

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

IN RE DIET DRUGS LITIGATION)

Plaintiff,)

vs.)

AMERICAN HOME PRODUCTS)
CORPORATION; WYETH-AYERST, a)
DIVISION OF AMERICAN HOME)
PRODUCTS CORPORATION; WYETH-)
AYERST LABORATORIES COMPANY;)
INTERNEURON PHARMACEUTICALS,)
INC.; GATE PHARMACEUTICALS;)
TEVA PHARMACEUTICALS,)
USA, INC.; SMITHKLINE BEECHAM)
CORPORATION; ABANA)
PHARMACEUTICALS, INC.;)
RICHWOOD PHARMACEUTICAL)
COMPANY, INC.; ION)
LABORATORIES, INC.; MEDEVA)
PHARMACEUTICALS, INC.;)
A.H. ROBINS COMPANY, INC.;)
CAMALL COMPANY; GOLDLINE)
LABORATORIES; EON)
LABORATORIES MANUFACTURING)
INC.; LABORATOIRES SERVIER SA,)
FISONS CORPORATION; RHONE-)
POULENC RORER INC. and)
DOES 1-100, inclusive,)

Defendants.)

_____)

Judicial Council Coordination Proceeding
No. 4032

**COMPLAINT FOR DAMAGES
(Diet Drug Cases)**

1. Strict Liability – Failure to Warn
2. Negligence
3. Negligence Per Se
4. Breach of Implied Warranty
5. Breach of Express Warranty
6. Deceit by Concealment
7. Negligent Misrepresentation
8. Violation of Business and Professions Code §17200
9. Violation of Business and Professions Code §17500
10. Loss of Consortium
11. Medical Negligence

DEMAND FOR JURY TRIAL

1 MASTER COMPLAINT - CALIFORNIA FEN-PHEN LITIGATION

2 INTRODUCTION

3 This case involves the diet drugs fenfluramine, phentermine and dexfenfluramine
4 commonly known as fen-phen, which were manufactured, sold, distributed and promoted by
5 defendants to capitalize on the public's obsession with being thin. Defendants misrepresented that
6 fen-phen was a safe and effective way to lose weight, when in fact the drugs cause serious medical
7 problems such as primary pulmonary hypertension and valve disease. The Food and Drug
8 Administration has now taken fenfluramine and dexfenfluramine off the market, but not soon
9 enough to prevent Plaintiff from being injured.

10
11 GENERAL ALLEGATIONS

12 1. This is an action for personal injuries and damages brought on behalf of the Plaintiff
13 who has been prescribed and supplied with, received, and who has taken and ingested and
14 consumed the diet drugs, Fenfluramine, Phentermine and Dexfenfluramine, individually or in
15 combination, as researched, designed, formulated, compounded, tested, manufactured, produced,
16 processed, assembled, inspected, distributed, marketed, labeled, promoted, packaged, advertised
17 for sale, prescribed or otherwise placed in the stream of interstate commerce by Defendant
18 Pharmaceutical Companies, Defendant Physicians, and/or Defendant Diet Centers and Defendants
19 Does 1 through 100. This action seeks, among other relief, general and special damages and
20 equitable relief in order to enable the Plaintiff to treat and monitor the dangerous, severe and life-
21 threatening side effects caused by these drugs, either separately or in combination, including but
22 not limited to pulmonary hypertension, cardiac valvular disease and disorders, neurotoxicity,
23 neurocognitive dysfunction and developmental neurotoxicity.

24 2. The true names or capacities, whether individual, corporate, or otherwise, of
25 Defendants DOES ONE through ONE HUNDRED, Inclusive, are unknown to Plaintiff who
26 therefore sues said Defendants by such fictitious names. Plaintiff believes and alleges that each of
27 the Defendants designated herein by fictitious names is in some manner legally responsible for the
28 events and happenings herein referred to and caused damages proximately and foreseeably to

1 Plaintiff as alleged herein.

2 3. To the extent that any Defendant not identified in Plaintiff's previously filed
3 Complaint are now identified and included in this Master Complaint, those Defendants are now
4 substituted for "Doe" Defendants named in the previously filed Complaint.

5 4. At all times herein mentioned, "Defendants" include all "Pharmaceutical Company"
6 Defendants, including but not limited to Wyeth-Ayerst Laboratories Company, American Home
7 Products Corporation, Interneuron Pharmaceuticals, Inc., Gate Pharmaceuticals, a Division of
8 Teva Pharmaceuticals, USA, SmithKline Beecham Corporation, Abana Pharmaceutical,
9 Richwood Pharmaceuticals Company, Inc., Ion Laboratories, Inc., Medeva Pharmaceuticals, Inc.,
10 A.H. Robins Company, Inc., Camall Company, Goldline Laboratories, Eon Laboratories
11 Manufacturing, Inc., all "Diet Center" Defendants and all "Physician" Defendants named herein,
12 and Does 1 through 100, inclusive, unless otherwise specified.

13 5. At all times herein mentioned, each of the Defendants was the agent, servant, partner,
14 aider and abettor, co-conspirator and joint venturer of each of the remaining Defendants herein
15 and were at all times operating and acting within the purpose and scope of said agency, service,
16 employment, partnership, conspiracy and joint venture and rendered substantial assistance and
17 encouragement to the other Defendants, knowing that their conduct constituted a breach of duty.

18 6. There exists, and at all times herein mentioned, there existed, a unity of interest in
19 ownership between certain Defendants and other certain Defendants such that any individuality
20 and separateness between the certain Defendants has ceased and these Defendants are the alter-
21 ego of the other certain Defendants and exerted control over those Defendants. Adherence to the
22 fiction of the separate existence of these certain Defendants as an entity distinct from other certain
23 Defendants will permit an abuse of the corporate privilege and would sanction fraud and would
24 promote injustice.

25 7. The injuries of Plaintiff were caused by the wrongful acts, omissions, and fraudulent
26 misrepresentations of Defendants, all of which occurred within the State of California.

27 8. At all times herein mentioned, one or more of the corporate Defendants was, and
28 now is, a corporation with its principal place of business in the State of California.

1 The Defendants

2 15. The Pharmaceutical Company Defendants manufactured, marketed, sold and
3 distributed phentermine, fenfluramine and/or dexfenfluramine, which were ingested by Plaintiff.

4 16. The Physician Defendants are physicians who prescribed and/or provided
5 fenfluramine, phentermine and/or dexfenfluramine to plaintiff.

6 17. The Diet Center Defendants are business entities which prescribed and/or provided
7 fenfluramine, phentermine and/or dexfenfluramine to plaintiff.

8 18. Defendants American Home Products Corporation, A.H. Robins, Wyeth-Ayerst, a
9 division of American Home Products Corporation and Wyeth-Ayerst Laboratories Company are
10 in the business of researching, designing, formulating, compounding, testing, manufacturing,
11 producing, processing, assembling, inspecting, distributing, marketing, labeling, promoting,
12 packaging and/or advertising for sale fenfluramine (Pondimin).

13 19. Defendants Interneuron Pharmaceuticals, Inc., American Home Products
14 Corporation, A.H. Robins and Wyeth-Ayerst Laboratories Company are in the business of
15 researching, designing, formulating, compounding, testing, testing, manufacturing, producing,
16 processing, assembling, inspecting, distributing, marketing, labeling, promoting, packaging and/or
17 advertising for sale dexfenfluramine (Redux).

18 20. Defendants Gate Pharmaceuticals, a division of Teva Pharmaceuticals, USA, Inc.,
19 SmithKline Beecham Corporation, Abana Pharmaceuticals, Inc., Richwood Pharmaceutical
20 Company, Inc., Ion Laboratories, Inc., Medeva Pharmaceuticals, Inc., Camall Corporation,
21 Goldline Laboratories, Eon Laboratories Manufacturing, Inc. and other manufacturers are in the
22 business of researching, designing, formulating, compounding, testing, manufacturing, producing,
23 processing, assembling, inspecting, distributing, marketing, labeling, promoting, packaging and/or
24 advertising for sale phentermine.

