate as to Plaintiffs and the Class within the meaning of Fed. R. Civ. P. 23 and direct its consummation pursuant to the terms of this Settlement Agreement;
- b. find that notice given constitutes due, adequate, and sufficient notice, and meets the requirements of due process and any applicable laws or rules;
- c. provide for payment of reasonable attorneys’ fees and reimbursement of costs and expenses from the Settlement Fund (as defined below) as described herein;
- d. provide for payment from the Settlement Fund of service awards to each of the named Plaintiffs, in addition to whatever monies they will receive from the Settlement Fund pursuant to a Court-approved plan of allocation;
- e. direct that the Class Action be dismissed with prejudice and, except as provided for in paragraph 10, without costs and without attorneys’ fees recoverable under 15 U.S.C. § 15(a);
- f. retain exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of this settlement; and
- g. direct that the judgment of dismissal of all Class claims against Allergan shall be final.

4. **Finality of Settlement.** This Settlement Agreement shall become final upon the occurrence of all of the following (the “Effective Date”):

- a. neither Allergan nor Plaintiffs have availed themselves of their respective rights to cancel and terminate the settlement pursuant to paragraph 14 hereof;
- b. the Settlement Agreement is approved by the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure;
- c. entry, as provided for in paragraph 3 hereof, is made of the Final Judgment and Order of dismissal with prejudice against the Plaintiffs and the Class; and
- d. the time for appeal from the Court's approval of this Settlement as described in subparagraph 4(b) hereof and entry of the Final Judgment and Order as described in subparagraph 4(c) hereof has expired or, if appealed, either such appeal shall have been dismissed prior to resolution by the Court or approval of this Settlement and the Final Judgment and Order has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

5. **Settlement Fund.**

(a) Subject to the terms and conditions of this Settlement Agreement and the Escrow Agreement, and in full, complete, and final settlement of the Class Action, sixty (60) calendar days after the Court grants preliminary approval to the Settlement, provided that Class Counsel notifies Allergan of the establishment and identity of the Escrow Account within twenty-one (21) days after execution of the Settlement Agreement, Allergan shall deposit Thirteen Million Four-Hundred Fifty Thousand Dollars and no/100 (\$13,450,000.00) (the "Settlement Amount") into the Escrow Account held and administered by the Escrow Agent. The Settlement Amount deposited by Allergan into the Escrow Account plus interest earned after deposit thereon shall be referred to as the "Settlement Fund." Allergan shall not pay any additional amount at any time, whether for wire transfer fees or bank fees of any kind associated with the wire transfer of funds, interest, notice, administration, costs, attorneys' fees, or otherwise into the Escrow Account. The total consideration that Defendant will pay for this

Settlement shall be the Settlement Amount only. If the Settlement becomes final, pursuant to paragraph 4 hereto, then no part of the Settlement Amount shall revert to Allergan.

(b) Before the Court issues the Final Judgment and Order, disbursements for expenses associated with providing notice of the settlement to the Class, expenses associated with administering the Settlement, and any payments and expenses incurred in connection with taxation matters relating to the settlement and this Settlement Agreement (“Administrative Expenses”) may be made from the Settlement Fund, and such amounts shall be refundable to Allergan in the event the settlement is disapproved, terminated, or otherwise fails to become effective, to the extent and subject to the terms of paragraph 17 hereto. Court approval shall not be required for disbursements or distribution of Administrative Expenses for amounts (in the aggregate) of less than \$75,000. Otherwise, no disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court.

(c) If this Settlement becomes final, pursuant to paragraph 4 hereto, all interest earned less Administrative Expenses will inure to the benefit of the Class.

