

# ORIGINAL

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

**RANDY CREWS**  
956 Cleveland Avenue  
Cincinnati, OH 45229



D109070254 IN1

and

**CARMEN CREWS**  
956 Cleveland Avenue  
Cincinnati, OH 45229

CASE NO. A 1407568

**Plaintiffs**

**COMPLAINT**  
**AND JURY DEMAND**

vs.

**KROGER LIMITED PARTNERSHIP I**  
dba **KROGER'S PHARMACY**  
4777 Kenard Avenue  
Cincinnati, OH 45232

**SERVE: CSC-Lawyers Incorporating Service**  
50 W. Broad Street  
Suite 1800  
Columbus, OH 43215

and

**THE KROGER COMPANY**  
1014 VINE STREET  
CINCINNATI, OH 45202

and

**KRGP, Inc.**

**SERVE: CSC Lawyers Incorporating Service**  
50 W. Broad Street  
Suite 1800  
Columbus, OH 43215

**Defendants**

FILED  
2014 DEC 31 P 12:05  
TRACY WINKLER  
CLERK OF COURTS  
HAMILTON COUNTY, OH

Now come the Plaintiffs, Randy Crews and Carmen Crews, by and through counsel, and for their complaint against the Defendants hereby state the following:

### **PARTIES**

1. Plaintiff Randy Crews and Carmen Crews are adults, husband and wife and are Hamilton County, Ohio residents.
2. Defendant Kroger Limited Partnership I was a general or limited partnership, limited liability company, corporation or other legal business entity registered with the State of Ohio with its principal place of business located in Hamilton County, Ohio. Kroger Limited Partnership I owned, leased and/or otherwise operated a retail entity known as KROGER'S PHARMACY located at or near 4777 Kenard Avenue, Cincinnati, Ohio 45232.
3. Defendant The Kroger Company was a sole proprietorship, limited liability company, corporation, partnership, or other legal business entity, doing business in Hamilton County, Ohio. The Kroger company owned, leased and/or otherwise operated a retail store located at or near 4777 Kenard Avenue, Cincinnati, Hamilton County, OH 45232.
4. Defendant KRGP, Inc. Is a corporation licensed to do business in the state of Ohio with its principal place of business located in the city of Cincinnati, Hamilton County, Ohio. KRGP owned, leased, and/or otherwise operated a retail store located at or near 4777 Kenard Ave., Cincinnati, Hamilton County, OH 45232

### **JURISDICTION AND VENUE**

5. Pursuant to Civ. R. 8, this court has personal, subject matter, and monetary jurisdiction over the parties and legal claims in this complaint.

6. Pursuant to Civ. R. 3(B), this court has venue given the events giving rise to the claims alleged in the complaint occurred in Hamilton County, Ohio, or because the defendants do business, or have committed tortious act in Hamilton County, Ohio.

### **FACTUAL ALLEGATIONS**

7. Plaintiff Randy Crews has a history of high blood pressure and has been prescribed Labetalol by his physicians in the past and has taken Labetalol to keep the high blood pressure under control.

8. On or about December 31, 2013, plaintiff Randy Crews was prescribed Labetalol by his doctor.

9. At all times relevant hereto, Kroger's Pharmacy was a retail establishment responsible for accurately filling prescriptions for its customers when it received prescriptions from its customers' physicians for controlled medications.

10. On December 31, 2013, Plaintiff Randy Crews was written the prescription for Labetalol by his doctor and had the prescription filled at Kroger's Pharmacy inside the Kroger store located at 4777 Kenard Ave, Cincinnati, OH 45232.

11. At the time the Plaintiff's prescription for Labetalol was filled at Kroger's, the pharmacy was under complete renovation, with a number of temporary accommodations being clearly visible to the general public.

12. Plaintiff Randy Crews was provided a bottle labeled as containing 90 tablets of Labetalol 200 mg tablets. The labeling and product information accompanying the prescription all indicated that Labetalol was in the bottle and was a treatment for high blood pressure.

13. However, the bottle provided to the Plaintiff by the Kroger's Pharmacy staff, although labeled Labetalol, did not contain such medication but rather contained similar appearing round white pills that the plaintiff later found out were actually Lamotrigine, an anti-epileptic, anticonvulsant medication.