25 21. Defendant American Home Products Corporation was and is an American
26 pharmaceutical company, incorporated under the laws of the State of Delaware, whose principal
27 place of business is 5 Giralda Farms, Madison, New Jersey. American Home Products Corp. owns
28 Defendant Wyeth-Ayerst Laboratories which at all times relevant, manufactures Pondimin

1 (fenfluramine) and marketed, sold and distributed Redux (dexfenfluramine) for Defendant
2 Interneuron Pharmaceuticals.

3 22. Defendant Interneuron Pharmaceuticals, Inc., is an American pharmaceutical
4 company, incorporated under the laws of the State of Delaware, whose principal place of business
5 is One LedgeMont Center, 99 Hayden Ave., Lexington, Massachusetts. On information and
6 belief, Plaintiff alleges that said entity does business in California and at all times relevant,
7 developed, manufactured, marketed, distributed, and sold in interstate commerce and in the State
8 of California the pharmaceutical known as dexfenfluramine.

9 23. Defendant Wyeth-Ayerst Laboratories Company, a division of American Home
10 Products Corporation, has its principal place of business in Philadelphia, Pennsylvania. Wyeth-
11 Ayerst Laboratories Company is incorporated under the laws of the State of Delaware. At all
12 times relevant hereto, Wyeth-Ayerst Laboratories Company was in the business of promoting,
13 marketing, distributing, and selling the pharmaceutical dexfenfluramine. On information and
14 belief, said entity does business in the State of California and at all times relevant, developed,
15 manufactured, marketed, distributed, and sold in interstate commerce and in the State of
16 California the pharmaceuticals known as fenfluramine.

17 24. Defendant Gate Pharmaceuticals is a division of Teva Pharmaceuticals, USA, Inc.,
18 and has its principal place of business at 650 Cathill Road, Sellersville, Pennsylvania. Teva
19 Pharmaceutical, USA, Inc., is incorporated under the laws of the State of Delaware. At all times
20 relevant, Gate Pharmaceuticals, was engaged in the business of manufacturing the pharmaceutical
21 known as phentermine. On information and belief, Plaintiff alleges that said entity does business
22 in California and at all times relevant, developed, manufactured, and sold in interstate commerce
23 and in the State of California the aforementioned drug.

24 25. Defendant SmithKline Beecham Corporation has its principal place of business at
25 One Franklin Plaza, Philadelphia, Pennsylvania. SmithKline Beecham Corporation is incorporated
26 in the State of Pennsylvania. At all times relevant, SmithKline Beecham Corporation was
27 engaged in the business of manufacturing the pharmaceutical known as phentermine. On
28 information and belief, Plaintiff alleges that said entity does business in California and at all times

1 relevant, developed, manufactured, and sold in interstate commerce and in the State of California
2 the aforementioned drug.

3 26. Defendant Abana Pharmaceuticals, Inc., has its principal place of business at 1
4 Chase Corporate Drive, Suite 260, Birmingham, Alabama. Abana Pharmaceuticals, Inc., is
5 incorporated under the laws of the State of Delaware. At all times relevant, Abana
6 Pharmaceuticals, Inc., was engaged in the business of manufacturing the pharmaceutical known as
7 phentermine. On information and belief, said entity does business in California and at all times
8 relevant, developed, manufactured, and sold in interstate commerce and in the State of California
9 the aforementioned drug.

10 27. Defendant Richwood Pharmaceutical Company, Inc., has its principal place of
11 business at 7900 Tanners Gate Drive, Suite 200, Florence, Kentucky. Richwood Pharmaceutical
12 Company, Inc., is incorporated under the laws of the State of Kentucky. At all times relevant,
13 Richwood Pharmaceutical Company, Inc., was engaged in the business of manufacturing the
14 pharmaceutical known as phentermine. On information and belief, Plaintiff alleges that said entity
15 does business in the State of California and at all times relevant, developed, manufactured, and
16 sold in interstate commerce and in the State of California the aforementioned drug.

17 28. Defendant Ion Laboratories, Inc., has its principal place of business at 7431 Pebble
18 drive, Fort Worth, Texas. Ion Laboratories, Inc., is incorporated under the laws of the State of
19 Texas. At all times relevant, Ion Laboratories, Inc., was engaged in the business of manufacturing
20 and did manufacture the pharmaceutical known as phentermine. On information and belief,
21 Plaintiff alleges that said entity does business in California and at all times relevant, developed,
22 manufactured, and sold in interstate commerce and in the State of California the aforementioned
23 drug.

24 29. Defendant Medeva Pharmaceuticals, Inc., has its principal place of business at
25 14801 Sovereign Road, Fort Worth, Texas. Medeva Pharmaceuticals, Inc., is incorporated under
26 the laws of the State of Texas. At all times relevant, Medeva Pharmaceuticals, Inc., was engaged
27 in the business of manufacturing, and did manufacture the pharmaceutical known as phentermine.
28 On information and belief, Plaintiff alleges that said entity does business in the State of California

1 and at all times relevant, developed, manufactured, and sold in interstate commerce and in the
2 State of California the aforementioned drug.

3 30. Defendant A.H. Robins Company, Inc., has its principal place of business at 1407
4 Cummings Drive, Richmond, Virginia. A.H. Robins Company, Inc., is incorporated under the
5 laws of the State of Delaware. At all times relevant, A.H. Robins Company, Inc., was engaged in
6 the business of manufacturing and did manufacture the pharmaceutical known as fenfluramine.
7 On information and belief, Plaintiff alleges that said entity does business in the State of California
8 and at all times relevant, developed, manufactured, and sold in interstate commerce and in the
9 State of California the aforementioned drug.

10 31. Defendant Camall Company, has its principal place of business at 70945 Van Dyke,
11 Romeo, Michigan 48065. Camall Company, is incorporated under the laws of the State of
12 Michigan. At all times relevant, Camall Company was engaged in the business of manufacturing
13 and did manufacture the pharmaceutical known as phentermine. On information and belief,
14 Plaintiff alleges that said entity does business in the State of California and at all times relevant,
15 developed, manufactured, and sold in interstate commerce and in the State of California the
16 aforementioned drug.

17 32. Defendant Goldline Laboratories, has its principal place of business at 16775
18 Johnson Drive, Industry City, California 91744. Goldline Laboratories, is incorporated under the
19 laws of the State of California. At all times relevant, Goldline Laboratories was engaged in the
20 business of manufacturing and did manufacture the pharmaceutical known as phentermine. On
21 information and belief, Plaintiff alleges that said entity does business in the State of California and
22 at all times relevant, developed, manufactured, and sold in interstate commerce and in the State of
23 California the aforementioned drug.

24 33. Defendant Eon Laboratories Manufacturing, Inc., has its principal place of business
25 at 1013 Centre Road, Wilmington, Delaware 19805. Eon Laboratories Manufacturing, Inc. is
26 incorporated under the laws of the State of Delaware. At all times relevant, Eon Laboratories
27 Manufacturing, Inc., was engaged in the business of manufacturing and did manufacture the
28 pharmaceutical known as phentermine. On information and belief, Plaintiff alleges that said entity

1 does business in the State of California and at all times relevant, developed, manufactured, and
2 sold in interstate commerce and in the State of California the aforementioned drug.

3 34. Defendant Laboratoires Servier SA is a foreign corporation or other business entity,
4 having its principal place of business in the country of France. At all times relevant, Laboratoires
5 Servier SA was engaged in the business of developing, testing and licensing for sale the diet drugs
6 fenfluramine and dexfenfluramine. Defendant licensed dexfenfluramine and fenfluramine to
7 American Home Products Corporation, and licensed dexfenfluramine to Interneuron
8 Pharmaceuticals, Inc., for manufacture, distribution, sale and consumption in the United States
9 and in the State of California, with the expectation that said diet drug products would be sold and
10 purchased in the State of California. Defendant Laboratoires Servier SA licensed said diet drugs
11 to said Defendants with the intention that the drugs would be sold and purchased in the State of
12 California, in order to profit from the sale of said diet drugs in the State of California. Said
13 Defendant purposely attempted to serve a market for diet drugs in the State of California, and
14 Defendants' actions thereby caused injury in the State of California.