(d) The Escrow Account shall be established and administered pursuant to the Escrow Agreement in a form to be agreed upon between the Plaintiffs, Allergan, and the proposed Escrow Agent and approved by the Court at the time of preliminary approval. It is intended that the Escrow Account be treated as a “qualified settlement fund” for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1 and that any taxes due as a result of income earned by the Settlement Fund will be paid from the Settlement Fund. Except as otherwise expressly permitted by the terms of the Escrow Agreement, the Escrow Agent shall disburse funds from the Escrow Account only pursuant to and consistent with the express terms of this Settlement Agreement, the Preliminary Approval Order, the Final Judgment and Order, the

Escrow Agreement, and as expressly authorized by any order of the Court. Class Counsel shall be solely responsible for directing the Escrow Agent to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Fund. Allergan shall have no responsibility to make any tax filings relating to this Settlement Agreement or the Settlement Fund, and shall have no responsibility to pay taxes on any income earned by the Settlement Fund, or to pay any taxes with respect thereto unless the settlement is not consummated and the Settlement Fund is returned to Allergan. Allergan shall have no responsibility for the payment of taxes or tax-related expenses. If, for any reason, for any period of time, Allergan is required to pay taxes on income earned by the Settlement Fund, the Escrow Agent shall, upon written instructions from Allergan with notice to Class Counsel, timely pay to Allergan sufficient monies from the Settlement Fund to enable Allergan to pay all taxes (state, federal, or other) on income earned by the Settlement Fund.

(e) The Settlement Fund shall be available for distributions to Plaintiffs and members of the Class upon the settlement becoming final pursuant to paragraph 4 hereto, subject to deductions for payments of: (1) reasonable attorneys' fees, costs, and expenses approved by the Court (and any interest awarded thereon); and (2) any and all Administrative Expenses.

(f) After making the payment described in paragraph 5(a) above, Allergan shall have no responsibility whatsoever for the allocation and distribution of the Settlement Fund and shall not be responsible for any disputes relating to the amount, allocation, or distribution of any fees, costs, or awards. Further, after making the payment described in paragraph 5(a) above, Allergan shall not be liable for any additional payments to the Class or Class Counsel pursuant to this Settlement Agreement.

6. **Full Satisfaction; Limitation of Interest and Liability.** Plaintiffs and members of the Class shall look solely to the Settlement Fund for settlement and satisfaction against Allergan of all claims that are released hereunder, including any costs, fees, or expenses of any of the Plaintiffs or their attorneys, experts, advisors, agents, and representatives, including with respect to the negotiation, execution, and performance of their obligations under this Settlement Agreement. In the event that the settlement becomes final pursuant to paragraph 4 hereof, the Settlement Fund will fully satisfy any and all Released Claims as defined in paragraph 11 hereof. Except as provided by order of the Court, no Plaintiff or member of the Class shall have any interest in the Settlement Fund or any portion thereof. Allergan shall have no liability, obligations, or responsibility with respect to the investment, allocation, disbursement, or other administration or oversight of the Settlement Fund. The total consideration that Allergan will pay for this Settlement shall be the Settlement Amount only, and Allergan shall have no financial responsibility other than the Settlement Amount, including, without limitation, any amounts payable as attorneys' fees, expenses, and costs of Plaintiffs and the Class, any Court-approved service award to Plaintiffs that served as class representatives, any taxes payable on the Settlement Fund, and any amounts to pay for any and all Administrative Expenses associated with the Class Action or the Settlement.

7. **Reimbursement of Costs, Fees, and Expenses.** Plaintiffs and their counsel will be reimbursed and indemnified solely out of the Settlement Fund for all costs, fees, and expenses including, but not limited to, all Administrative Expenses. Allergan shall not be liable for any costs, fees, or expenses of any of Plaintiffs' respective attorneys, experts, advisors, agents, and representatives, or for any costs, fees, or expenses for notice, administration, or other costs of implementing this Settlement. All such costs, fees, and expenses shall be paid from the

Settlement Fund and, with the exception of Administrative Expenses of \$75,000 or less in accordance with paragraph 5(b) hereof, shall be approved by the Court. Any such costs, fees, and expenses, to the extent approved by the Court, shall be paid out of the Settlement Fund, and be deducted from the Settlement Fund before distribution of the Settlement Fund to the members of the Class following entry of an order by the Court approving any fees and expenses to Class Counsel.

8. **Disbursement of the Settlement Fund**. If this Settlement Agreement becomes final pursuant to the provisions of paragraph 4 hereof, the Settlement Fund, net of any amounts used to pay the Fee and Expense Award, Incentive Awards, and other Administrative Expenses, shall be distributed to members of the Class pursuant to the Plan of Allocation set forth in paragraph 9 hereto.

