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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

IN RE DIET DRUGS LITIGATION)

Judicial Council Coordination Proceeding
No. 4032

Plaintiff,)

**[PROPOSED] REVISED
FIRST AMENDED COMPLAINT
FOR DAMAGES**

(Diet Drug Cases)

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)
LABS MANUFACTURING)
INC.; LABORATOIRES SERVIER SA,)
FISONS CORPORATION; RHONE-)
POULENC RORER INC.; LES)
LABORATOIRES SERVIER, SA; ORSEM;)
ORIL; PRODUITS CHIMIQUES;)
SERVIER AMERIQUE; INSTITUT DE)
RECHERCHERS INTERNATIONALES)

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. **Violations of Business and Professions Code § 17500**
10. **Loss of Consortium**
11. **Medical Negligence**

DEMAND FOR JURY TRIAL

1 SERVIER, I.R.I.S.; SCIENCE-UNION ET)
CIE and DOES 1-100, inclusive,)
2)
Defendants.)
3)

4 [PROPOSED] FIRST AMENDED MASTER COMPLAINT -
5 CALIFORNIA FEN-PHEN LITIGATION

6 INTRODUCTION

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

14 GENERAL ALLEGATIONS

15 1. This is an action for personal injuries and damages brought on behalf of the Plaintiff
16 who has been prescribed and supplied with, received, and who has taken and ingested and
17 consumed the diet drugs, Fenfluramine, Phentermine and Dexfenfluramine, individually or in
18 combination, as researched, designed, formulated, compounded, tested, manufactured, produced,
19 processed, assembled, inspected, distributed, marketed, labeled, promoted, packaged, advertised
20 for sale, prescribed or otherwise placed in the stream of interstate commerce by Defendant
21 Pharmaceutical Companies, Defendant Physicians, Defendant Diet Centers and/or Pharmacy
22 Defendants, and Defendants Does 1 through 100. This action seeks, among other relief, general
23 and special damages and equitable relief in order to enable the Plaintiff to treat and monitor the
24 dangerous, severe and life-threatening side effects caused by these drugs, either separately or in
25 combination, including but not limited to pulmonary hypertension, cardiac valvular disease and
26 disorders, neurotoxicity, neurocognitive dysfunction and developmental neurotoxicity.
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1 2. The true names or capacities, whether individual, corporate, or otherwise, of
2 Defendants DOES ONE through ONE HUNDRED, Inclusive, are unknown to Plaintiff who
3 therefore sues said Defendants by such fictitious names. Plaintiff believes and alleges that each of
4 the Defendants designated herein by fictitious names is in some manner legally responsible for the
5 events and happenings herein referred to and caused damages proximately and foreseeably to
6 Plaintiff as alleged herein.

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

10 4. At all times herein mentioned, "Defendants" include all "Pharmaceutical Company"
11 Defendants, including but not limited to Wyeth-Ayerst Laboratories Company, American Home
12 Products Corporation, Interneuron Pharmaceuticals, Inc., Gate Pharmaceuticals, a Division of
13 Teva Pharmaceuticals, USA, SmithKline Beecham Corporation, Abana Pharmaceutical,
14 Richwood Pharmaceuticals Company, Inc., Ion Laboratories, Inc., Medeva Pharmaceuticals, Inc.,
15 A.H. Robins Company, Inc., Camall Company, Goldline Laboratories, Eon Labs Manufacturing,
16 Inc., Les Laboratoires Servier SA, ORSEM, ORIL Product Chimiques, Servier Amerique, Institut
17 de Recherches Internationales Servier ("IRIS"), Science Union et Cie, Rhone-Poulenc Rorer Inc.;
18 all "Diet Center" Defendants, all "Physician" Defendants and all "Pharmacy" Defendants named
19 herein, and Does 1 through 100, inclusive, unless otherwise specified.

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

25 6. There exists, and at all times herein mentioned, there existed, a unity of interest in
26 ownership between certain Defendants and other certain Defendants such that any individuality
27 and separateness between the certain Defendants has ceased and these Defendants are the alter-

1 ego of the other certain Defendants and exerted control over those Defendants. Adherence to the
2 fiction of the separate existence of these certain Defendants as an entity distinct from other certain
3 Defendants will permit an abuse of the corporate privilege and would sanction fraud and would
4 promote injustice.

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

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

9 9. At all times herein mentioned, one or more of the individual Defendants was, and
10 now is a resident of the State of California.

11 10. At all times herein mentioned, the Pharmaceutical Company Defendants, and each
12 of them were engaged in the business of, or were successors in interest to, entities engaged in the
13 business of research, licensing, designing, formulating, compounding, testing, manufacturing,
14 producing, processing, assembling, inspecting, distributing, marketing, labeling, promoting,
15 packaging and/or advertising for sale or selling the diet drugs fenfluramine, phentermine and
16 dexfenfluramine, hereafter "drug products," individually or in combination.