14. In early April, 2014, Plaintiff Randy Crews began to take the medication from the prescription pill bottle dated December 31, 2013, which indicated it contained Labetalol.

15. After taking medication for a brief period of hours and days from the pill bottle labeled Labetalol dated December 31, Plaintiff Randy Crews felt and observed unusual symptoms such as that his blood pressure was elevated and he was lightheaded and dizzy, and so when it was appropriate he took another dose of the medication that he believed was Labetalol from the pill bottle dated December 31, 2013.

16. After taking subsequent doses of medication from the bottle labelled Labetalol, the Plaintiff's blood pressure continue to rise, and he began experiencing additional symptoms such as nausea, lightheadedness and dizziness. His body and organs were reacting violently to the medication he was taking and he began to vomit and suffer a host of other effects, including his blood pressure continuing to rise and he was unable to eat or sleep as normal.

17. Plaintiff Carmen Crews, the wife of Plaintiff Randy Crews, also observed the symptoms that Randy Crews was experiencing. She recognized that the onset of symptoms was when he began to take the medication from the December 31 bottle labeled Labetalol, and so became concerned that the medication in the bottle was bad.

18. Plaintiff Carmen Crews took the pills and the bottle marked "Labetalol" to another pharmacy

where, based upon the letters and numbers stamped onto the pills, the other pharmacist concluded that it was not in fact Labetalol in the bottle, but rather Lamotrigine.

19. With his symptoms getting worse and almost fatal, Plaintiff Randy Crews was admitted into the hospital on April 9, 2014 and was hospitalized for five days. He was diagnosed with Acute Renal Failure resulting from dehydration and elevated blood pressure caused by his ingestion of Lamotrigine.

20. After being released from the hospital Plaintiff Randy Crews was diagnosed with Stage 5 kidney disease and chronic renal failure.

21. After being released from the hospital, Plaintiff Randy Crews has had numerous treatments and procedures performed, including preparations for and initiation of hemodialysis and peritoneal dialysis, and he is currently on a heavy, expensive and time consuming dialysis schedule.

22. Randy Crews has been given two options by his physicians to continue life, that he must either continue to undergo daily dialysis because his kidneys were so heavily and irreparably damaged, or he must have a kidney transplant.

23. Prior to taking the incorrect medication Lamotrigine, Randy Crews was in good health, and very active in his church and the community.

24. Since taking the improper medication, Randy Crews has been unable to perform the same duties or experience life as he had before.

#### **COUNT 1 - NEGLIGENCE**

25. The plaintiffs reincorporate the preceding paragraphs as if fully rewritten herein.

26. The defendants owed a duty of care to plaintiffs Randy Crews and Carmen Crews to fill the prescription for Labetalol accurately.

27. The defendants breached said duty of care by not filling the prescription for Labetalol correctly, instead providing the anti-convulsive medication Lamotrigine in a bottle labeled "LABETALOL".

28. As a direct and proximate result of the error in filling the Labetalol prescription and the breach of one or more of the legal duties owed by the defendants, plaintiff Randy Crews sustained medical expenditures, physical and mental injuries, physical pain and mental anguish, a loss of the enjoyment of life, interference with his normal activities, and he will continue to incur such damages into the future.

### **COUNT 2 - PRODUCT DEFECT**

29. The plaintiffs reincorporate the previous paragraphs as if fully rewritten..

30. The defendants sold medication labeled as Labetalol and represented to the plaintiff that the medication in the bottle was Labetalol.

31. The defendants had a statutory and common law duty to supply pills that conformed to the defendants' representations.

32. The pills in the bottle given to the plaintiff did not conform to the representations by the defendants and were therefore defective.

33. The defendants breached the duty to provide pills that conform with the defendants representations when dispensing Lamotrigine instead of Labetalol.

34. As a direct and proximate result of the products nonconforming pills, the defendants are strictly liable for said injuries and damages suffered by the plaintiffs.

**COUNT THREE - FAILURE TO WARN**

35. Plaintiff reincorporate the previous paragraphs as if fully rewritten herein.

36. The defendant Kroger, at all times material to this action, supplied, distributed and/or sold Labetalol and Lamotrigine.

37. The plaintiff purchased what he thought was Labetalol, which was sold by defendant Kroger.

38. The pills supplied, distributed and sold by Kroger's to the plaintiff, which were actually Lamotrigine, were defective and unreasonably dangerous when sold.