(a) Prior to the Settlement becoming final pursuant to paragraph 4, the following disbursements may be made:

(i) disbursements for Administrative Expenses may be made from the Settlement Fund only upon written notice from Class Counsel (Roy A. Katriel and Ralph B. Kalfayan) to the Escrow Agent in the manner provided in the Escrow Agreement, with a copy provided to counsel for Allergan, provided that any disbursements in excess of \$75,000 in the aggregate shall require prior Court approval. Allergan shall have no liability or responsibility with respect to disbursements from or administration of the Settlement Fund. To the extent that there is any ambiguity or inconsistency concerning disbursements when this Settlement Agreement and the Escrow Agreement are read together, the terms of this Settlement Agreement shall control;

(ii) disbursements for the payment of any taxes (including estimated

taxes, interest, or penalties) due, as a result of income earned by the Settlement Fund, shall be made promptly by the Escrow Agent with advance notice of such disbursement provided to Class Counsel and counsel for Allergan;

(iii) Class Counsel may withdraw from the Settlement Fund any portion of the Fee and Expense Award awarded to them by the Court; provided, however, that in the event that the order(s) approving the Fee and Expense Award is reversed or modified on appeal, and in the event that Class Counsel (or any of them) has received payment, such counsel shall, within five (5) business days of the date in which the Fee and Expense Award is modified or reversed, refund to the Settlement Fund the fees and expenses previously received by them in full or in any amount consistent with such reversal or modification, plus interest earned thereon through the date of such refund;

(b) After the Settlement becomes final pursuant to paragraph 4 hereto, the following disbursements from the Settlement Fund may be made:

(i) the Fee and Expense Award approved by the Court, to the extent not previously disbursed pursuant to paragraph 8(a)(iii) hereto, may be disbursed to Class Counsel from the Settlement Fund within ten (10) days of the Effective Date of this Settlement;

(ii) the remaining Administrative Expenses incurred in connection with the administration of the Escrow Account and Settlement Fund shall be paid, and to the extent, if any, the reasonable remaining fees and expenses incurred as part of the notice and claims administration, shall be paid from the Settlement Fund by the Escrow Agent with notice of such disbursements provided to Class Counsel;

(iii) disbursements for the payment of any taxes (including any estimated taxes, interest, or penalties) due as a result of income earned by the Settlement Fund

shall be made promptly by the Escrow Agent with advance notice of such disbursements provided to Class Counsel and counsel for Allergan;

(iv) any Incentive Award approved by the Court for services rendered to the Class by Plaintiffs shall be distributed to the Plaintiffs from the Settlement Fund after the Effective Date of the Settlement; and

(v) the balance of the Settlement Fund after the payment of the Fee and Expense Award, Incentive Award(s), Administrative Expenses, and any taxes due, inclusive of any accrued interest accrued on such balance, shall be distributed to the members of the Class pursuant to the Plan of Allocation set forth in paragraph 9 hereto.

9. Plan of Allocation.

(a) Upon the Settlement becoming Final pursuant to paragraph 4 hereto, the Settlement Fund, net of any amounts used to pay the Fee and Expense Award, Incentive Awards, and other Administrative Expenses, plus any interest accrued on such balance, shall be disbursed by the Settlement Administrator, in accordance with the terms of paragraphs 9(b) through 9(d) hereto (“the Plan of Allocation”) to the members of the Class who have not timely submitted requests to be excluded from the Settlement and who meet the criteria set forth at paragraph 9(b) hereto.

(b) Following the Effective Date, all members of the Class who did not submit a timely request to be excluded from the Settlement, and who purchased Botox[®] Cosmetic directly from Allergan at any time during the period April 1, 2015 through June 26, 2017 for a purchase price that was based off the list price for Botox[®] Cosmetic (“Qualifying Purchase”), shall receive a disbursement from the Settlement Fund. No later than ten (10) business days after the deadline set by the Court for the submission of requests for exclusion

from the Settlement, Allergan shall provide to the Settlement Administrator and Class Counsel records identifying the name and last mailing address of the members of the Class who made a Qualifying Purchase, as well as the number of units of Botox[®] Cosmetic and vial sizes comprising the Qualifying Purchase(s) made by each such Class member.