17 11. At all times herein mentioned, the Pharmaceutical Company Defendants, and each
18 of them, were authorized to do business within the State of California and did in fact supply the
19 aforementioned products within the State of California.

20 12. At all times herein mentioned, the officers and directors of the Pharmaceutical
21 Company Defendants named herein participated in, authorized and directed the production and
22 promotion of the aforementioned products when they knew, or with the exercise of reasonable
23 care should have known, of the hazards and dangerous propensities of said products and thereby
24 actively participated in the tortious conduct which resulted in the physical injuries described
25 herein.

26 13. At all times herein mentioned, the Physician Defendants, Diet Center Defendant and
27 Pharmacy Defendants herein, and each of them, were engaged in the business of prescribing,
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1 formulating, distributing, supplying and selling fenfluramine, phentermine and dexfenfluramine.

2 THE PARTIES

3 The Plaintiff

4 14. Plaintiff, who resides in California, took fenfluramine, phentermine and/or
5 dexfenfluramine and was injured as a result.

6 The Defendants

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

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

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

13 18. The Pharmacy Defendants are in the business of selling, assembling, inspecting,
14 marketing, promoting, packaging and/or advertising for sale fenfluramine, phentermine and/or
15 dexfenfluramine to plaintiff. The Pharmacy Defendants owed a duty to plaintiff to provide
16 warnings about the proper use and side effects of fenfluramine, phentermine and/or
17 dexfenfluramine to plaintiff.

18 The Fenfluramine/Dexfenfluramine Defendants

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

24 20. Defendants American Home Products Corporation, A.H. Robins, Wyeth-Ayerst, a
25 division of American Home Products Corporation and Wyeth-Ayerst Laboratories Company are
26 in the business of researching, designing, formulating, compounding, testing, manufacturing,
27 producing, processing, assembling, inspecting, distributing, marketing, labeling, promoting,
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1 packaging and/or advertising for sale fenfluramine (Pondimin).

2 21. Defendant American Home Products Corporation was and is an American
3 pharmaceutical company, incorporated under the laws of the State of Delaware, whose principal
4 place of business is 5 Giralda Farms, Madison, New Jersey. American Home Products Corp. owns
5 Defendant Wyeth-Ayerst Laboratories which at all times relevant, manufactures Pondimin
6 (fenfluramine) and marketed, sold and distributed Redux (dexfenfluramine) for Defendant
7 Interneuron Pharmaceuticals.

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

14 23. Defendant A.H. Robins Company, Inc., has its principal place of business at 1407
15 Cummings Drive, Richmond, Virginia. A.H. Robins Company, Inc., is incorporated under the
16 laws of the State of Delaware. At all times relevant, A.H. Robins Company, Inc., was engaged in
17 the business of manufacturing and did manufacture the pharmaceutical known as fenfluramine.
18 On information and belief, Plaintiff alleges that said entity does business in the State of California
19 and at all times relevant, developed, manufactured, and sold in interstate commerce and in the
20 State of California the aforementioned drug.

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

2 The Servier Defendants

3 25. Defendants Les Laboratoires Servier SA, ORSEM, ORIL Product Chimiques,
4 Servier Amerique, Institut de Recherches Internationales Servier (“IRIS”), Science Union et Cie
5 are all French companies (collectively referred to as “Servier”) that manufactured, licensed and
6 sold dexfenfluramine and fenfluramine across the United States, including California.

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

19 26. The Defendant ORSEM, is a corporation organized and existing under the laws of
20 the Republic of France, with its principal place of business located in Neuilly-Sur-Seine, France.
21 Plaintiff is informed and believes, and thereupon alleges, that ORSEM, directly and indirectly,
22 does business in California. At all times material to this lawsuit, ORSEM supplied, licensed,
23 trademarked, designed, tested, manufactured, promoted, distributed and sold within California the
24 pharmaceutical Redux. It is a related entity of Les Laboratoires Servier SA and is a holder of the
25 trademark licenses for dexfenfluramine.

26 27. The Defendant ORIL Produits Chimiques (“ORIL”), is a corporation organized and
27 existing under the laws of the Republic of France, with its principal place of business located in
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1 Neuilly-Sur-Seine, France. Plaintiff is informed and believes, and thereupon alleges, that ORIL,
2 directly and indirectly, does business in California. At all times material to this lawsuit, ORIL
3 supplied, licensed, trademarked, designed, tested, manufactured, promoted, distributed and sold
4 within California the pharmaceuticals Pondimin and Redux. In addition, it is believed that this
5 defendant ORIL manufactured fenfluramine and dexfenfluramine and delivered it to co-defendant
6 A.H. Robins, Co., Inc.'s manufacturing plant in the United States. It is a related entity of Les
7 Laboratoires Servier SA.

