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HAMILTON COUNTY CLERK OF COURTS**

COMMON PLEAS DIVISION

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TRACY WINKLER
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 428802**

DEREK J BORCHERDING

A 1504072

vs.

KROGER PHARMACY

**FILING TYPE: INITIAL FILING (IN COUNTY) WITH NO JURY
DEMAND**

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EPR200

**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

DEREK J. BORCHERDING	:	
410 Cleveland Ave.	:	Case No.
Cincinnati, Ohio 45217	:	
	:	
DANA BORCHERDING	:	Judge
410 Cleveland Ave.	:	
Cincinnati, Ohio 45217	:	
	:	
Plaintiffs,	:	COMPLAINT
v.	:	
	:	
KROGER PHARMACY	:	
8241 Vine St.	:	
Cincinnati, OH 45216	:	
	:	
THE KROGER COMPANY	:	
c/o CSC-Lawyers Incorporating Service	:	
50 W. Broad St. Suite 1800	:	
Columbus, OH 43215	:	
	:	
JOHN DOE 1	:	
Unknown	:	
	:	
JOHN DOE 2	:	
Unknown	:	
	:	
Defendants.	:	

Now come the Plaintiffs, by and through counsel, and state the following for their Complaint:

1. Plaintiffs Derek and Dana Borcharding are residents of Hamilton County, Ohio with a current address of 410 Cleveland Ave Cincinnati, Ohio 45217.
2. Defendant Hartwell Kroger Pharmacy is located in Hamilton County at 8241 Vine St,

Cincinnati, Ohio 45216.

3. Kroger Pharmacy is a division of Defendant The Kroger Company which is headquartered in Hamilton County at 1014 Vine Street Cincinnati, Ohio 45202.
4. Defendants John Doe 1 and John Doe 2 represent the pharmacists who dispensed Plaintiff Mr. Borcharding the incorrect medication at the Hartwell Kroger Pharmacy in January 2014 and April 2014. Despite Plaintiffs' attempts to determine the identity of these individuals, the information is unknown at this time.

COUNTS I, II & III
NEGLIGENCE, MEDICAL NEGLIGENCE, AND WILLFUL, WANTON, OR
RECKLESS CONDUCT

5. Plaintiff hereby incorporates by reference all prior allegations as if fully rewritten herein.
6. In January 2014 Mr. Borcharding was prescribed refills of 50mg tablets of Clomiphene, which is used to increase luteinizing hormone and Follicle-stimulating hormone (LH/FSH) and Testosterone.
7. The prescription was submitted electronically to Hartwell Kroger Pharmacy located at 8241 Vine St, Cincinnati, OH 45216.
8. In January 2014, Derek Borcharding went to Hartwell Kroger Pharmacy with the intention of purchasing his prescription for 50 mg tablets of Clomiphene. Instead, Mr. Borcharding was dispensed 50mg capsules of Clomipramine, a tricyclic antidepressant, by Defendant Kroger Pharmacy by pharmacist John Doe 1.
9. In April 2014, Mr. Borcharding returned to Hartwell Kroger Pharmacy to refill his Clomiphene prescription. Defendant Kroger Pharmacy and pharmacist John Doe 2 again dispensed 50mg capsules Clomipramine rather than 50 mg tablets of Clomiphene to Mr.

Borcherding.

10. On July 30, 2014, Mr. Borcherding discovered that he had been dispensed the incorrect medication for the past six months, discontinued use and reported the fact to his physician.
11. As a result of the incorrect disbursement and treatment with the incorrect, not prescribed medication, Mr. Borcherding experienced physical and mental complications.
12. The physical complications include insomnia, anhedonia, loss of libido, inability to sustain erections, negative effects on the possibility of having future children, higher blood sugar levels, increased cholesterol, and rashes on hands and arms.
13. The mental complications include depression, loss of impulse control, impulsive spending, aggravated ADHD symptoms, aggravated OCD symptoms, paranoid and aggressive behavior towards wife, and a hindered ability to be a good father and husband.
14. As a result of these physical and mental complications Mr. Borcherding was terminated from his place of employment.
15. Defendants Kroger Company and Kroger Pharmacy are responsible for all pharmacists and employees that work in Defendant Kroger Pharmacy under the law of actual or apparent agency.
16. Defendant Kroger Pharmacy acted below the standard of care by dispensing the incorrect medication to Mr. Borcherding.
17. Defendant John Doe 1 acted below the standard of care by dispensing the incorrect medication to Mr. Borcherding in January 2014.
18. Defendant John Doe 2 acted below the standard of care by dispensing the incorrect medication to Mr. Borcherding in April 2014.
19. As a result of Defendants' negligence and willful wanton or reckless conduct of the

Defendants and its agents, Mr. Borcharding incurred medical bills in an amount yet to be determined.

20. As a result of Defendants' negligence and willful wanton or reckless conduct, Mr. Borcharding endured great pain and suffering of mind and body.
21. As a result of Defendants' negligence and willful wanton or reckless conduct, Mr. Borcharding has suffered damages in the amount of lost wages.
22. As a result of the individual and collective negligence and willful, wanton or reckless conduct of Defendants and their agents, Dana Borcharding suffered damages for the loss of companionship, loss of consortium, care, assistance, attention, protection, advice, guidance, and counsel.

WHEREFORE, Plaintiffs demand judgment for compensatory damages in excess of \$25,000.00, together with costs, interest, and any other relief to which they are entitled.

/s/Joseph W. Shea

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