(c) The Settlement Administrator, based on the records received from Allergan pursuant to paragraph 9(b) hereto, shall allocate the amount in the Settlement Fund, net of any amounts used to pay the Fee and Expense Award, Incentive Award, other Administrative Expenses, plus any interest accrued by that balance, on a pro rata basis based on the number of vials of Botox[®] Cosmetic included in all of the Qualifying Purchases made by members of the Class who did not submit a timely request for exclusion from the Settlement. For purposes of this pro rata allocation, each 50 unit vial of Botox[®] Cosmetic shall be counted as equaling 0.55 times a 100 unit vial of Botox[®] Cosmetic.³

(d) No later than thirty (30) days following the Effective Date, the Settlement Administrator shall mail a check to each Class member meeting the criteria set forth in paragraph 9(b) hereto in an amount corresponding to the per vial pro rata amount multiplied by the total number of Botox[®] Cosmetic vials purchased by the Class member as part of that Class member's Qualifying Purchases.

(e) Any member of the Class having a dispute with respect to the payment mailed to the Class member pursuant to this Settlement Agreement shall present such dispute in writing to the Settlement Administrator and Class Counsel no later than twenty-one (21) days following the date of issuance of that Class member's check. The Settlement Administrator shall

³ This multiplier is based on the estimated, recent ratio of the Botox[®] Cosmetic 50 unit vial list price to the Botox[®] Cosmetic 100 unit vial list price.

consult with Class Counsel and investigate any such disputes in a prompt manner, and thereafter notify the Class member of the resolution of the dispute, such resolution by the Settlement Administrator being final and binding.

10. **Attorneys' Fees, Expenses, and Costs.** Class Counsel intend to seek, solely from the Settlement Fund, attorneys' fees of up to one-third (i.e. 33.33%) of the Settlement Fund plus the reimbursement of reasonable costs and expenses incurred in the prosecution of the Class Action against Allergan plus interest thereon, and a service award for each named Plaintiff ("Fee and Expense Award"). Class Counsel shall file a motion for approval of the Fee and Expense Award after the Court has granted preliminary approval to the settlement but sufficiently before the deadline set for filing of objections, and Allergan agrees to take no position with respect to the application by Class Counsel for a Fee and Expense Award as set forth above. Any Fee and Expense Award approved by the Court shall be payable solely out of the Settlement Fund, and Plaintiffs, members of the Class, and their respective counsel shall not seek payment of any attorneys' fees, expenses, costs, or service awards from Allergan or any source other than the Settlement Fund. The Released Parties (as defined in paragraph 11 hereof) shall have no responsibility for, and no liability whatsoever with respect to, any payment or disbursement of attorneys' fees, expenses, costs, or service awards, any allocation of attorneys' fees, expenses, costs, or service awards among Class Counsel and/or Plaintiffs, or with respect to any allocation of attorneys' fees, expenses, costs, or service awards to any other person or entity who may assert any claim thereto. Except as provided in paragraph 8(a)(iii) hereto, in no event shall any Fee and Expense Award be paid before the later of the Effective Date and the date on which the Fee and Expense Award is final and the period for any appeal or other review thereof has expired with no appeal being filed.

11. **Releases.**

(a) Upon the occurrence of the Effective Date and in consideration of payment of the Settlement Amount specified in paragraph 5 above, Plaintiffs and all Class members, on behalf of themselves and their respective past and present parents, subsidiaries, and affiliates, as well as the past and present general and limited partners, officers, directors, employees, agents, attorneys, servants, predecessors, successors, heirs, executors, administrators, and representatives of all Class members (the “Releasors”), hereby release and forever discharge, and covenant not to sue Allergan and its respective past, present, and future parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, general partners, limited partners, officers, directors, management, supervisory boards, insurers, employees, agents, servants, trustees, associates, attorneys and any of their legal representatives, or any other representatives thereof (and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing) (the “Released Parties”), with respect to, in connection with, or relating to any and all past, present, or future liabilities, claims, demands, obligations, suits, damages, levies, executions, judgments, debts, charges, actions, or causes of action, at law or in equity, whether class, individual, or otherwise in nature, and whether known or unknown, arising out of or relating to any conduct, events, or transactions, related to the allegations in the First Amended Complaint, prior to the Effective Date, (a) alleged, or which could reasonably have been alleged, in the Class Action, (b) concerning the Medytox-Allergan License Agreement, or (c) purchases of Botox[®] Cosmetic and arising under the Sherman Act, 15 U.S.C. §§ 1 & 2, *et seq.*, or any other federal or state statute or common law doctrine relating to antitrust or unfair competition, unjust enrichment, or consumer protection (the “Released Claims”).