15 35. Defendant Fisons Corporation has its principal place of business at 755 Jefferson
16 Road, Rochester, New York 14623. Fisons Corporation is incorporated under the laws of the
17 State of Delaware. At all times relevant, Fisons Corporation was engaged in the business of
18 manufacturing of phentermine, which was sold as ionamin. On information and belief, Plaintiff
19 alleges that said entity does business in the State of California and at all times relevant, developed,
20 manufactured, and sold in interstate commerce and in the State of California the aforementioned
21 drug.

22 36. Defendant Rhone-Poulenc Rorer, Inc., has its principal place of business at 500
23 Arcola Road, Collegeville, Pennsylvania 19426. Rhone-Poulenc Rorer, Inc. is incorporated under
24 the laws of the State of Delaware. At all times relevant, Rhone-Poulenc Rorer, Inc. was engaged
25 in the business of manufacturing phentermine, which was sold as ionamin. On information and
26 belief, Plaintiff alleges that said entity does business in the State of California and at all times
27 relevant, developed, manufactured, and sold in interstate commerce and in the State of California
28 the aforementioned drug.

1 widely advertised by the Defendants as effective weight control drugs; these drugs are chemically
2 related and affect, among other things, brain serotonin levels. Phentermine, fenfluramine and/or
3 dexfenfluramine are appetite suppressants that are chemically related and affect the level of
4 serotonin in the brain. Serotonin is a chemical messenger that makes patients feel full after eating
5 less food.

6 44. Fenfluramine and Phentermine when prescribed or ingested together as anorectic
7 including, weight-loss drugs are properly known, advertised, promoted and referred to as
8 “fen/phen.” The drugs are commonly prescribed in combination with each other and with
9 dexfenfluramine. The fen/phen combination is also commonly prescribed in combination with
10 dexfenfluramine.

11 45. Beginning in approximately 1995 prescription of the so-called “Fen/Phen” diet
12 became popular and, in 1996, the total number of prescriptions for phentermine and fenfluramine
13 in the United States alone exceeded 18 million. In 1992, 1993 and 1994 there were 50,000
14 prescriptions for fenfluramine written. In 1995 there were 1,000,000 fenfluramine prescriptions
15 and 2,000,000 phentermine prescriptions written. Dexfenfluramine was approved for use in the
16 United States in 1996 and there were approximately 2,000,000 prescriptions written for it even
17 though it was only on the market 6 months.

18 46. On information and belief, Defendants, and each of them, have actively encouraged
19 the combination use of these drugs which are the subject of this suit because Defendants knew
20 that the combination use, though not approved by the FDA, would increase sales of each
21 individual drug.

22 47. Defendants made filing(s) with the United States Food And Drug Administration
23 (“FDA”) in conjunction with the approval process for fenfluramine, phentermine and
24 dexfenfluramine, in the United States.

25 48. These drugs have been linked to several severe and life threatening medical
26 disorders including, but not limited to, pulmonary hypertension, cardiac valvular disease and
27 disorders, neurotoxicity, central and peripheral nervous system toxicity, neurocognitive
28 dysfunction and developmental neurotoxicity.

1 49. Evidence linking the subject drug formulations to neurotoxicity and pulmonary
2 hypertension has also been noted and reported in the medical literature since the mid-1970's.
3 Researchers based at the National Institute of Mental Health reanalyzed animal data suggesting
4 that fenfluramine and dexfenfluramine appeared to damage parts of brain cells at doses roughly
5 comparable to those prescribed to and consumed and ingested by Plaintiff. These known material
6 risks were not disclosed to or shared with Plaintiff by any Defendant.

7 50. Defendants' strategy beginning in the early 1990's has been to aggressively market
8 and sell these products by falsely misleading potential users about the products and by failing to
9 protect users from serious dangers which Defendants knew or should have known to result from
10 use of these products.

11 51. Defendants widely and successfully marketed phentermine, fenfluramine and
12 dexfenfluramine in the United States, by undertaking an advertising blitz extolling the virtues of
13 phentermine, fenfluramine and dexfenfluramine in order to induce widespread use of the products.
14 The marketing campaign consisted of advertisements, promotional literature to be placed in the
15 offices of doctors and other healthcare providers, and other promotional materials provided to
16 potential phentermine, fenfluramine and dexfenfluramine users.

17 52. The advertising program, as a whole, sought to create the image, impression and
18 belief by consumers and physicians that the use of phentermine, fenfluramine and dexfenfluramine
19 , both individually and in combination, was safe for human use, had fewer side effects and adverse
20 reactions than other methods of weight loss, and constituted a convenient, safe form of weight
21 loss and would not interfere with daily life, even though the Defendants knew these to be false,
22 and even though the Defendants had no reasonable grounds to believe them to be true.

23 53. Defendants and each of them purposefully downplayed and understated the health
24 hazards and risks associated with the phentermine, fenfluramine and dexfenfluramine .
25 Defendants, through promotional literature, deceived potential users of phentermine, fenfluramine
26 and dexfenfluramine by relaying positive information, including testimonials from satisfied users,
27 and manipulating statistics to suggest widespread acceptability, while downplaying the known
28 adverse and serious health effects. Defendants concealed material relevant information from

1 potential phentermine, fenfluramine and dexfenfluramine users and minimized user and prescriber
2 concern regarding the safety of the phentermine, fenfluramine and dexfenfluramine.

3 54. In particular, in the materials produced by Defendants, Defendants falsely
4 misrepresented the severity, frequency and nature of adverse health effects caused by
5 phentermine, fenfluramine and dexfenfluramine, and falsely represented that adequate testing had
6 been conducted concerning phentermine, fenfluramine and dexfenfluramine individually, and in
7 combination.

8 55. As a result of the Defendants' advertising and marketing efforts, and representations
9 concerning the subject products, the drugs are so pervasively prescribed throughout the United
10 States that in excess of 18 million prescriptions for phentermine, fenfluramine and dexfenfluramine
11 were written in the United States in the past year.

12 56. Between 1994 and 1996 various Belgian doctors reported at least 30 cases of heart
13 valve problems in diet pill users, and their reports were made to Belgian drug regulators as well as
14 to Defendant Laboratoires Servier SA. Several Belgian doctors spoke with Servier officials and
15 representatives by phone in 1994 to advise them of otherwise healthy patients who had taken
16 fenfluramine, and who had various heart valve problems, including serious heart murmurs and
17 valve leaks.

18 57. An August 26, 1996 article in The New England Journal of Medicine of the results
19 of the International Primary Pulmonary Hypertension study ("IPPH Study") entitled "Appetite
20 Suppressants and the Risk of Primary Pulmonary Hypertension" concluded that fenfluramine-
21 based anorexigens, such as fen/phen, increased the risk of PPH by a multiple of more than 30
22 times. The Defendant Pharmaceutical Companies were aware of the results of the IPPH Study by
23 at least November 1995, well in advance of its official publication in The New England Journal of
24 Medicine in August 1996. Nevertheless, the Defendants failed to apprise the public or physicians
25 that the risk of contracting PPH was many, many multiples of that previously reported by the
26 Defendant companies in their literature. Defendants have also failed to warn the public and
27 physicians about the special risks of contracting PPH and other problems associated with the
28 combination use of phentermine, fenfluramine and dexfenfluramine. The 1989 through 1997

1 editions of the *Physician Desk Reference* (PDR), which publishes warnings issued by drug
2 manufacturers, mentioned only “four cases” of primary pulmonary hypertension (PPH), a disease
3 with a 55% mortality rate, while in fact, the manufacturers were informed during the same period
4 of over 100 cases of PPH during the same time period.