8 28. The Defendant Servier Amerique, is a corporation organized and existing under the
9 laws of the Republic of France, with its principal place of business located in Neuilly-Sur-Seine
10 Cedex, France. Plaintiff is informed and believes, and thereupon alleges that Servier Amerique,
11 directly and indirectly, does business in California. At all times material to this lawsuit, Servier
12 Amerique supplied, licensed, trademarked, designed, tested, manufactured, promoted, distributed
13 and sold within California the pharmaceuticals Pondonimin and Redux. It represents the Servier
14 entities interests in the North and South America.

15 29. The Defendant Institut de Recherches Internationales Servier ("IRIS"), is a
16 corporation organized and existing under the laws of the Republic of France, with its principal
17 place of business located in Courbevoire Cedex, France. Plaintiff is informed and believes, and
18 thereupon alleges, that IRIS does business in California directly and indirectly through its affiliates
19 LLS, ORSEM, ORIL, Servier Amerique and Science Union. At all times material to this lawsuit,
20 IRIS supplied, licensed, trademarked, designed, tested, manufactured, promoted, distributed and
21 sold within California of the pharmaceuticals Pondimim and Redux.

22 30. The Defendant Science Union et Cie , is a corporation organized and existing under
23 the laws of the Republic of France, with its principal place of business located in Neuilly-Sur-Sein
24 Cedex, France. Plaintiff is informed and believes, and thereupon alleges, that Science Union,
25 directly and indirectly, does business in California. At all times material to this lawsuit, Science
26 Union supplied, licensed trademarked, designed, tested, manufactured, promoted, distributed and
27 sold within California the pharmaceutical Pondimim. It is a related entity of Les Laboratoires
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1 Servier SA. In 1963, Science Union et Cie licensed to A.H. Robins the right to manufacture and
2 sell Pondimin in the United States.

3 The Phentermine Defendants

4 31. Defendants Gate Pharmaceuticals, a division of Teva Pharmaceuticals, USA, Inc.,
5 SmithKline Beecham Corporation, Abana Pharmaceuticals, Inc., Richwood Pharmaceutical
6 Company, Inc., Ion Laboratories, Inc., Medeva Pharmaceuticals, Inc., Camall Corporation,
7 Goldline Laboratories, Eon Labs Manufacturing, Inc., Rhone-Poulenc Rorer, Inc. and other
8 manufacturers are in the business of researching, designing, formulating, compounding, testing,
9 manufacturing, producing, processing, assembling, inspecting, distributing, marketing, labeling,
10 promoting, packaging and/or advertising for sale phentermine. These defendants will be referred
11 to collectively as the “Phentermine Defendants.”

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

19 33. Defendant SmithKline Beecham Corporation has its principal place of business at
20 One Franklin Plaza, Philadelphia, Pennsylvania. SmithKline Beecham Corporation is incorporated
21 in the State of Pennsylvania. At all times relevant, SmithKline Beecham Corporation was
22 engaged in the business of manufacturing the pharmaceutical known as phentermine. On
23 information and belief, Plaintiff alleges that said entity does business in California and at all times
24 relevant, developed, manufactured, and sold in interstate commerce and in the State of California
25 the aforementioned drug.

26 34. Defendant Abana Pharmaceuticals, Inc., has its principal place of business at 1
27 Chase Corporate Drive, Suite 260, Birmingham, Alabama. Abana Pharmaceuticals, Inc., is

1 incorporated under the laws of the State of Delaware. At all times relevant, Abana
2 Pharmaceuticals, Inc., was engaged in the business of manufacturing the pharmaceutical known as
3 phentermine. On information and belief, said entity does business in California and at all times
4 relevant, developed, manufactured, and sold in interstate commerce and in the State of California
5 the aforementioned drug.

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

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

20 37. Defendant Medeva Pharmaceuticals, Inc., has its principal place of business at
21 14801 Sovereign Road, Fort Worth, Texas. Medeva Pharmaceuticals, Inc., is incorporated under
22 the laws of the State of Texas. At all times relevant, Medeva Pharmaceuticals, Inc., was engaged
23 in the business of manufacturing, and did manufacture the pharmaceutical known as phentermine.
24 On information and belief, Plaintiff alleges that said entity does business in the State of California
25 and at all times relevant, developed, manufactured, and sold in interstate commerce and in the
26 State of California the aforementioned drug.

27 38. Defendant Camall Company, has its principal place of business at 70945 Van Dyke,
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1 Romeo, Michigan 48065. Camall Company, is incorporated under the laws of the State of
2 Michigan. At all times relevant, Camall Company was engaged in the business of manufacturing
3 and did manufacture the pharmaceutical known as phentermine. On information and belief,
4 Plaintiff alleges that said entity does business in the State of California and at all times relevant,
5 developed, manufactured, and sold in interstate commerce and in the State of California the
6 aforementioned drug.

