

FILED

Virginia Conlan Whitman (0028973)  
Attorney for Plaintiff

Dec 5 1 59 PM '97

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

JAMES DISSELL  
CLERK OF COURTS  
HAMILTON CO, OHIO

Mary Dee Donovan  
717 Birney Lane  
Cincinnati, Ohio 45239

: Case No.: A3707718  
(J. )

Plaintiff

: COMPLAINT AND JURY DEMAND

v.

C The Kroger Company  
1014 Vine Street  
Cincinnati, Ohio 45202

dba

The Kroger Pharmacy  
7545 Beechmont Avenue  
Cincinnati, Ohio 45230

ORIG. COMP. PARTIES, SUMMONS		
<input checked="" type="checkbox"/> CERT MAIL	<input type="checkbox"/> SHERIFF	<input type="checkbox"/> WAVE
<input type="checkbox"/> PROCESS SERVER	<input type="checkbox"/> NONE	
CLERKS FEES		TIC
SECURITY FOR COST	410 <sup>00</sup>	
DEPOSITED BY	28973	
FILING CODE	C-315	

Defendant

:

Plaintiff Mary Dee Donovan (hereinafter "Plaintiff"), complaining of Defendant, The Kroger Company dba The Kroger Pharmacy (hereinafter "Defendant"), alleges as follows:

PARTIES

1. Plaintiff Mary Dee Donovan is a female resident of the State of Ohio, Hamilton County.
2. Defendant The Kroger Company (hereinafter "Kroger"), is a corporation licensed to do business in the State of Ohio, with its principal place of business in Hamilton County, Ohio.
3. Defendant Kroger owns and operates The Kroger Pharmacy (hereinafter "Kroger Pharmacy") which is located at 7545 Beechmont Avenue in Hamilton County, Ohio.

## **JURISDICTION AND VENUE**

4. This is a proceeding for compensatory and punitive damages brought pursuant to the Common Law of the State of Ohio.

5. Jurisdiction over this action is conferred by Ohio Revised Code §2305.01.

6. Venue is properly laid in this Court because at all times material hereto, Plaintiff resided in, Defendant conducted business within Hamilton County, Ohio and the claims arose within Hamilton County, Ohio.

## **FACTUAL ALLEGATIONS**

7. At all times material hereto, Defendant has owned and operated the Kroger Pharmacy located at 7545 Beechmont Avenue, Cincinnati, Ohio.

8. On or about March 14, 1997, Plaintiff suffered an injury to her eye, whereby the cornea was cut, and sought treatment from Dr. Howard Bell, a medical doctor licensed to practice medicine in the State of Ohio. Dr. Bell is an ophthalmologist.

9. On or about March 15, 1997, Dr. Bell called the Kroger Pharmacy and prescribed by telephone, the prescription medicine Polysporin for treatment of Plaintiff's eye injury.

10. At the time Dr. Bell prescribed Polysporin for Plaintiff, he was aware that Plaintiff was allergic to the prescription medicine Neomycin, and knew further that Plaintiff had suffered an allergic reaction to Neomycin in the past.

11. The prescribing of medication for Plaintiff by telephone is a legally authorized method of transmitting prescription information, pursuant to Ohio Revised Code §4729.37.

12. On or about March 15, 1997, Plaintiff's husband, Scott Knepshield, went to the Kroger Pharmacy to pick up the prescription medication Polysporin for Plaintiff.

13. While at the Kroger Pharmacy, Mr. Knepshield had a conversation with the pharmacist working at the Kroger Pharmacy, whereby he advised the pharmacist that Plaintiff was allergic to Neomycin and pointed out the place on Plaintiff's insurance card where it is clearly written that Plaintiff is allergic to Neomycin.

14. The Kroger pharmacist provided an ointment medication to Mr. Knepshield, which was purported to be the medication prescribed for Plaintiff by Dr. Bell.

15. Unbeknownst to Mr. Knepshield or Plaintiff, the Kroger Pharmacy incorrectly gave Mr. Knepshield medication containing Neomycin instead of Polysporin, without so advising Plaintiff or Mr. Knepshield.