5 58. The International Primary Pulmonary Hypertension Study (IPPHS), published in
6 1996, revealed that these drugs are a risk factor for the development of PPH, especially if they are
7 used for more than three months, placing persons exposed to a risk factor of between 23 and 46
8 times that expected. The 1997 PDR continued to represent that there were “four cases”, despite
9 internal manufacturer memos in 1995 and 1996 discussing the need to update the warning. In
10 addition to the failure to warn of known cases of PPH far in excess of the number mentioned in
11 the PDRs, between 1989 and 1997, the manufacturers’ agents were also warned of cases of valve
12 damage associated with these drugs as early as 1990. In many instances, although required to do
13 so by law, these Adverse Drug Effects or ADEs as they are known, were not reported to the
14 FDA.

15 59. In 1996, the Mayo Clinic noted a case of valvular heart disease following Fen-Phen
16 therapy. In July of 1997, researchers at the Mayo Clinic reported 24 cases of a rare valvular
17 disease in women who took phentermine and fenfluramine in therapy combination. The Mayo
18 Clinic found a rare thickening of the heart valves. While normally the four valves of the heart
19 close tightly to keep the blood flowing in one direction, the Mayo Clinic found that Fen-Phen
20 appeared to injure the issues of the heart valves so that the valves did not close completely and the
21 blood leaked backward. The 24 patients had been using Fen-Phen for an average of one year and
22 none of them had pre-existing heart disease when they began taking the drugs. Eight of the
23 women had new documented pulmonary hypertension and five patients needed heart surgery to
24 repair or replace damaged valves. Between 1991 and 1996, the Defendants received notice of
25 reports of heart valve disease and complaints of heart valve regurgitation associated with use of
26 the subject diet drugs, 31 of which met the FDA definition of valvulopathy. However, the
27 Defendants intentionally withheld most of this information from the FDA, which was only aware
28 of 12 such problems between 1991 and 1996.

1 60. The Defendant Pharmaceutical Companies, and each of them, became aware and
2 had knowledge by as early as March 1996, of a striking and significant relationship between these
3 drugs and defects of the valves of the heart. Researchers at the prestigious Mayo Clinic located
4 in Rochester, Minnesota shared the findings of their study with the defendants, and each of them,
5 at that time. Nevertheless, the defendants, and each of them, failed to inform the public,
6 physicians, and patients that the risk of contracting primary pulmonary hypertension was many,
7 many multiples of that previously reported by the Defendant companies, and each of them, in their
8 written literature. Defendants, and each of them, also failed to warn the public, physicians, and
9 patients prescribed and ingesting the drugs about the special and increased risks of contracting
10 valvular heart disease through the combination use and increased risks of contracting valvular
11 heart disease through the combination use of fenfluramine, dexfenfluramine and/or phentermine.
12 Defendants, and each of them, also failed to inform Plaintiff and physicians of the
13 reports in the literature of neurotoxicity and developmental neurotoxicity associated with use of
14 the subject drugs, despite 80 published articles documenting neurotoxicity associated with
15 dexfenfluramine alone.

16 61. In March 1997, four months before the report was made public, Defendant Wyeth-
17 Ayerst, a subsidiary of American Home, also the parent of Defendant Robins, obtained a detailed
18 report from the Mayo doctors in a four hour meeting. At that time, there were five known cases
19 of the heart valve problems. Later in March of 1997, Wyeth-Ayerst/American Home received
20 information from doctors at MeritCare Medical Center in Fargo, North Dakota, about
21 approximately 12 other cases of patients who developed heart valve problems after taking the diet
22 drugs.

23 62. By August of 1997, there were at least 58 additional reports of valvular disease in
24 patients from at least 18 different states which were associated with the tandem use of
25 phentermine and fenfluramine - including two male patients. The severity of the disease was
26 graded as moderate or severe in three-fourths of the cases. The typical patient began showing
27 heart symptoms after ten months of drug use. One 29-year-old woman died of a heart attack
28 eight months after she first took the medicines. Six patients needed valve replacement surgery

1 and more than ten needed surgery to repair the valves.

2 63. In August of 1997, the Journal of the American Medical Association associated the
3 use of Fen-Phen with brain dysfunction in animals. Researchers reviewing 128 medical journal
4 articles concluded that Fen-Phen disrupted the brain functions in animals, and may cause
5 depression, memory loss, anxiety and sleep disorders in humans as well as contributing to
6 pulmonary hypertension in humans.

7 64. In August of 1997, the FDA asked Fen-Phen drug manufacturers to put “black box”
8 warnings on the labels of their medications and package inserts stressing these dangers.
9 Defendants had not previously warned about valvular disease and had minimized or omitted the
10 other risks and dangers. Defendants resisted revising their warnings.

11 65. In approximately September of 1997, the FDA received information from five
12 physicians who had performed heart studies on patients who took Fen-Phen or dexFen-Phen but
13 who did not have symptoms of heart disease. Of the 291 asymptomatic patients screened, about
14 30% had abnormal valve findings, primary aortic regurgitation.

15 66. In September of 1997, manufacturers withdrew fenfluramine and dexfenfluramine
16 from the market. The withdrawal was based on initial echocardiographic findings in five surveys
17 indicating that approximately 30% of patients in these surveys who took the drugs had valvular
18 abnormalities, even though most had no symptoms. This percentage is much higher than would
19 be expected in the general population. The FDA warned against taking any of the remaining
20 supplies. Phentermine remains on the market, but has been found to be less effective when taken
21 alone.

22 67. On or about November 13, 1997, the U.S. Department of Health and Human
23 Services issued preliminary recommendations for the medical management of people who took the
24 diet drugs fenfluramine or dexfenfluramine:

- 25 ● Anyone who has taken fenfluramine or dexfenfluramine for any period of time,
26 either alone or with another drug or drugs, should see their doctor for a medical
27 history and physical examination to determine whether there are signs or symptoms
28 of heart or lung disease.

- 1 ● Anyone who has taken these drugs for any period of time, either alone or with
2 another drug or drugs, who has signs or symptoms of heart or lung disease, such
3 as a new heart murmur or shortness of breath, should have an echocardiogram
4 performed.
- 5 ● An echocardiogram should be strongly considered for any patient who has taken
6 these drugs, either alone or with another drug or drugs - regardless of whether
7 they have signs and symptoms of the heart or lung diseases - BEFORE having any
8 invasive procedure for which the American Heart Association recommends
9 antibiotic prophylactic treatment to prevent the development of bacterial
10 endocarditis. This will provide an accurate determination of whether or not the
11 person needs the antibiotic treatment.

12 68. Although the FDA has approved phentermine, fenfluramine and dexfenfluramine
13 separately, the FDA has not approved these drugs for combination use. The manufacturers and
14 distributors of these drugs knew of and encouraged the prevalence of off-label combination use of
15 their drugs, and failed adequately and appropriately to warn physicians and consumers that the
16 combination drug regimen was not FDA approved, was especially hazardous, was not
17 recommended, and had not been systemically tested by appropriate clinical trials.

18 69. The product warnings about PPH in effect during the period when Plaintiff took the
19 medications involved in this litigation were both substantively and graphically wholly inadequate
20 to alert prescribing physicians and consumer patients about valve disease and the actual
21 pulmonary, cardiac and neurological risks associated with these drugs which was then known to
22 the product and physician Defendants, and each of them.

23 70. The Pharmaceutical Company Defendants had knowledge, prior to fenfluramine and
24 dexfenfluramine being taken off the market, that the drugs, either individually, or in combination
25 increased the risks of PPH in multiples much greater than disclosed, and also caused valve
26 disease. The manufacturers and distributors of phentermine, fenfluramine and dexfenfluramine,
27 and each of them, did not adequately or appropriately disclose related drug information to
28 physicians in the United States. As a result, physicians have been over-prescribing phentermine,

1 fenfluramine and dexfenfluramine to patients who have been grossly under informed regarding the
2 risk of primary pulmonary hypertension, cardiac valve disease and neurotoxicity associated with
3 the Defendants' diet pills.