39. The defective Lamotrigine reached the plaintiff without substantial change in the condition in which it was supplied, distributed and sold by the defendant Kroger.

40. The defendants had a statutory and common law duty to warn the plaintiff Randy Crews of the dangers and possible side effects of the drug Lamotrigine when dispensing it to the plaintiff.

41. The defendants breached the duty to warn of the dangers and possible side effects of the drug Lamotrigine when dispensing it to the plaintiff Randy Crews.

42. As a direct and proximate result of the product defect and failure by the defendants to warn of the dangers and side effects, plaintiff Randy Crews suffered injuries and damages described herein, and the defendants are strictly liable for said injuries and damages suffered by the plaintiff.

#### **COUNT 4 - IMPROPER LABELING**

43. The plaintiffs incorporate the previous paragraphs as a fully rewritten herein.

44. The defendants dispensed a substance to be used by the plaintiff Randy Crews.

45. The defendants had a statutory and common law duty to fix a label showing the name and side effects of the prescription drug on the bottle containing the prescription drug.

46. The defendants breached the duty to label the prescription bottles showing contents and side effects of the prescription drug containing Lamotrigine.

47. As a direct and proximate result of improper labeling of the bottles by the defendants, plaintiff Randy Crews suffered the injuries and damages described herein, and the defendants are strictly liable for injuries and damages suffered by the plaintiff.

#### **COUNT 5 - LOSS OF CONSORTIUM**

48. Plaintiffs incorporate paragraphs 1 through 47 as if fully rewritten herein.

49. At all times relevant herein, Plaintiff Carmen Crews was the wife of Plaintiff Randy Crews.

50. As a direct and proximate result of the defendants' conduct, Plaintiff Carmen Crews suffered the loss of services, affection and consortium of her husband, Plaintiff Randy Crews.

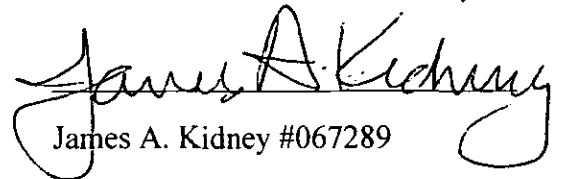
WHEREFORE plaintiff Randy Crews and Carmen Crews hereby demand judgment on their complaint as follows:

1. Direct and consequential damages in an amount in excess of \$25,000;
2. An award of attorneys fees and costs; and



3. All other relief this court deems just and proper.

Respectfully submitted,

A handwritten signature in black ink that reads "James A. Kidney". The signature is written in a cursive style with a large, looping initial "J".

James A. Kidney #067289

Attorney for Plaintiffs

40 East 10<sup>th</sup> Street

Newport, KY 41071

(859) 261-0012

(859)261-6303 FAX

**JURY DEMAND**

The Plaintiffs demand a trial by jury.

**Praecipe**

**REQUEST FOR SERVICE**

**TO THE CLERK OF COURTS:**

Please serve the foregoing documents upon the Defendants, via certified mail in accordance with the Ohio Rules of Civil Procedure, at the following addresses:

**KROGER LIMITED PARTNERSHIP I**

**dba KROGER'S PHARMACY**

**4777 Kenard Avenue**

**Cincinnati, OH 45232**

**SERVE: CSC-Lawyers Incorporating Service**

**50 W. Broad Street**

**Suite 1800**

**Columbus, OH 43215**

**and**

**THE KROGER COMPANY**

**1014 VINE STREET**

**CINCINNATI, OH 45202**

**and**

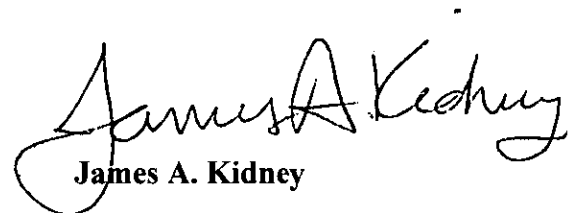
**KRGP, Inc.**

**SERVE: CSC Lawyers Incorporating Service**

**50 W. Broad Street**

**Suite 1800**

**Columbus, OH 43215**

  
**James A. Kidney**