7 39. Defendant Goldline Laboratories, has its principal place of business at 16775
8 Johnson Drive, Industry City, California 91744. Goldline Laboratories, is incorporated under the
9 laws of the State of California. At all times relevant, Goldline Laboratories was engaged in the
10 business of manufacturing and did manufacture the pharmaceutical known as phentermine. On
11 information and belief, Plaintiff alleges that said entity does business in the State of California and
12 at all times relevant, developed, manufactured, and sold in interstate commerce and in the State of
13 California the aforementioned drug.

14 40. Defendant Eon Labs Manufacturing, Inc., has its principal place of business at 1013
15 Centre Road, Wilmington, Delaware 19805. Eon Labs Manufacturing, Inc. is incorporated under
16 the laws of the State of Delaware. At all times relevant, Eon Labs Manufacturing, Inc., was
17 engaged in the business of manufacturing and did manufacture the pharmaceutical known as
18 phentermine. On information and belief, Plaintiff alleges that said entity does business in the State
19 of California and at all times relevant, developed, manufactured, and sold in interstate commerce
20 and in the State of California the aforementioned drug.

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

1 48. Fenfluramine (Pondimin) and dexfenfluramine (Redux) are sympathomimetic amines
2 which have an anorectic, or diet suppressant, action mediated through the activation of
3 serotonergic pathways in the brain. The serotonergic pathways are those liberated, activated by,
4 or involving serotonin in the transmission of nerve impulses.

5 49. Phentermine is a sympathomimetic amine with pharmacologic activity similar to the
6 prototype drugs of this class used in treating obesity, the amphetamines. Its action, like that of
7 the amphetamines, includes central nervous system stimulation and elevation of blood pressure. It
8 has not been established that the action of this drug in treating obesity is primarily one of appetite
9 suppression, and there may be other central nervous system actions and/or metabolic effects
10 involved.

11 50. Each of these drugs, fenfluramine, phentermine and dexfenfluramine, has been
12 widely advertised by the Defendants as effective weight control drugs; these drugs are chemically
13 related and affect, among other things, brain serotonin levels. Phentermine, fenfluramine and/or
14 dexfenfluramine are appetite suppressants that are chemically related and affect the level of
15 serotonin in the brain. Serotonin is a chemical messenger that makes patients feel full after eating
16 less food.

17 51. Fenfluramine and Phentermine when prescribed or ingested together as anorectic
18 including, weight-loss drugs are properly known, advertised, promoted and referred to as
19 “fen/phen.” The drugs are commonly prescribed in combination with each other and with
20 dexfenfluramine. The fen/phen combination is also commonly prescribed in combination with
21 dexfenfluramine.

22 52. Beginning in approximately 1995 prescription of the so-called “Fen/Phen” diet
23 became popular and, in 1996, the total number of prescriptions for phentermine and fenfluramine
24 in the United States alone exceeded 18 million. In 1992, 1993 and 1994 there were 50,000
25 prescriptions for fenfluramine written. In 1995 there were 1,000,000 fenfluramine prescriptions
26 and 2,000,000 phentermine prescriptions written. Dexfenfluramine was approved for use in the
27 United States in 1996 and there were approximately 2,000,000 prescriptions written for it even
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1 though it was only on the market 6 months.

2 53. On information and belief, Defendants, and each of them, have actively encouraged
3 the combination use of these drugs which are the subject of this suit because Defendants knew
4 that the combination use, though not approved by the FDA, would increase sales of each
5 individual drug.

6 54. Defendants made filing(s) with the United States Food And Drug Administration
7 (“FDA”) in conjunction with the approval process for fenfluramine, phentermine and
8 dexfenfluramine, in the United States.

9 55. These drugs have been linked to several severe and life threatening medical
10 disorders including, but not limited to, pulmonary hypertension, cardiac valvular disease and
11 disorders, neurotoxicity, central and peripheral nervous system toxicity, neurocognitive
12 dysfunction and developmental neurotoxicity.

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

19 57. Defendants’ strategy beginning in the early 1990's has been to aggressively market
20 and sell these products by falsely misleading potential users about the products and by failing to
21 protect users from serious dangers which Defendants knew or should have known to result from
22 use of these products.

23 58. Defendants widely and successfully marketed phentermine, fenfluramine and
24 dexfenfluramine in the United States, by undertaking an advertising blitz extolling the virtues of
25 phentermine, fenfluramine and dexfenfluramine in order to induce widespread use of the products.
26 The marketing campaign consisted of advertisements, promotional literature to be placed in the
27 offices of doctors and other healthcare providers, and other promotional materials provided to
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1 potential phentermine, fenfluramine and dexfenfluramine users.

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

8 60. Defendants and each of them purposefully downplayed and understated the health
9 hazards and risks associated with the phentermine, fenfluramine and dexfenfluramine .
10 Defendants, through promotional literature, deceived potential users of phentermine, fenfluramine
11 and dexfenfluramine by relaying positive information, including testimonials from satisfied users,
12 and manipulating statistics to suggest widespread acceptability, while downplaying the known
13 adverse and serious health effects. Defendants concealed material relevant information from
14 potential phentermine, fenfluramine and dexfenfluramine users and minimized user and prescriber
15 concern regarding the safety of the phentermine, fenfluramine and dexfenfluramine.