4 71. Prior to the date on which the aforementioned products were ingested by Plaintiff,
5 Defendants and each of them knew that these products were unsafe and had the potential and
6 propensity to produce serious and/or life-threatening injuries and other damages.

7 Notwithstanding the foregoing knowledge by the Defendants, at all times herein mentioned,
8 Defendants failed to take appropriate action to cure the nature of said defects or to adequately
9 warn users of said products and their physicians of said dangerous characteristics and defects.

10 72. At all times herein mentioned, Defendants have known that the subject drug
11 products can cause serious and permanent physical injuries and they have failed to disseminate this
12 information to or adequately warn governmental agencies, physicians, drug recipients and/or the
13 general public, and have continued to advise physicians and the general public that the drugs do
14 not cause any harm, thereby continuing their tortious activities against Plaintiff from the date of
15 ingestion to the present.

16 73. Defendants, and each of them, have participated in the mutual exchange of
17 information concerning the problems, dangers and health risks of the drugs and have provided
18 information to each other designed to promote the sale of these drugs in general.

19 74. Plaintiff has sustained and will continue to sustain injuries on a continuing basis, by
20 virtue of the drugs ingested, which have continued to cause injuries from the date of ingestion to
21 the present.

22 75. The damages sustained by Plaintiff include but are not limited to general damages
23 for pain and suffering, as well as loss of earnings and earning capacity and medical and other bills
24 and expenses.

25 76. Plaintiff files this lawsuit within one year of first suspecting that said drugs were the
26 cause of any appreciable harm sustained by Plaintiff. Plaintiff could not, by the exercise of
27 reasonable diligence, have discovered the wrongful cause of Plaintiff's injuries at an earlier time
28 because the Defendants herein misrepresented and continue to misrepresent to the public and to

1 the medical profession that these drugs are safe and free from serious side effects.

2 77. Plaintiff further pleads that any and all limitations statutes applicable to her causes
3 of action alleged herein are tolled by the filing of various class actions.

4 78. At all times herein mentioned, Defendants, and each of them, (i) knew that the
5 aforementioned products were dangerous and unsafe for ingestion in the human system as
6 previously delineated in this Master Complaint; (ii) concealed said dangers and health risks from
7 Plaintiff, physicians and the public in general; (iii) made misrepresentations to Plaintiff, physicians
8 and the public in general as previously delineated in this Master Complaint; and (iv) with full
9 knowledge of the health risks associated with the aforementioned products and without adequate
10 warnings of same, manufactured, marketed and distributed said products for use by Plaintiff.

11 79. Prior to the manufacturing, sale and distribution of said drug products Defendants,
12 and each of them, knew that said drug products were in a defective condition as previously
13 described, and knew that those who were prescribed and took the same would experience, and did
14 experience, severe physical, mental and emotional injuries. Further, Defendants, and each of
15 them, through their officers, directors and managing agents, had prior notice and knowledge from
16 several sources, prior to the date of the dispensing of said drug products to Plaintiff, that the
17 drugs presented a substantial and reasonable risk of harm to the public, including Plaintiff, and as
18 such said consumers of said drugs were unreasonably subjected to risk of injury or death from the
19 consumption of said drugs.

20 80. Despite such knowledge, Defendants, and each of them, acting through their
21 officers, directors and managing agents for the purpose of enhancing Defendants' profits,
22 knowingly and deliberately failed to remedy the known defects in said drugs and failed to warn the
23 public, including Plaintiff, of the extreme risk of injury occasioned by said defects inherent in said
24 drugs. Said Defendants and individuals intentionally proceeded with the manufacturing, sale and
25 distribution and marketing of said drugs knowing persons would be exposed to serious potential
26 danger, in order to advance their own pecuniary interests.

27 81. Defendants' conduct was despicable, and so contemptible that it would be looked
28 down upon and despised by ordinary decent people, and carried on by Defendants with a willful

1 and conscious disregard for the safety of Plaintiff, entitling Plaintiff to exemplary damages under
2 Civil Code Section 3294. The trier of fact, in the exercise of its sound discretion, should award
3 Plaintiff additional damages for the sake of example and in a sufficient amount to punish said
4 defendants for their conduct, in an amount reasonably related to Plaintiff's actual damages and
5 Defendants' wealth and sufficiently large to be an example to others and to deter Defendants and
6 others from engaging in similar conduct in the future.

7
8 FIRST CAUSE OF ACTION

9 (Strict Liability - Failure to Warn - Pharmaceutical Company Defendants Only)

10 82. Plaintiff incorporates by reference herein Paragraphs 1 through 81 as though fully set
11 forth herein.

12 83. The drug products previously described were defective at the time of their
13 manufacture, development, production, testing, inspection, endorsement, prescription, sale and
14 distribution, in that, and not by way of limitation, said products and their warnings, instructions
15 and directions failed to warn of the dangerous propensities of said products, which risks were
16 known or reasonably scientifically knowable to Defendants. The Defendants, and each of them,
17 knew or should have known of the defective condition, characteristics and risks associated with
18 said products, as previously set forth herein.

19 84. At all times herein mentioned, the aforementioned products were defective, and
20 Defendants, and each of them, knew that the products were to be used by the user without
21 inspection for defects therein. Moreover, Plaintiff neither knew, nor had reason to know at the
22 time of the use of the subject products, of the existence of the aforementioned defects.

23 85. As a result of the defective condition of the aforementioned products, Plaintiff
24 suffered injuries and damages as alleged herein.

25
26 SECOND CAUSE OF ACTION

27 (Negligence - Pharmaceutical Company Defendants and Diet Center Defendants Only)

28 86. Plaintiff incorporates by reference herein Paragraphs 1 through 85 as though fully

1 set forth herein.

2 87. At all times herein mentioned, Defendants, and each of them, had a duty to properly
3 manufacture, design, formulate, compound, test, produce, process, assemble, inspect, research,
4 distribute, market, label, package, prepare for use, sell, prescribe and adequately warn of the risks
5 and dangers of the aforementioned products.

6 88. At all times herein mentioned, Defendants, and each of them, negligently and
7 carelessly manufactured, designed, formulated, compounded, produced, processed, assembled,
8 inspected, distributed, marketed, labeled, packaged, prepared for use and sold the aforementioned
9 products and failed to adequately test and warn of the risks and dangers of the aforementioned
10 products.

11 89. As a result of said negligence and carelessness of the Defendants and each of them,
12 Plaintiff suffered injuries and damages as alleged herein.

13
14 THIRD CAUSE OF ACTION

15 (Negligence Per Se - Pharmaceutical Company Defendants Only)

16 90. Plaintiff incorporated by reference herein Paragraphs 1 through 89 as though fully
17 set forth herein.

18 91. At all times herein mentioned, Defendants, and each of them, had an obligation not
19 to violate the law, in the manufacture, design, formulation, compounding, testing, production,
20 processing, assembly, inspection, research, distribution, marketing, labeling, packaging,
21 preparation for use, sale and warning of the risks and dangers of the aforementioned products.

22 92. At all times herein mentioned, Defendants, and each of them, violated the Federal
23 Food, Drug and Cosmetic Act, 21 U.S.C. Section 301, et seq., related amendments and codes and
24 federal regulations provided thereunder, the Sherman Food, Drug and Cosmetic Law, California
25 Health and Safety Code Sections 110290, 110390, 110395, 110398, 110400 and 111330,
26 formerly Sections 26400, 26460, 26461, 26461.5, 26462, 26630 et seq., and California Civil
27 Code Sections 1750, 1790, et seq., and regulations promulgated thereunder, and other applicable
28 laws, statutes and regulations.

1 93. Plaintiff, as a purchaser and consumer of the products, is within the class of persons
2 the statutes and regulations described above are designed to protect, and Plaintiff's injuries are the
3 type of harm these statutes are designed to prevent.