16. The Kroger Pharmacy gave Mr. Knepshield medication containing Neomycin, without authorization from Plaintiff or Plaintiff's doctor.

17. The paperwork and vial containing the medication did not identify it as Neomycin. The ointment tube was covered with a Kroger Pharmacy label, which also did not identify the ointment as Neomycin.

18. Mr. Knepshield took the medication provided to him by the Kroger Pharmacy and gave it to Plaintiff, who applied it to her eye on three (3) occasions, in accordance with the printed instructions. Plaintiff applied the ointment into her eye at approximately 10:00 p.m. on March 15, 1997, and at approximately 12:00 a.m. and 4:00 a.m. on March 16, 1997. Plaintiff woke up on March 16, 1997 with a severely swollen face.

19. Plaintiff peeled the Kroger Pharmacy label from the tube of ointment and saw for the first time that the ointment she had put in her eye contained Neomycin.

20. Plaintiff thereafter contacted Dr. Bell, who contacted the Kroger Pharmacy on Plaintiff Donovan's behalf.

21. An agent and/or employee of the Kroger Pharmacy admitted that the Kroger Pharmacy had made a mistake by providing an incorrect prescription to Plaintiff.

22. Plaintiff thereafter obtained from the Kroger Pharmacy the correct prescription for the infection in her eye, which cleared up quickly.

23. Plaintiff, however, suffered a severe allergic reaction to the Neomycin, which continued over the next thirty (30) days.

24. The allergic reaction suffered by Plaintiff caused numerous symptoms, including but not limited to swelling from her eye down to her neck on one side of her face, skin that was red, blistered and hard, pressure in her head, itchiness around the eye area, broken blood vessels in the eye and protruding and tender lymph nodes.

25. Plaintiff suffered some symptoms of her allergic reaction to the Neomycin for approximately 30 days.

26. On March 15, 1997, Plaintiff was approximately 4½ months pregnant with her second child.

27. Plaintiff's first child was 2½ years old at the time.

#### **CLAIM FOR RELIEF**

28. Plaintiff incorporates the allegations of paragraphs 1 through 27, as if fully set forth herein.

29. At all times relevant herein, The Kroger Company owned and operated a licensed pharmacy which was doing business at 7545 Beechmont Avenue, Cincinnati, Ohio.

30. Defendant employed registered pharmacists at the Kroger Pharmacy, who at all times relevant herein, were acting within the scope and course of their employment.

31. Upon information and belief, the individual who obtained the prescription over the telephone from Dr. Bell, and the individual or individuals who filled the prescription and tendered the prescription to Mr. Knepshield, were at all times relevant herein employees of Defendant, and were acting within the course and scope of their employment.

32. Defendant had a duty of care to properly fill the prescription ordered by her doctor, and to provide Plaintiff with the correct medication ordered by her doctor.

33. Defendant was aware, at the time the medication containing Neomycin was dispensed to Plaintiff, that Plaintiff was allergic to Neomycin.

34. Defendant's substitution of the drug Neomycin for the Polysporin prescribed by Plaintiff's doctor, was negligent.

35. Defendant's substitution of the drug Neomycin for the Polysporin prescribed by Plaintiff's doctor was intentional and malicious, in conscious disregard for the rights and safety of Plaintiff.

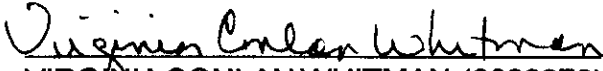
36. As a direct and proximate result of the acts of Defendant, by and through its employees, Neomycin was negligently or intentionally and maliciously dispensed to Plaintiff in place of the Polysporin which Dr. Bell had prescribed.

37. The aforementioned negligence or intentional and malicious acts proximately caused Plaintiff to suffer an allergic reaction to the drug Neomycin.

38. As a direct and proximate result of the aforementioned actions on the part of Defendant, Plaintiff has suffered physical injury and has endured emotional distress, including but not limited to apprehension concerning the possible effect of the Neomycin on her unborn child and difficulty caring for her 2½ year old child.