16 61. In particular, in the materials produced by Defendants, Defendants falsely
17 misrepresented the severity, frequency and nature of adverse health effects caused by
18 phentermine, fenfluramine and dexfenfluramine, and falsely represented that adequate testing had
19 been conducted concerning phentermine, fenfluramine and dexfenfluramine individually, and in
20 combination.

21 62. As a result of the Defendants' advertising and marketing efforts, and representations
22 concerning the subject products, the drugs are so pervasively prescribed throughout the United
23 States that in excess of 18 million prescriptions for phentermine, fenfluramine and dexfenfluramine
24 were written in the United States in the past year.

25 63. Between 1994 and 1996 various Belgian doctors reported at least 30 cases of heart
26 valve problems in diet pill users, and their reports were made to Belgian drug regulators as well as
27 to Defendant Laboratoires Servier SA. Several Belgian doctors spoke with Servier officials and
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1 representatives by phone in 1994 to advise them of otherwise healthy patients who had taken
2 fenfluramine, and who had various heart valve problems, including serious heart murmurs and
3 valve leaks.

4 64. An August 26, 1996 article in The New England Journal of Medicine of the results
5 of the International Primary Pulmonary Hypertension study (“IPPH Study”) entitled “Appetite
6 Suppressants and the Risk of Primary Pulmonary Hypertension” concluded that fenfluramine-
7 based anorexigens, such as fen/phen, increased the risk of PPH by a multiple of more than 30
8 times. The Defendant Pharmaceutical Companies were aware of the results of the IPPH Study by
9 at least November 1995, well in advance of its official publication in The New England Journal of
10 Medicine in August 1996. Nevertheless, the Defendants failed to apprise the public or physicians
11 that the risk of contracting PPH was many, many multiples of that previously reported by the
12 Defendant companies in their literature. Defendants have also failed to warn the public and
13 physicians about the special risks of contracting PPH and other problems associated with the
14 combination use of phentermine, fenfluramine and dexfenfluramine. The 1989 through 1997
15 editions of the *Physician Desk Reference* (PDR), which publishes warnings issued by drug
16 manufacturers, mentioned only “four cases” of primary pulmonary hypertension (PPH), a disease
17 with a 55% mortality rate, while in fact, the manufacturers were informed during the same period
18 of over 100 cases of PPH during the same time period.

19 65. The International Primary Pulmonary Hypertension Study (IPPHS), published in
20 1996, revealed that these drugs are a risk factor for the development of PPH, especially if they are
21 used for more than three months, placing persons exposed to a risk factor of between 23 and 46
22 times that expected. The 1997 PDR continued to represent that there were “four cases”, despite
23 internal manufacturer memos in 1995 and 1996 discussing the need to update the warning. In
24 addition to the failure to warn of known cases of PPH far in excess of the number mentioned in
25 the PDRs, between 1989 and 1997, the manufacturers’ agents were also warned of cases of valve
26 damage associated with these drugs as early as 1990. In many instances, although required to do
27 so by law, these Adverse Drug Effects or ADEs as they are known, were not reported to the
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1 FDA.

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

16 67. The Defendant Pharmaceutical Companies, and each of them, became aware and
17 had knowledge by as early as March 1996, of a striking and significant relationship between these
18 drugs and defects of the valves of the heart. Researchers at the prestigious Mayo Clinic located
19 in Rochester, Minnesota shared the findings of their study with the defendants, and each of them,
20 at that time. Nevertheless, the defendants, and each of them, failed to inform the public,
21 physicians, and patients that the risk of contracting primary pulmonary hypertension was many,
22 many multiples of that previously reported by the Defendant companies, and each of them, in their
23 written literature. Defendants, and each of them, also failed to warn the public, physicians, and
24 patients prescribed and ingesting the drugs about the special and increased risks of contracting
25 valvular heart disease through the combination use and increased risks of contracting valvular
26 heart disease through the combination use of fenfluramine, dexfenfluramine and/or phentermine.
27 Defendants, and each of them, also failed to inform Plaintiff and physicians of the

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1 reports in the literature of neurotoxicity and developmental neurotoxicity associated with use of
2 the subject drugs, despite 80 published articles documenting neurotoxicity associated with
3 dexfenfluramine alone.

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

11 69. By August of 1997, there were at least 58 additional reports of valvular disease in
12 patients from at least 18 different states which were associated with the tandem use of
13 phentermine and fenfluramine - including two male patients. The severity of the disease was
14 graded as moderate or severe in three-fourths of the cases. The typical patient began showing
15 heart symptoms after ten months of drug use. One 29-year-old woman died of a heart attack
16 eight months after she first took the medicines. Six patients needed valve replacement surgery
17 and more than ten needed surgery to repair the valves.