4 94. Defendants failed to meet the standard of care set by the following statutes and
5 regulations, which were intended for the benefit of individuals such as Plaintiff, making
6 Defendants negligent per se:

7 (a) The labeling lacked adequate information on the use of the Fen-Phen
8 combination, even though the Defendants were aware of the widespread use of the combination.
9 [21 C.F.R. Section 201.56(a) and (d)]

10 (b) The labeling lacked adequate information on the approximate kind, degree and
11 duration of expected improvement, alone or in combination in violation of 21 C.F.R. Section
12 201.57(c)(3)(i).

13 (c) The labeling did not state that there was a lack of evidence to support the
14 common belief of the safety and advocacy of Fen-Phen. [21 C.F.R. 201.57(c)(3)(i) and (iv) and
15 (c)(2)]

16 (d) The labeling failed to add warnings for pulmonary hypertension, serious heart
17 conditions, and serious brain conditions as soon as there was reasonable evidence of their
18 association with the drug, individually or with the Fen-Phen combination. [21 C.F.R. 201.57(e).

19 (e) There was inadequate information for patients for the safe and effective use of
20 Defendants' drugs, individually or in concomitant use in the Fen-Phen combination in violation of
21 C.F.R. 201.57(f)(2).

22 (f) There was inadequate information regarding special care to be exercised by the
23 doctor for safe and effective use of Defendants' drugs and Defendants' drugs in the Fen-Phen
24 combination violation of 21 C.F.R. 201.57(f)(1).

25 (g) The labeling was misleading and promotional in violation of 21 C.F.R.
26 201.56(b).

27 (h) The labeling was misleading in violation of California Health and Safety Code
28 Sections 111330 and 110290.

1 (i) Defendants' advertising and representations regarding the subject drug products
2 were false and misleading in violation of Health and Safety Code Sections 110390 and 110290,
3 and Civil Code Section 1770(a)(5).

4 95. As a result of the violations of the statutes described above, Plaintiff suffered
5 injuries and damages as alleged herein.

6
7 FOURTH CAUSE OF ACTION

8 (Breach of Implied Warranty - Pharmaceutical Company Defendants Only)

9 96. Plaintiff incorporated by reference herein Paragraphs 1 through 95 as though fully
10 set forth herein.

11 97. Prior to the time that the aforementioned products were used by Plaintiff,
12 Defendants, and each of them, impliedly warranted to Plaintiff and Plaintiff's agents and
13 physicians that said products were of merchantable quality and safe and fit for the use for which
14 they were intended.

15 98. Plaintiff was and is unskilled in the research, design and manufacture of the
16 aforementioned products and reasonably relied entirely on the skill, judgment and implied
17 warranty of the Defendants in using the aforementioned products.

18 99. The aforementioned products were neither safe for their intended use nor of
19 merchantable quality, as warranted by Defendants, in that they had dangerous propensities when
20 put to their intended use and would cause severe injuries to the user.

21 100. As a result of the aforementioned breach of implied warranties by the Defendants
22 and each of them, Plaintiff suffered injuries and damages as alleged herein.

1 FIFTH CAUSE OF ACTION

2 (Breach of Express Warranty - Pharmaceutical Company Defendants Only)

3 101. Plaintiff incorporates by reference herein Paragraphs 1 through 100 as though fully
4 set forth herein.

5 102. At all times herein mentioned, Defendants expressly warranted to Plaintiff and
6 Plaintiff's agents and physicians, by and through statements made by Defendants or their
7 authorized agents or sales representatives, orally and in publications, package inserts and other
8 written materials intended for physicians, medical patients and the general public, that the
9 aforementioned products were safe, effective, fit and proper for their intended use.

10 103. In utilizing the aforementioned products, Plaintiff relied on the skill, judgment,
11 representations and foregoing express warranties of the Defendants, and each of them. Said
12 warranties and representations were false in that the aforementioned products were not safe and
13 were unfit for the uses for which they were intended.

14 104. As a result of the foregoing breach of express warranties by the Defendants, and
15 each of them, Plaintiff suffered injuries and damages as alleged herein.

16
17 SIXTH CAUSE OF ACTION

18 (Deceit by Concealment - Cal. Civ. Code §1709 - 1710 -

19 Pharmaceutical Company Defendants and Diet Center Defendants Only)

20 105. Plaintiff incorporates by reference herein Paragraphs 1 through 104 as
21 though fully set forth herein.

22 106. Defendants, and each of them, from the time that the aforementioned products
23 were first manufactured, marketed and distributed, and up to the present, willfully deceived
24 Plaintiff by concealing from the Plaintiff, Plaintiff's physicians and the general public, the true
25 facts concerning said pharmaceutical products, which the Defendants, as manufacturers markers
26 and distributors of the products, had a duty to disclose.

27 107. As set forth above, the 1989 through 1997 editions of the *Physicians Desk*
28 *Reference* (PDR), which publishes warnings issued by drug manufacturers, mentioned only "four

1 cases” of primary pulmonary hypertension (PPH), a disease with a 55% mortality rate, while in
2 fact, the manufacturers were informed during this same period of over 100 cases of PPH during
3 the same time period. The International Primary Pulmonary Hypertension Study (IPPHS),
4 published in 1996, revealed that these drugs are a risk factor for the development of PPH,
5 especially if they are used for more than three months, placing persons exposed to a risk factor of
6 between 23 and 46 times than expected. The 1997 PDR continued to represent that there were
7 “four cases”, despite internal manufacturer memos in 1995 and 1996 discussing the need to
8 update the warning.

9 108. In addition to the failure to warn of known cases of PPH far in excess of the
10 number mentioned in the PDR’s, between 1989 and 1997, the manufacturers’ agents were also
11 warned of cases of valve damage associated with these drugs as early as 1990. In many instances,
12 although required to do so by law, these Adverse Drug Effects or ADE’s as they are known, were
13 not reported to the FDA. Between 1991 and 1996, the Defendants received notice of reports of
14 heart valve disease and complaints of heart valve regurgitation associated with use of the subject
15 diet drugs, 31 of which met the FDA definition of valvulopathy. However, the Defendants
16 intentionally withheld most of this information from the FDA, which was only aware of 12 such
17 problems between 1991 and 1996.

18 109. At all times herein mentioned, Defendants, and each of them, conducted a sales
19 and marketing campaign to promise the sale of the aforementioned drug products and willfully
20 deceive Plaintiff, Plaintiff’s physicians and the general public as to the health risks and
21 consequences of the use of the aforementioned products. Defendants, and each of them, were
22 aware of the foregoing, and that the aforementioned products were not safe, fit and effective for
23 human consumption, the use of said products is hazardous to health, and said products have a
24 serious propensity to cause serious injuries to users, including but not limited to the injuries
25 suffered by Plaintiff as delineated herein.

26 110. The Defendants intentionally concealed and suppressed the true facts concerning
27 said pharmaceutical products with the intent to defraud Plaintiff, in that the Defendants knew that
28 Plaintiff’s physicians would not prescribe the subject products, and Plaintiff would not have used

1 the subject products, if they were aware of the true facts concerning the dangers of said products.

2 111. As a result of the foregoing fraudulent and deceitful conduct by the Defendants,
3 and each of them, Plaintiff suffered injuries and damages as alleged herein.

4
5 SEVENTH CAUSE OF ACTION

6 (Negligent Misrepresentation Pharmaceutical Company Defendants and
7 Diet Center Defendants Only)

8 112. Plaintiff incorporated by reference herein Paragraphs 1 through 111 as though fully
9 set forth herein.

10 113. Defendants, and each of them, from the time that the aforementioned products
11 were first manufactured, marketed and distributed, and up to the present, made false
12 misrepresentations, as previously set forth herein, to Plaintiff, Plaintiff's physicians and the general
13 public, including but not limited to the misrepresentation that said pharmaceutical products, alone
14 and in combination, were safe, fit and effective for human consumption. At all times herein
15 mentioned, Defendants, and each of them, conducted a sales and marketing campaign to promote
16 the sale of the aforementioned drug products and willfully deceive Plaintiff, Plaintiff's physicians
17 and the general public as to the health risks and consequences of the use of the aforementioned
18 products.