(b) In addition, upon the Effective Date, each Releasor hereby expressly

waives, releases, and forever discharges, upon the Settlement Agreement becoming final pursuant to paragraph 4 hereof, any and all provisions, rights, and/or benefits conferred by § 1542 of the California Civil Code, which reads:

Section 1542. General Release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Upon the Effective Date, each Releasor also hereby expressly waives, releases, and forever discharges any and all provisions, rights, and/or benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are the subject matter of paragraph 11. Nonetheless, upon the Effective Date, each Releasor hereby expressly waives and fully, finally, and forever settles, releases, and discharges any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim that is the subject matter of paragraph 11, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Plaintiff and member of the Class also hereby expressly waives and fully, finally, and forever settles, releases, and discharges any and all claims it may have against any Released Party under § 17200, *et seq.*, of the California Business and Professions Code or any similar comparable or equivalent provision of the law of any other state or territory of the United States or other jurisdiction, which claims are expressly incorporated into the definition of Released Claims.

(c) Upon the occurrence of the Effective Date and in consideration of the

release set forth in subparagraphs 11(a) and 11(b), Allergan hereby releases and forever discharges, and covenants not to sue the Released Parties from all claims with respect to, in connection with, or relating to any and all past, present, or future liabilities, claims, demands, obligations, suits, damages, levies, executions, judgments, debts, charges, actions, or causes of action, at law or in equity, whether class, individual, or otherwise in nature, and whether known or unknown, arising out of or relating to any conduct, events, or transactions, prior to the Effective Date, alleged, or which could reasonably have been alleged, by way of counterclaim, in the Class Action.

12. **Reservation of Claims.** Notwithstanding the releases contained in paragraph 11, the Releasors and Allergan expressly agree that this Settlement Agreement and the releases are not intended to release any claims arising in the ordinary course of business between Releasors and the Released Parties under Article 2 of the Uniform Commercial Code (pertaining to sales), or the laws of negligence or product liability or implied warranty, breach of contract, breach of express warranty, or personal injury, to the extent that such claims are not based in whole or in part on any conduct challenged in the Class Action and do not relate to Botox[®] Cosmetic pricing or competition.

13. **Notice Forms.** Plaintiffs and Plaintiffs' Counsel will ensure that each form of Notice contains a copy of the release set forth in paragraph 11 hereof, and expressly informs recipients that, unless the Class member submits a timely request for exclusion from the Settlement, the Class member will be subject to and bound by the release set forth at paragraph 11 hereto.

14. **Effect of Disapproval.** If the Court declines to finally approve this Settlement; or if such approval is set aside on appeal or materially modified; or if the Court enters final

judgment and appellate review is sought, and on such review, the final judgment is not affirmed or is affirmed with material modification; or if the terms of this Settlement Agreement are materially changed except by mutual consent of the parties, then this Settlement Agreement may be cancelled and terminated, and shall become null and void upon the election of any of Allergan or Class Counsel by providing written notice to the parties designated to receive such notice hereunder in accordance with paragraph 22 hereof and the Escrow Agent within fourteen (14) business days following the occurrence of any such event. An Order by the Court awarding attorneys' fees, costs, expenses, and/or incentive awards from the Settlement Fund in any amount lower than requested by Plaintiffs' counsel pursuant to this Settlement Agreement shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or the Final Judgment and Order and shall not give rise to any right of termination. A modification or reversal on appeal of any amount of Class Counsel's fees and expenses awarded by the Court from the Settlement Fund, or the amount of service awards from the Settlement Fund to Plaintiffs in the Action, shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or the Final Judgment and Order and shall not give rise to any right of termination.