18 70. In August of 1997, the Journal of the American Medical Association associated the
19 use of Fen-Phen with brain dysfunction in animals. Researchers reviewing 128 medical journal
20 articles concluded that Fen-Phen disrupted the brain functions in animals, and may cause
21 depression, memory loss, anxiety and sleep disorders in humans as well as contributing to
22 pulmonary hypertension in humans.

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

27 72. In approximately September of 1997, the FDA received information from five
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1 physicians who had performed heart studies on patients who took Fen-Phen or dexFen-Phen but
2 who did not have symptoms of heart disease. Of the 291 asymptomatic patients screened, about
3 30% had abnormal valve findings, primary aortic regurgitation.

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

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

- 14 ● Anyone who has taken fenfluramine or dexfenfluramine for any period of time,
15 either alone or with another drug or drugs, should see their doctor for a medical
16 history and physical examination to determine whether there are signs or symptoms
17 of heart or lung disease.
- 18 ● Anyone who has taken these drugs for any period of time, either alone or with
19 another drug or drugs, who has signs or symptoms of heart or lung disease, such
20 as a new heart murmur or shortness of breath, should have an echocardiogram
21 performed.
- 22 ● An echocardiogram should be strongly considered for any patient who has taken
23 these drugs, either alone or with another drug or drugs - regardless of whether
24 they have signs and symptoms of the heart or lung diseases - BEFORE having any
25 invasive procedure for which the American Heart Association recommends
26 antibiotic prophylactic treatment to prevent the development of bacterial
27 endocarditis. This will provide an accurate determination of whether or not the
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1 person needs the antibiotic treatment.

2 75. Although the FDA has approved phentermine, fenfluramine and dexfenfluramine
3 separately, the FDA has not approved these drugs for combination use. The manufacturers and
4 distributors of these drugs knew of and encouraged the prevalence of off-label combination use of
5 their drugs, and failed adequately and appropriately to warn physicians and consumers that the
6 combination drug regimen was not FDA approved, was especially hazardous, was not
7 recommended, and had not been systemically tested by appropriate clinical trials.

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

13 77. The Pharmaceutical Company Defendants had knowledge, prior to fenfluramine and
14 dexfenfluramine being taken off the market, that the drugs, either individually, or in combination
15 increased the risks of PPH in multiples much greater than disclosed, and also caused valve
16 disease. The manufacturers and distributors of phentermine, fenfluramine and dexfenfluramine,
17 and each of them, did not adequately or appropriately disclose related drug information to
18 physicians in the United States. As a result, physicians have been over-prescribing phentermine,
19 fenfluramine and dexfenfluramine to patients who have been grossly under informed regarding the
20 risk of primary pulmonary hypertension, cardiac valve disease and neurotoxicity associated with
21 the Defendants' diet pills.

22 78. Prior to the date on which the aforementioned products were ingested by Plaintiff,
23 Defendants and each of them knew that these products were unsafe and had the potential and
24 propensity to produce serious and/or life-threatening injuries and other damages.
25 Notwithstanding the foregoing knowledge by the Defendants, at all times herein mentioned,
26 Defendants failed to take appropriate action to cure the nature of said defects or to adequately
27 warn users of said products and their physicians of said dangerous characteristics and defects.

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

7 80. Defendants, and each of them, have participated in the mutual exchange of
8 information concerning the problems, dangers and health risks of the drugs and have provided
9 information to each other designed to promote the sale of these drugs in general.

10 81. Plaintiff has sustained and will continue to sustain injuries on a continuing basis, by
11 virtue of the drugs ingested, which have continued to cause injuries from the date of ingestion to
12 the present.

13 82. The damages sustained by Plaintiff include but are not limited to general damages
14 for pain and suffering, as well as loss of earnings and earning capacity and medical and other bills
15 and expenses.

16 83. Plaintiff files this lawsuit within one year of first suspecting that said drugs were the
17 cause of any appreciable harm sustained by Plaintiff. Plaintiff could not, by the exercise of
18 reasonable diligence, have discovered the wrongful cause of Plaintiff's injuries at an earlier time
19 because the Defendants herein misrepresented and continue to misrepresent to the public and to
20 the medical profession that these drugs are safe and free from serious side effects.

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

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

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

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

19 88. Defendants' conduct was despicable, and so contemptible that it would be looked
20 down upon and despised by ordinary decent people, and carried on by Defendants with a willful
21 and conscious disregard for the safety of Plaintiff, entitling Plaintiff to exemplary damages under
22 Civil Code Section 3294. The trier of fact, in the exercise of its sound discretion, should award
23 Plaintiff additional damages for the sake of example and in a sufficient amount to punish said
24 defendants for their conduct, in an amount reasonably related to Plaintiff's actual damages and
25 Defendants' wealth and sufficiently large to be an example to others and to deter Defendants and
26 others from engaging in similar conduct in the future.