19 114. The Defendants made the foregoing representations without any reasonable
20 ground for believing them to be true. These representations were made directly by Defendants,
21 by sales representatives and other authorized agents of said Defendants, and in publications and
22 other written materials directed to physicians, medical patients and the public, with the intention
23 of inducing reliance and the prescription, purchase and use of the subject products.

24 115. The foregoing representations by the Defendants, and each of them, were in fact
25 false, in that the aforementioned products were not safe, fit and effective for human
26 consumption, the use of said products is hazardous to health, and said products have a serious
27 propensity to cause serious injuries to users, including but not limited to the injuries suffered by
28 Plaintiff as delineated herein.

1 116. The foregoing representations by Defendants, and each of them, were made with
2 the intention of inducing reliance and the prescription, purchase and use of the subject products.

3 117. In reliance on the misrepresentations by the Defendants, and each of them, Plaintiff
4 was induced to purchase and use the use of the aforementioned products. If Plaintiff had known
5 of the true facts and the facts concealed by the Defendants, Plaintiff would not have used the
6 subject products. The reliance of Plaintiff upon Defendants' misrepresentations was justified
7 because such misrepresentations were made and conducted by individuals and entities who were
8 in a position to know the true facts.

9 118. As a result of the foregoing negligent misrepresentations by the Defendants, and
10 each of them, Plaintiff suffered injuries and damage as alleged herein.

11 EIGHTH CAUSE OF ACTION

12 (Violation of Business & Professions Code §17200 -

13
14 Pharmaceutical Company Defendants and Diet Center Defendants Only)

15 119. Plaintiff incorporated by reference herein Paragraphs 1 through 118 as though fully
16 set forth herein.

17 120. Plaintiff brings this cause of action pursuant to Business & Professions Code
18 §17204, in an individual capacity, and not on behalf of the general public.

19 121. California Business & Professions Code §17200 provides that unfair competition
20 shall mean and include "all unlawful, unfair or fraudulent business practices and unfair, deceptive,
21 untrue or misleading advertising.

22 122. The acts and practices described in Paragraphs 1 through 121 above, were and are
23 likely to mislead the general public and therefore constitute unfair business practices within the
24 meaning of Business & Professions Code §17200. The acts of untrue and misleading advertising
25 set forth in presiding paragraphs are incorporated by reference and are, by definition, violations of
26 Business & Professions Code §17200. This conduct includes, but is not limited to:

- 27 (a) Representing to Plaintiff, Plaintiff's physicians and the general public that said
28 pharmaceutical products were safe, fit and effective for human consumption,

1 knowing that said representations were false, and concealing from the Plaintiff,
2 Plaintiff's physicians and the general public that said products had a serious
3 propensity to cause injuries to users;

4 (b) Engaging in advertising programs designed to create the image, impression
5 and belief by consumers, physicians and diet centers that the use of
6 phentermine, fenfluramine and dexfenfluramine, both individually and in
7 combination, was safe for human use, had fewer side effects and adverse
8 reactions than other methods of weight loss, constituted a convenient, safe
9 form of weight loss and would not interfere with daily life, even though the
10 Defendants knew these to be false, and even though the Defendants had no
11 reasonable grounds to believe them to be true;

12 (c) Purposely downplaying and understating the health hazards and risks
13 associated with phentermine, fenfluramine and dexfenfluramine;

14 (d) Issuing promotional literature deceiving potential users of phentermine,
15 fenfluramine and dexfenfluramine by relaying positive information,
16 including testimonials from satisfied users, and manipulating statistics to
17 suggest widespread acceptability, while downplaying the known adverse
18 and serious health effects and concealing material relevant information
19 regarding the safety of said products;

20 (e) Encouraging the combination of phentermine, fenfluramine and
21 dexfenfluramine, even though the FDA had not approved the drugs for use
22 in combination, and knowing that the combination drug regimen was
23 specially hazardous, had not been systemically tested by appropriate clinical
24 trials, and causes serious adverse health effects.

25
26 123. These practices constitute unlawful, unfair and fraudulent business acts or
27 practices, within the meaning of California Business & Professions Code §17200, as well as
28 unfair, deceptive, untrue and misleading advertising as prohibited by California Business &

1 Professions Code §17500.

2 124. The unlawful, unfair and fraudulent business practices of Defendants described
3 above present a continuing threat to members of the public in that Defendants continue to engage
4 in the conduct described therein.

5 125. As a result of their conduct described above Defendants have been and will be
6 unjustly enriched. Specifically, Defendants have been unjustly enriched by receipt of hundreds of
7 millions of dollars in ill-gotten gains from the sale and prescription of said drugs in California, sold
8 in large part as a result of the acts and omissions described herein.

9 126. Because of the fraudulent misrepresentations made by Defendants as detailed
10 above, and the inherently unfair practice of committing a fraud against the public by intentionally
11 misrepresenting and concealing material information, the acts of Defendants described herein
12 constitute unfair or fraudulent business practices.

13 127. Plaintiff, pursuant to California Business & Professions Code §17203, seeks an
14 order of this court compelling the Defendants to provide restitution, and to disgorge the monies
15 collected and profits realized by Defendants, and each of them, as a result of their unfair business
16 practices, and injunctive relief calling for Defendants, and each of them, to cease such unfair
17 business practices in the future.

18
19 NINTH CAUSE OF ACTION

20 (Violation of Business and Professions Code §17500 -

21 Pharmaceutical Company Defendants and Diet Center Defendants Only)

22 128. Plaintiff incorporated by reference herein Paragraphs 1 through 127 as though
23 fully set forth herein.

24 129. Plaintiff brings this cause of action pursuant to Business & Professions Code
25 §17535, in an individual capacity and not on behalf of the general public.

26 130. California Business & Professions Code §17500 provides that it is unlawful for any
27 person, firm, corporation or association to dispose of property or perform services, or to induce
28 the public to enter into any obligation relating thereto, through the use of untrue or misleading

1 statements.

2 131. At all times herein mentioned Defendants have committed acts of disseminating
3 untrue and misleading statements as defined by Business & Professions Code §17500 by engaging
4 in the following acts and practices with intent to induce members of the public to purchase and
5 use diet drugs:

- 6 (a) Representing to Plaintiff, Plaintiff's physicians and the general public that
7 said pharmaceutical products were safe, fit and effective for human
8 consumption, knowing that said representations were false, and concealing
9 from the Plaintiff, Plaintiff's physicians and the general public that said
10 products had a serious propensity to cause injuries to users;
- 11 (b) Engaging in advertising programs designed to create the image, impression
12 and belief by consumers, physicians and diet centers that the use of
13 phentermine, fenfluramine and dexfenfluramine, both individually and in
14 combination, was safe for human use, had fewer side effects and adverse
15 reactions than other methods of weight loss, constituted a convenient, safe
16 form of weight loss and would not interfere with daily life, even though the
17 Defendants knew these to be false, and even though the Defendants had no
18 reasonable grounds to believe them to be true;
- 19 (c) Purposely downplaying and understating the health hazards and risks
20 associated with phentermine, fenfluramine and dexfenfluramine;
- 21 (d) Issuing promotional literature deceiving potential users of phentermine,
22 fenfluramine and dexfenfluramine by relaying positive information,
23 including testimonials from satisfied users, and manipulating statistics to
24 suggest widespread acceptability, while downplaying the known adverse
25 and serious health effects and concealing material relevant information
26 regarding the safety of said products;
- 27 (e) Encouraging the combination of phentermine, fenfluramine and
28 dexfenfluramine, even though the FDA had not approved the drugs for use

1 in combination, and knowing that the combination drug regimen was
2 specially hazardous, had not been systemically tested by appropriate clinical
3 trials, and causes serious adverse health effects.

4 132. The foregoing practices constitute false and misleading advertising within the
5 meaning of California Business & Professions Code §17500.

