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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding)	JUDICIAL COUNCIL
Special Title (Rule 1550(b)))	COORDINATION PROCEEDING
DIET DRUG CASES)	NO. 4032
)	FENFLURAMINE/DEXFENFLURAMINE
)	DEFENDANTS' MASTER ANSWER TO
)	PLAINTIFFS' MASTER COMPLAINT

The Fenfluramine/Dexfenfluramine defendants answer the Master Complaint as follows:

1. The use of a feminine pronoun in this answer includes male, neuter and plural pronouns and any singular in this answer, referring to "plaintiff" or "defendant", shall include the plural reference.
2. Under the provisions of Code of Civil Procedure Section 431.30(d), the Fenfluramine/Dexfenfluramine defendants deny each and every allegation of the Master Complaint and the whole thereof, and further deny that plaintiff has been damaged in the sum alleged or any sum whatsoever. The Fenfluramine/Dexfenfluramine defendants further deny that plaintiff's alleged injuries resulted from or were in any way connected with any act, omission, fault, conduct or liability on the part of the Fenfluramine/Dexfenfluramine defendants whether

1 negligent, careless, intentional, unlawful, or of any nature alleged or otherwise and deny that the
2 Fenfluramine/Dexfenfluramine defendants were in any way negligent, careless, reckless, wanton
3 or unlawful.

4
5 **FOR A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE:**

6 3. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon
7 such information and belief allege that the Master Complaint fails to state facts sufficient to
8 constitute any cause of action against them.

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10 **FOR A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE**

11 4. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon
12 such information and belief allege that the alleged incident and damages complained of by
13 plaintiff, if there actually were any, said incident and damages being expressly denied by the
14 Fenfluramine/Dexfenfluramine defendants, were proximately caused by the negligence and/or
15 other fault of plaintiff and/or firms, persons, corporations, other than the
16 Fenfluramine/Dexfenfluramine defendants, and that said negligence and/or other fault
17 comparatively reduces the percentage of any negligence and/or other fault attributable to the
18 Fenfluramine/Dexfenfluramine defendants, if it should be found that the
19 Fenfluramine/Dexfenfluramine defendants were negligent or otherwise at fault, which the
20 Fenfluramine/Dexfenfluramine defendants expressly deny.

21
22 **FOR A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE**

23 5. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon
24 such information and belief allege that plaintiff has no standing to bring this action and/or to
25 seek the relief requested in the Master Complaint.

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FOR A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE

6. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon such information and belief allege that at or about the time(s), date(s) and place(s) mentioned in the Master Complaint, if any risk was associated with the activities of the plaintiff and the product[s] which is the subject of the Master Complaint, which the Fenfluramine/Dexfenfluramine defendants deny, then said plaintiff knew of such risks and therefore plaintiff's claims against them are barred under the principles of assumption of the risk and/or informed consent.

FOR A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE

7. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon such information and belief allege that plaintiff's claims are subject to Restatement (Third) of Torts: Product Liability §6(c).

FOR A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE

8. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon such information and belief allege that the alleged injuries in question and the alleged damages in question were the result of the misuse of the product[s] in question.

FOR A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE

9. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon such information and belief allege that pursuant to the Learned Intermediary Doctrine, the Fenfluramine/Dexfenfluramine defendants owed no duty to directly warn the plaintiff of the risk of using the product[s], if any.

FOR AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE

10. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon such information and belief allege that the plaintiff failed to take proper and reasonable steps to

1 avoid or to mitigate the damages alleged, and to the extent of such failure to mitigate or to avoid
2 damages, any recovery by the plaintiff must be reduced accordingly.

3
4 **FOR A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE**

5 11. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon
6 such information and belief allege that if, in fact, the plaintiff was damaged in any manner
7 whatsoever, said damages, if any, were a direct and proximate result of the intervening and
8 superseding conduct on the part of other named or unnamed parties, not the
9 Fenfluramine/Dexfenfluramine defendants, and that such intervening and superseding conduct of
10 said other parties precludes recovery against the Fenfluramine/Dexfenfluramine defendants.

11
12 **FOR A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE**

13 12. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon
14 such information and belief allege that if plaintiff sustained an injury, said injury being expressly
15 denied by the Fenfluramine/Dexfenfluramine defendants, following the receipt of any product[s]
16 distributed by the Fenfluramine/Dexfenfluramine defendants, then said injury was a result of an
17 idiosyncratic event and was due in no way to any fault of the Fenfluramine/Dexfenfluramine
18 defendants.