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1 **FIRST CAUSE OF ACTION**

2 (Strict Liability - Failure to Warn -

3 Pharmaceutical Company Defendants Only)

4 89. Plaintiff incorporates by reference herein Paragraphs 1 through 88 as though fully set
5 forth herein.

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

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

17 92. As a result of the defective condition of the aforementioned products, Plaintiff
18 suffered injuries and damages as alleged herein.

19 **SECOND CAUSE OF ACTION**

20 (Negligence - Pharmaceutical Company Defendants,

21 Diet Center Defendants and Pharmacy Defendants Only)

22 93. Plaintiff incorporates by reference herein Paragraphs 1 through 92 as though fully
23 set forth herein.

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

1 regulations, which were intended for the benefit of individuals such as Plaintiff, making
2 Defendants negligent per se:

3 (a) The labeling lacked adequate information on the use of the Fen-Phen
4 combination, even though the Defendants were aware of the widespread use of the combination.
5 [21 C.F.R. Section 201.56(a) and (d)]

6 (b) The labeling lacked adequate information on the approximate kind, degree and
7 duration of expected improvement, alone or in combination in violation of 21 C.F.R. Section
8 201.57(c)(3)(i).

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

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

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

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

21 (g) The labeling was misleading and promotional in violation of 21 C.F.R.
22 201.56(b).

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

25 (i) Defendants' advertising and representations regarding the subject drug products
26 were false and misleading in violation of Health and Safety Code Sections 110390 and 110290,
27 and Civil Code Section 1770(a)(5).
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1 (j) There was a failure to warn and/or consult as required by California Code of
2 Regulations §1707.2.

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

5 **FOURTH CAUSE OF ACTION**

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

7 103. Plaintiff incorporated by reference herein Paragraphs 1 through 102 as though fully
8 set forth herein.

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

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

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

19 107. As a result of the aforementioned breach of implied warranties by the Defendants
20 and each of them, Plaintiff suffered injuries and damages as alleged herein.

21 **FIFTH CAUSE OF ACTION**

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

23 108. Plaintiff incorporates by reference herein Paragraphs 1 through 107 as though fully
24 set forth herein.

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

3 110. In utilizing the aforementioned products, Plaintiff relied on the skill, judgment,
4 representations and foregoing express warranties of the Defendants, and each of them. Said
5 warranties and representations were false in that the aforementioned products were not safe and
6 were unfit for the uses for which they were intended.

7 111. As a result of the foregoing breach of express warranties by the Defendants, and
8 each of them, Plaintiff suffered injuries and damages as alleged herein.

9 **SIXTH CAUSE OF ACTION**

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

11 Pharmaceutical Company Defendants and Diet Center Defendants Only)

12 112. Plaintiff incorporates by reference herein Paragraphs 1 through 111 as though fully
13 set forth herein.

14 113. Defendants, and each of them, from the time that the aforementioned products
15 were first manufactured, marketed and distributed, and up to the present, willfully deceived
16 Plaintiff by concealing from the Plaintiff, Plaintiff's physicians and the general public, the true
17 facts concerning said pharmaceutical products, which the Defendants, as manufacturers markers
18 and distributors of the products, had a duty to disclose.

19 114. As set forth above, the 1989 through 1997 editions of the *Physicians Desk*
20 *Reference* (PDR), which publishes warnings issued by drug manufacturers, mentioned only "four
21 cases" of primary pulmonary hypertension (PPH), a disease with a 55% mortality rate, while in
22 fact, the manufacturers were informed during this same period of over 100 cases of PPH during
23 the same time period. The International Primary Pulmonary Hypertension Study (IPPHS),
24 published in 1996, revealed that these drugs are a risk factor for the development of PPH,
25 especially if they are used for more than three months, placing persons exposed to a risk factor of
26 between 23 and 46 times than expected. The 1997 PDR continued to represent that there were
27 "four cases", despite internal manufacturer memos in 1995 and 1996 discussing the need to
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1 update the warning.

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

11 116. At all times herein mentioned, Defendants, and each of them, conducted a sales
12 and marketing campaign to promise the sale of the aforementioned drug products and willfully
13 deceive Plaintiff, Plaintiff's physicians and the general public as to the health risks and
14 consequences of the use of the aforementioned products. Defendants, and each of them, were
15 aware of the foregoing, and that the aforementioned products were not safe, fit and effective for
16 human consumption, the use of said products is hazardous to health, and said products have a
17 serious propensity to cause serious injuries to users, including but not limited to the injuries
18 suffered by Plaintiff as delineated herein.

19 117. The Defendants intentionally concealed and suppressed the true facts concerning
20 said pharmaceutical products with the intent to defraud Plaintiff, in that the Defendants knew that
21 Plaintiff's physicians would not prescribe the subject products, and Plaintiff would not have used
22 the subject products, if they were aware of the true facts concerning the dangers of said products.