6 133. The acts of untrue and misleading statements by Defendants described herein
7 above present a continuing threat to members of the public in that the acts alleged herein are
8 continuous and ongoing, and the public will continue to suffer the harm alleged herein.

9 134. As a result of their false and misleading statements described above, Defendants
10 have been and will be unjustly enriched. Specifically, Defendants have been unjustly enriched by
11 hundreds of millions of dollars in ill-gotten gains from the sale and prescription of diet drugs, sold
12 in large part as a result of the false or misleading statements described herein.

13 135. Pursuant to California Business & Professions Code §17535, Plaintiff seeks an
14 order of this court compelling the Defendants to provide restitution, and to disgorge the monies
15 collected and profits realized by Defendants, and each of them, as a result of their unfair business
16 practices, and injunctive relief calling for Defendants, and each of them, to cease such unfair
17 business practices in the future.

18 136. Plaintiff seeks the imposition of a constructive trust over, and restitution and
19 disgorgement of, the monies collected and profits realized by Defendants, and each of them, to
20 cease such false and misleading advertising in the future.

21
22 TENTH CAUSE OF ACTION

23 (Loss of Consortium - Against All Defendants)

24 137. Plaintiff incorporated by reference herein Paragraphs 1 through 136 as though fully
25 set forth herein.

26 138. This cause of action is brought on behalf of the Plaintiff who is the spouse of the
27 Plaintiff who consumed and ingested the subject drug products. By reason of the injuries
28 sustained by Plaintiff's spouse, the Plaintiff has been and will continue to be deprived of

1 consortium, society, comfort, protection, and service, thereby causing and continuing to cause
2 said Plaintiff grief, sorrow, mental anguish, emotional distress and pain and suffering.

3
4 ELEVENTH CAUSE OF ACTION

5 (Medical Negligence - Health Care Provider Defendants Only)

6 139. Plaintiff incorporated by reference herein Paragraphs 1 through 138 as though fully
7 set forth herein.

8 140. The Health Care Provider Defendant(s) herein was/were the medical provider(s)
9 who prescribed, dispensed and/or otherwise supplied the subject drug products to Plaintiff or
10 advised concerning the safety thereof.

11 141. At all times herein mentioned, the Health Care Provider Defendant(s) was/were
12 the agents of entities who tested, produced, manufactured, sold, distributed, marketed, processed
13 or supplied the subject drug products.

14 142. These Defendants, and each of them, were and held themselves out to be,
15 knowledgeable in the safety, efficacy and use of the subject drug products.

16 143. As health care providers prescribing the subject drug products, Defendant(s)
17 knew, or in the exercise of reasonable care should have known, of the health hazards as
18 previously delineated in this Master Complaint involved with use of the subject drug products at
19 the time they prescribed said medications to Plaintiff.

20 144. At all times herein mentioned, Defendant(s) carelessly and negligently examined,
21 informed, treated, diagnosed, prognosed, prescribed medication to and otherwise treated and
22 rendered medical and other services and care to Plaintiff.

23 145. At all times herein mentioned, the relationship between Defendant(s) and Plaintiff
24 herein was fiduciary in nature, which imposed a duty upon Defendant(s) to fully disclose any and
25 all potential problems, dangers, hazards and health problems inherently associated with the subject
26 drug products.

27 146. Defendant(s) failed to fully disclose the potential hazards, dangers, risks and health
28 problems inherent to the subject drug products, and represented that the subject drug products

1 were completely safe for their intended use and would not cause injury.

2 147. Said representations, in fact, were false and Defendant(s) knew that they were
3 false, and had knowledge of serious hazards involved in the use of said products, as delineated in
4 this Master Complaint.

5 148. If Plaintiff had been adequately informed of this information, including but not
6 limited to the risks, hazards, dangers and health problems associated with the use of the subject
7 drug products, Plaintiff would not have consented to use of the products as prescribed by the
8 Defendants.

9 149. As a result of the professional negligence and medical malpractice of Defendant(s),
10 Plaintiff has suffered severe injuries and damages as alleged herein.

11 150. Plaintiff has complied with the provisions of Code of Civil Procedure §364 by
12 serving on physician defendant(s) notice of plaintiff's intention to Commence this action.

13 151. The conduct of Defendant(s) was willful and intentional and done with fraud,
14 oppression and malice against Plaintiff and with a conscious disregard to the rights of Plaintiff.
15 Pursuant to California Code of Civil Procedure §425.13, Plaintiff is unable to assert punitive
16 and/or exemplary damages against Health Care Providers in this Master Complaint. Based upon
17 the allegations set forth in this Master Complaint, Plaintiff will seek leave to amend said claims in
18 the future to allege punitive damages under C.C.P. §415.13(a).

19
20 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
21 follows:

- 22 1. For past and future general damages, according to proof;
- 23 2. For past and future medical and incidental expenses, according to proof;
- 24 3. For past and future loss of earnings and/or earning capacity, according to proof;
- 25 4. For punitive and exemplary damages in an amount to be determined at trial;
- 26 5. For prejudgment interest on all damages as is allowed by the laws of the State of
27 California;
- 28 6. For past and future mental and emotional distress, according to proof;

- 1 7. For past and future loss of consortium, according to proof;
2 8. For past and future costs of suit incurred herein;
3 9. For injunctive relief, enjoining Defendants from the acts of unfair competition and
4 untrue and misleading advertising alleged above, and ordering Defendants to
5 restore to Plaintiff all funds acquired by means of any act or practice declared by
6 this court to be unlawful or fraudulent, or to constitute unfair competition or
7 untrue or misleading advertising.
8 10. For such other and further relief as the Court deems just and proper.

9 Dated: _____
10

11 BY: _____
12 Mark P. Robinson, Jr.
13 Office of Plaintiffs' Liaison
14 Counsel

15 JURY DEMAND

16 Plaintiff demands a trial by jury on all issues which may be tried by a jury.

17 Dated: _____

18 BY: _____
19 Mark P. Robinson, Jr.
20 Office of Plaintiffs' Liaison
21 Counsel
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

On behalf of Plaintiffs' Executive Committee:

COTCHETT, PITRE & SIMON
Frank M. Pitre, Esq.
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, California 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577

LIEFF, CABRASER,
HEIMANN & BERNSTEIN
William Hirsch, Esq.
275 Battery Street, 30th Floor
San Francisco, California 94111
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

SHERMAN, DAN & PORTUGAL
Arthur Sherman, Esq.
9454 Wilshire Boulevard, Suite 550
Beverly Hills, California 90212
Telephone: (310) 275-5077
Facsimile: (310) 276-5871

ROBINSON, PHILLIPS & CALCAGNIE
Mark P. Robinson, Esq.
28202 Cabot Road, Suite 200
Laguna Niguel, California 92677
Telephone: (949) 347-8855
Facsimile: (949) 347-8774

THORNSSES, BARTOLOTTA, MCGUIRE
& PADILLA
Vince Bartolotta, Esq.
2550 Fifth Avenue, 11th Floor
San Diego, California 92103
Telephone: (619) 236-9363
Facsimile: (619) 236-9653

GREENE, BROILLET, TAYLOR,
WHEELER & PANISH
Brian Panish, Esq.
100 Wilshire Boulevard, 21st Floor
Santa Monica, California 90401
Telephone: (310) 576-1200
Facsimile: (310) 576-1220

PAUL & JANOFSKY
Gary Paul, Esq.
1401 Ocean, Suite 200
Santa Monica, California 90401
Telephone: (310) 458-7900
Facsimile: (310) 458-6823

LAW OFFICES OF THOMAS J. BRANDI
Thomas J. Brandi, Esq.
44 Montgomery Street, Suite 1050
San Francisco, California 94104
Telephone: (415) 989-1800
Facsimile: (415) 989-1801

LOPEZ & HODES
Ramon Lopez, Esq.
2424 S.E. Bristol Street, Suite 250
Newport Beach, California 92660
Telephone: (714) 756-9300
Facsimile: (714) 756-1902