15. **Determination of Opt-Outs.**

(a) The parties hereto acknowledge that members of the Class received fair and reasonable notice and an opportunity to request exclusion from the Class by way of direct individual mailed notice, approved by the Court on July 25, 2017. The parties confirm that after adequate notice the Class members listed at Exhibit 1 to this Agreement were the only members who timely requested exclusion from the Class.

(b) As to the ability of Class members to opt out of the Settlement, within ten (10) business days after the Court-ordered deadline by which members of the Class may exclude

themselves from the Class, Plaintiffs' Counsel shall serve on counsel for Defendant a list of all Class Members who timely filed notices of exclusion.

(c) In the event that members of the class representing in the aggregate five (5) percent of total purchases of Botox[®] Cosmetic (in dollars) directly from Allergan during the Class Period submit requests for and are granted exclusion, Allergan shall have the right to terminate this Settlement Agreement within thirty (30) days of receipt of the list of exclusions by notifying Class Counsel in writing of Allergan's exercise of its right of termination.

16. **Uncashed Settlement Checks And Residual Settlement Funds.** It is the intent and expectation of the parties to this Settlement Agreement that all Settlement Funds, net of any amounts used to pay the Fee and Expense Award, Incentive Award, and Administrative Expenses, be disbursed to members of the Class in accordance with the Plan of Allocation. In the event that after such disbursement checks remain undeposited and uncashed by members of the Class after the validity of the checks has expired, the Settlement Administrator shall promptly inform Class Counsel and counsel for Allergan of the amount of such checks that were uncashed. Such amounts shall revert to the Settlement Fund, and within thirty (30) days of being notified by the Settlement Administrator that such uncashed funds remain, Class Counsel shall file a motion seeking a Court Order for the disposition of any uncashed funds to a Court-approved *cy pres* recipient.⁴ In no event shall such uncashed funds revert to Allergan, Class Counsel, or Plaintiffs.

17. **Termination.** In the event that the settlement is terminated pursuant to paragraph 14, or for any reason does not become final in accordance with the terms of paragraph 4 hereof,

⁴ A roster of potential *cy pres* recipients is included as an exhibit to the Declaration of Roy A. Katriel In Support of Plaintiffs' Unopposed Motion for Preliminary Approval.

then (i) this Settlement Agreement shall be of no force or effect, (ii) any amount of the Settlement Fund, including any and all interest earned thereon, less the costs of administration of the funds and the costs of the notice(s) provided for herein, shall be paid to Allergan as soon as practicable after the Escrow Agent receives notice of termination pursuant to paragraph 14 hereof, and (iii) any release pursuant to paragraph 11 above shall be of no force or effect.

18. **Preservation of Rights.** The parties hereto agree that this Settlement Agreement, whether or not it shall become final, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party; shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by Allergan, or of the truth of any of the claims or allegations contained in any complaint or any other pleading or document filed in this Class Action; and evidence thereof shall not be discoverable, admissible, or otherwise used directly or indirectly, in any way (except that the provisions of this Settlement Agreement can be used by the parties to effectuate or enforce the provisions of the Settlement Agreement), whether in the Class Action or in any other action or proceeding. The parties expressly reserve all of their rights if the settlement does not become final in accordance with paragraph 4 of this Settlement Agreement. Upon the Settlement becoming final, nothing in this paragraph shall prevent Allergan from asserting any release or using this Settlement Agreement to offset any liability to any other parties.

19. **Resumption of Litigation in the Event of Termination.** The parties agree that in the event that the Settlement Agreement is terminated, or the settlement does not become final pursuant to paragraph 4, litigation of the Class Action will resume in a reasonable manner and on a reasonable timetable to be approved by the Court upon joint application by the parties hereto.