23 118. As a result of the foregoing fraudulent and deceitful conduct by the Defendants,
24 and each of them, Plaintiff suffered injuries and damages as alleged herein.

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1 SEVENTH CAUSE OF ACTION

2 (Negligent Misrepresentation - Pharmaceutical Company Defendants and
3 Diet Center Defendants Only)

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

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

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

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

25 123. The foregoing representations by Defendants, and each of them, were made with
26 the intention of inducing reliance and the prescription, purchase and use of the subject products.

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

6 125. As a result of the foregoing negligent misrepresentations by the Defendants, and
7 each of them, Plaintiff suffered injuries and damage as alleged herein.

8 **EIGHTH CAUSE OF ACTION**

9 (Violation of Business & Professions Code §17200 -

10 Pharmaceutical Company Defendants, Diet Center Defendants,

11 Pharmacy Defendants Only)

12 126. Plaintiff incorporated by reference herein Paragraphs 1 through 125 as though fully
13 set forth herein.

14 127. Plaintiff brings this cause of action pursuant to Business & Professions Code
15 §17204, in an individual capacity, and not on behalf of the general public.

16 128. California Business & Professions Code §17200 provides that unfair competition
17 shall mean and include "all unlawful, unfair or fraudulent business practices and unfair, deceptive,
18 untrue or misleading advertising.

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

- 24 (a) Representing to Plaintiff, Plaintiff's physicians and the general public that
25 said pharmaceutical products were safe, fit and effective for human
26 consumption, knowing that said representations were false, and concealing
27 from the Plaintiff, Plaintiff's physicians and the general public that said
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products had a serious propensity to cause injuries to users;

- (b) Engaging in advertising programs designed to create the image, impression and belief by consumers, physicians and diet centers that the use of phentermine, fenfluramine and dexfenfluramine, both individually and in combination, was safe for human use, had fewer side effects and adverse reactions than other methods of weight loss, constituted a convenient, safe form of weight loss and would not interfere with daily life, even though the Defendants knew these to be false, and even though the Defendants had no reasonable grounds to believe them to be true;
- (c) Purposely downplaying and understating the health hazards and risks associated with phentermine, fenfluramine and dexfenfluramine;
- (d) Issuing promotional literature deceiving potential users of phentermine, fenfluramine and dexfenfluramine by relaying positive information, including testimonials from satisfied users, and manipulating statistics to suggest widespread acceptability, while downplaying the known adverse and serious health effects and concealing material relevant information regarding the safety of said products;
- (e) Encouraging the combination of phentermine, fenfluramine and dexfenfluramine, even though the FDA had not approved the drugs for use in combination, and knowing that the combination drug regimen was specially hazardous, had not been systemically tested by appropriate clinical trials, and causes serious adverse health effects.

130. These practices constitute unlawful, unfair and fraudulent business acts or practices, within the meaning of California Business & Professions Code §17200, as well as unfair, deceptive, untrue and misleading advertising as prohibited by California Business & Professions Code §17500.

131. The unlawful, unfair and fraudulent business practices of Defendants described

1 above present a continuing threat to members of the public in that Defendants continue to engage
2 in the conduct described therein.

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

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

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

16 **NINTH CAUSE OF ACTION**

17 (Violation of Business and Professions Code §17500 -

18 Pharmaceutical Company Defendants, Diet Center Defendants,
19 Pharmacy Defendants Only)

20 135. Plaintiff incorporated by reference herein Paragraphs 1 through 134 as though fully
21 set forth herein.

22 136. Plaintiff brings this cause of action pursuant to Business & Professions Code
23 §17535, in an individual capacity and not on behalf of the general public.

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

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

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

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

6 140. 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.

9 141. 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.

13 142. 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.

18 143. 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 **TENTH CAUSE OF ACTION**

22 (Loss of Consortium - Against All Defendants)

23 144. Plaintiff incorporated by reference herein Paragraphs 1 through 143 as though fully
24 set forth herein.

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

4 (Medical Negligence - Health Care Provider Defendants Only)

5 146. Plaintiff incorporated by reference herein Paragraphs 1 through 145 as though fully
6 set forth herein.

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

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

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

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

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

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

26 153. Defendant(s) failed to fully disclose the potential hazards, dangers, risks and health
27 problems inherent to the subject drug products, and represented that the subject drug products
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1 were completely safe for their intended use and would not cause injury.

2 154. 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.

5 155. 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.

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

11 157. 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.

13 158. 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 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
20 follows:

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

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

Dated: February 22, 1999

BY: _____
Mark P. Robinson, Jr.
Plaintiffs' Liaison
Counsel

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1 JURY DEMAND

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

3 Dated: _____

4
5 BY: _____
6 Mark P. Robinson, Jr.
7 Plaintiffs' Liaison
8 Counsel

9 On behalf of Plaintiffs' Executive Committee:

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