39. Further, Plaintiff incurred medical expenses as a direct and proximate result of Defendant's actions.

WHEREFORE, Plaintiff demands judgment against the Defendant for compensatory and punitive damages, including attorneys fees and costs of this action in excess of Twenty Five Thousand Dollars (\$25,000.00), plus all other relief to which she is deemed entitled.

  
VIRGINIA CONLAN WHITMAN (0028973)  
Attorney for Plaintiff  
1700 Fourth and Vine Tower  
One West Fourth Street  
Cincinnati, Ohio 45202  
(513) 352-0401

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

  
Virginia Conlan Whitman

H:\MDONOVAN\COMPLAIN.

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

Mary Dee Donovan : Case No.: 23707718  
717 Birney Lane : (J.)  
Cincinnati, Ohio 45239 :  
  
Plaintiff : PLAINTIFF'S FIRST SET OF  
 : INTERROGATORIES  
  
v. :  
  
The Kroger Company :  
c/o Paul W. Heldman, Esq., :  
Statutory Agent :  
1014 Vine Street :  
Cincinnati, Ohio 45202 :  
  
dba :  
  
The Kroger Pharmacy :  
7545 Beechmont Avenue :  
Cincinnati, Ohio 45230 :  
  
Defendants :

Pursuant to the provisions of Rules 26 and 33 of the Ohio Rules of Civil Procedure, Plaintiff Mary Dee Donovan propounds the following Interrogatories to Defendant The Kroger Company.

These Interrogatories are to answered under oath within thirty (30) days from the service hereof. These Interrogatories shall be deemed continuing so as to require supplemental answers if you obtain further information between the time the answers are given and the time the claim is heard.

## DEFINITIONS AND INSTRUCTIONS

1. "Defendant" means The Kroger Company and/or The Kroger Pharmacy. Any information known by one or other of the Defendants shall be provided in response to an interrogatory.

2. "You" or "your" shall mean Defendant, including The Kroger Pharmacy.

3. With respect to all questions, all information is to be divulged which is within the knowledge, possession or control of the party to whom these requests are addressed, including his, her or its officers, agents, employees, attorneys, investigators, affiliates, subsidiaries, and divisions.

4. Where an Interrogatory calls for an answer in more than one part, each part should be separated in the answer so that the answer is clearly understandable.

5. All answers must be made separately and fully stated in writing under oath.

6. Pursuant to Rule 26(E) of the Ohio Rules of Civil Procedure, you are under a continuing duty to seasonably supplement all discovery responses with respect to any question directly addressed to the entity and location of persons having knowledge of discoverable matters; further, a party who knows or later learns that his response is incorrect is under a duty seasonably to correct the response.

7. For the purposes of these discovery requests, the following terms shall have meanings as set forth below:

(a) "Document", as used herein, includes, but is not limited to, the original and all non-identical copies (regardless of the origin) of memoranda, reports, books, manuals, instructions, financial reports, records, notes, letters, notices, confirmations,



telegrams, receipts, calendars, inter-office and intra-office communications, contracts, cables, notations or memoranda of any sort of conversation, telephone calls, meetings or other communications, bulletins, written communications, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes and amendments of any of the foregoing), graphic or aural records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape recordings), electronic, mechanical, and electric or electronic records of presentations of any kind (including, without limitation, tapes, cassettes, disks and records), and other written, printed, typed or other graphic or recorded matter of any kind and nature, however, produced or reproduced, and whether preserved in writing, phono record, film, or videotape.

(b) "Identify" shall mean:

(1) With respect to a document, to state its date, its author, its type (e.g., letter, memorandum, chart, photographs, sound reproduction, etc.), its subject matter, its present location, and the name of its present custodian. The document may be produced in lieu of supplying the foregoing information.

(2) With respect to a natural person, to state his or her full name, last known employer or business affiliation, title, and last known home address.

(3) With respect to a person other than a natural person, state the title of that person, any trade name, or corporate name or partnership name used by that person, and the principal business address of that person.