20. **Confidentiality.** The parties agree to refrain from public comments about the

Settlement, including issuance of a press release, except that this shall not prohibit the parties from making generic factual statements that the Class Action has settled, nor shall it prohibit Class Counsel from communicating with Class members individually or through a posting on their websites (including law firm websites) with respect to the facts of the settlement in a non-argumentative manner, or Allergan's or any Class member's making disclosures as it believes is necessary under applicable laws or regulations. Class Counsel shall not disparage Defendant or Defense Counsel and Defendant shall not disparage Plaintiffs or Plaintiffs' Counsel in any communications about the settlement or the Class Action. Nothing in this paragraph 20 shall limit the content of filings in any court proceeding. In any public communications concerning this Settlement or this Settlement Agreement, Plaintiffs, their counsel and other agents for or representatives of Plaintiffs and of the Class, as well as Allergan, its counsel, and other agents for or representatives of Allergan, shall abide by the terms of the Stipulation Governing Confidential Material approved and entered by the Court on November 6, 2015 [Doc. No. 51] (the "Protective Order") and its amendments. Any obligation to abide by the Protective Order shall survive beyond the Effective Date of this Settlement Agreement.

21. **Binding Effect.** This Settlement Agreement shall be binding upon, and inure to the benefit of, the parties hereto, the Released Parties, the Releasers, and the successors and assigns of each of them, except that members of the Class who submit a timely request for exclusion from the Settlement shall not be bound by this Settlement Agreement or the Release set forth in paragraph 11 hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Plaintiffs and their counsel shall be binding upon all members of the Class and the Releasers and their respective successors and assigns, except those members of the Class who submit a timely request for exclusion from the Settlement, as well as

their respective successors and assigns.

22. **Notice.** Any and all notices, requests, consents, directives, or communications by any party intended for any other party and made pursuant to this Settlement Agreement shall be in writing and shall, unless expressly provided otherwise herein, be given personally, or by express courier, or by facsimile transmission or email followed by postage prepaid mail, to the following persons, and shall be addressed as follows:

To Plaintiffs and the Class:

Roy A. Katriel
The Katriel Law Firm
4660 La Jolla Village Drive, Suite 200
San Diego, California 92122
Tel.: (858) 546-4436
rak@katriellaw.com

Ralph B. Kalfayan
Krause, Kalfayan, Benink & Slavens, LLP
550 West C Street, Suite 530
San Diego, California 92101
Tel.: (619) 232-0331
ralph@kkbs-law.com

Counsel for Plaintiffs and the Class

To Allergan:

Jack E. Pace III
White & Case LLP
1221 Avenue of the Americas
New York, NY 10020
Tel.: (212) 819-8520
jpace@whitecase.com

Donald Bunnin
Executive Director, Senior Counsel –
Litigation & Commercial Eye Care
2525 Dupont Drive
Irvine, CA 92612
Phone: (714) 246-5532
donald.bunnin@allergan.com

Counsel for Allergan

Any of the parties may, from time to time, change the address to which such notices, requests, consents, directives, or communications are to be delivered, by giving the other parties prior written notice of the changed address, in the manner hereinabove provided, ten (10) calendar days before the change is effective.

23. **Integrated Agreement.** This Settlement Agreement contains the entire, complete, and integrated statement of each and every term and provision agreed to, by and among the parties hereto with respect to the transactions contemplated by this Agreement, and supersedes all prior agreements or understandings, whether written or oral, between or among

any of the parties hereto with respect to the subject matter hereof. This Settlement Agreement shall not be modified in any respect, unless by writing executed by each of the parties hereto.

24. **Independent Settlement.** This Settlement of the Class Action is entirely independent of all other cases and is not conditioned on approval by any other plaintiff or settlement of any other case.

25. **Headings.** The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

26. **No Party is the Drafter.** None of the parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

27. **Choice of Law.** All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the state of California without regard to its choice of law or conflict of laws principles.

28. **Consent to Jurisdiction.** Allergan and each member of the Class hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Central District of California, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement. Notwithstanding anything in this paragraph 28 to the contrary, nothing in this paragraph 28 shall prohibit (i) the assertion in any forum in which a claim is brought that any release herein is a defense, in whole or in part, to such claim or (ii) in the event that such a defense is asserted in such forum, the determination of its merits in that forum.