(c) "Produce" or "Identify and Produce" shall mean that the party to whom these discovery requests are addressed shall produce each document involved. Non-identical copies of documents shall be considered separate documents. For each document which you contend is privileged or otherwise excludable from discovery, there shall be included a statement as to the claimed basis for such claim of privilege or other grounds for exclusion.

### **INTERROGATORIES**

1. Please set forth the name and address of all persons responding to these Interrogatories.

**ANSWER:**

2. Please set forth the legal relationship between The Kroger Company and The Kroger Pharmacy located at 7545 Beechmont Avenue, Cincinnati, Ohio.

**ANSWER:**

3. Please state the name, address and job title of the individual who took the prescription from Dr. Bell over the telephone on or about March 15, 1997, which is the subject of this lawsuit.

**ANSWER:**

4. Set forth the name, address and job title of the individual who filled the prescription for Mary Dee Donovan, that was received from Dr. Bell on or about March 15, 1997.

ANSWER:

5. Set forth the name, address and job title of the individual who spoke with Scott Knepshield when he arrived at the Kroger Pharmacy to pick up the prescription medication for Mary Dee Donovan, on or about March 15, 1997.

ANSWER:

6. Set forth the name, address and job title of the individual who spoke on the telephone with Dr. Bell on or about March 16, 1997 concerning the prescription that had been provided to Mary Dee Donovan on March 15, 1997.

ANSWER:

7. State the reason why Defendant did not charge Plaintiff Donovan for the prescription medicine it provided to her on March 16, 1997.

ANSWER:

8. State the location of all records and/or documentation concerning the prescription that was provided to Mary Dee Donovan on or about March 15, 1997.

ANSWER:

9. With regard to any individuals identified in Interrogatories 3 through 6, state whether each individual is a registered pharmacist, and if so, each individual's registration number.

ANSWER:

10. State why the prescription medicine Neomycin was given to Plaintiff Donovan on or about March 15, 1997.

ANSWER:

11. Please set forth the name and address of any person with knowledge of the matters set forth in the Complaint, or with knowledge relevant to any defenses to be raised to the Complaint.

ANSWER:

12. Please set forth the name and address of any person you intend to call as a witness in this matter, and a summary of that person's anticipated testimony. This request includes both lay and expert witnesses.

ANSWER:

13. Set forth any policy or practice followed by Kroger Pharmacies concerning the substitution of one prescription medication for another.

ANSWER:

Respectfully submitted,

*Virginia Conlan Whitman*  
VIRGINIA CONLAN WHITMAN (0028973)  
Attorney for Plaintiff  
1700 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, Ohio 45202  
(513) 352-0401

*Attached to and  
served with complaint  
Virginia C. Whitman  
12/5/97*

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

MARY DEE DONOVAN  
PLAINTIFF

-- vs --

Use below number on  
all future pleadings

KROGER COMPANY  
DEFENDANT

No. A 9707718  
SUMMONS

KROGER COMPANY DBA KROGER           D-1  
PHARMACY  
1014 VINE ST  
CINCINNATI OH 45202

You are notified  
that you have been named Defendant(s) in a complaint filed by

DONOVAN MARY DEE  
717 BIRNEY LANE  
CINCINNATI OH 45239

Plaintiff(s)  
in the Hamilton County, Court of Common Pleas, Hamilton County Court House,  
Cincinnati, Ohio 45202. You are hereby summoned and required to serve upon  
the plaintiff's attorney, or upon the plaintiff, if he has no attorney of  
record, a copy of an answer to the complaint within twenty-eight (28) days  
after service of this summons on you, exclusive of the day of service. Your  
answer must be filed with the Court within three (3) days after the service of  
a copy of the answer on the plaintiff's attorney.

If you fail to appear and defend, judgment by default will be rendered  
against you for the relief demanded in the attached complaint.

JAMES CISSELL  
Clerk, Court of Common Pleas  
Hamilton County, Ohio

Name and Address of attorney  
VIRGINIA C WHITMAN  
1 W 4TH ST  
SUITE 1700  
CINCINNATI OH 45202

By CARL E PIECZONKA  
Deputy

Date: December 8, 1997