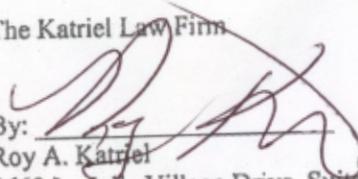
29. **No Admission.** Nothing in this Settlement Agreement shall be construed as an admission in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority, present or future, by Allergan including, without limitation, that Allergan has engaged in any conduct or practices that violate any antitrust statute or other law. This Settlement Agreement shall not be admissible for any purpose except in an action to enforce its terms or as otherwise provided in paragraph 28 hereof.

30. **Representations and Warranties.** Each party hereto represents and warrants to each other party hereto that it has the requisite authority (or in the case of natural persons, the legal capacity) to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby.

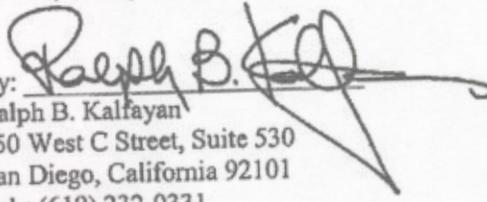
31. **Execution in Counterparts.** This Settlement Agreement may be executed in counterparts. Signatures transmitted by facsimile or email shall be considered valid signatures as of the date hereof.

IN WITNESS WHEREOF, the parties hereto through their fully authorized representatives have agreed to this Settlement Agreement as of the date first herein above written.

The Katriel Law Firm

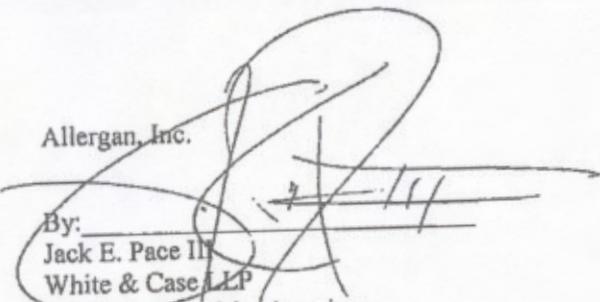
By: 
Roy A. Katriel
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rak@katriellaw.com

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By: 
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550 West C Street, Suite 530
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Counsel for Plaintiffs and the Class

Allergan, Inc.

By: 
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jpace@whitecase.com

Counsel for Allergan

EXHIBIT 1 TO SETTLEMENT AGREEMENT

EXCLUSIONS

| Claim ID | Requestor | Opt-Out / Postmark Date | Type (Paper / Electronic) | Late |
|---------------|---------------------------------------|----------------------------|------------------------------|------|
| AWL-100005357 | SARAH BIHM | 10/19/2017 | Electronic | |
| AWL-100006710 | GERALD SMYSER MD | 9/9/2017 | Electronic | |
| AWL-100011543 | JANA KNUTSON APRN | 9/14/2017 | Electronic | |
| AWL-100056130 | LUXE AESTHETIC CENTER | 9/8/2017 | Electronic | |
| AWL-100070876 | WILLIAM D STRINDEN MD | 11/14/2017 | Electronic | |
| AWL-100109667 | AUBURN DENTAL SPA | 9/27/2017 | Electronic | |
| AWL-100134637 | DALTON FAMILY PRACTICE PC | 9/14/2017 | Paper | |
| AWL-100169171 | KIMBERLY Y SCHUMACHER DO | 9/25/2017 | Paper | |
| AWL-100170650 | LESLIE CAMPBELL, DMD | 9/9/2017 | Paper | |
| AWL-100182089 | ETHAN NGUYEN MD | 11/21/2017 | Electronic | |
| AWL-100184880 | DENTISTRY WITH TLC | 9/13/2017 | Electronic | |
| AWL-100316646 | NORTHWEST ORAL MAXILLO-FACIL SURGEONS | 9/6/2017 | Paper | |
| AWL-100345611 | DERMATOLOGY CENTER OF WILLIAMS | 9/18/2017 | Electronic | |
| AWL-100362192 | KRISTI MITCHELL ELIA DDS | 9/12/2017 | Electronic | |
| AWL-100400701 | OPTIMAL WELLNESS SPA | 9/6/2017 | Electronic | |
| AWL-100404642 | STEPHANIE A SALAS MD PLLC | 9/25/2017 | Electronic | |