19
20 **FOR AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE**

21 13. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon
22 such information and belief allege that the Master Complaint, and all issues raised therein are
23 barred by the each and every applicable statute(s) of limitations, including, but not limited to
24 Code of Civil Procedure, sections, 338, 339(1), 340(3), 340.5 and 343 and Civil Code §1783.

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FOR A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE

14. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon such information and belief allege that all alleged causes of action claimed by Plaintiff are barred by the doctrine of Federal Preemption.

FOR A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

15. The Fenfluramine/Dexfenfluramine defendants are informed and believe and on that basis allege that parties both served and unserved, named and unnamed, and plaintiffs are in are in some manner or percentage responsible for Plaintiff’s injuries or non-economic damages if any, and the Fenfluramine/Dexfenfluramine defendants require an order from the trier of fact setting forth separate judgments against each and every party, named and unnamed, served and unserved, and plaintiffs, for the amount of all non-economic damages that may be recovered by the Plaintiff in direct proportion to the percentage of fault of each party, named and unnamed, served and unserved, and Plaintiff, pursuant to Civil Code §1431.2.

FOR A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

16. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon such information and belief allege that the Master Complaint, and all issues raised therein are barred by the doctrines of laches, unclean hands, waiver and/or estoppel.

FOR A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

17. The Fenfluramine/Dexfenfluramine defendants allege that the product[s] in issue are subject to the Comment (j) exception to section 402A on strict tort liability as defined in Restatement (Second) of Torts.

FOR A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

18. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon such information and belief allege that the plaintiff has failed to join all necessary and

1 indispensable parties and therefore, complete relief cannot be accorded to those who are already
2 parties to this action and plaintiff's failure to join all indispensable parties will result in prejudice.

3
4 **FOR A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE**

5 19. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon
6 such information and belief allege that plaintiff's causes of action for strict liability and/or
7 implied warranty are barred by section 402A of the Restatement (Second) of Torts, Comment k,
8 as adopted by the California Supreme Court in Brown v. Superior Court, 44 Cal.3d 1049 and all
9 subsequent cases following same.

10
11 **FOR AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE**

12 20. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon
13 such information and belief allege that plaintiff's causes of action are barred by the State of the
14 Art Doctrine.

15
16 **FOR A NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE**

17 21. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon
18 such information and belief allege that plaintiff's injuries, if any, and damages awarded for same,
19 if any, are limited by Civil Code §§3333.1 and 3333.2.

20
21 **FOR A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE**

22 22. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon
23 such information and belief allege that Plaintiff's claims are barred under Section 4 *et seq.* of the
24 Restatement (Third) of Torts: *Products Liability*.

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FOR A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE

23. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon such information and belief allege that any alleged warranty was disclaimed.

FOR A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE

24. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon such information and belief allege that Plaintiff failed to notify the Fenfluramine/Dexfenfluramine defendants of any alleged breach of warranty within a reasonable time after Plaintiff discovered or should have discovered any such alleged breach and is, therefore, barred from any recovery for such claims.

FOR A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE

25. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon such information and belief allege that Plaintiff impermissibly seeks to impose liability on conduct protected from liability by the First Amendment to the United States Constitution and by Section 2 of Article I of the Constitution of the State of California.

FOR A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE

26. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon such information and belief allege that Plaintiff lacks standing to prosecute a claim for injunctive and/or monetary relief pursuant to Business & Professions Code §§17200, 17203, 17205, 17500 and 17535.

FOR A TWENTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE

27. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon such information and belief allege that the Master Complaint fails to state facts sufficient to state a claim for injunctive relief pursuant to Business & Professions Code §§17200, 17203, 17205, 17500 and 17535.

FOR A TWENTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE

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2 28. Plaintiff's claims for punitive damages are in contravention of the
3 Fenfluramine/Dexfenfluramine defendants' rights under each of the following constitutional
4 provisions:
5 a. the Commerce Clause of Article I, Section 8 of the United States
6 Constitution;
7 b. the Contracts Clause of Article I, Section 10 of the United States
8 Constitution;
9 c. the prohibition against *ex post facto* laws embodied in Article I, Section
10 10 of the United States Constitution;
11 d. the Supremacy Clause of Article VI of the United States Constitution;
12 e. the Free Speech Clause of the First Amendment of the United States
13 Constitution;
14 f. the Due Process Clause of the Fifth and Fourteenth Amendments of the
15 United States Constitution;
16 g. the Takings Clause of the Fifth Amendment of the United States
17 Constitution;
18 h. the Excessive Fines Clause of the Eighth Amendment of the United States
19 Constitution;
20 i. the Equal Protection Clause of the Fourteenth Amendment of the United
21 States Constitution.
22 j. the Free Speech Clause of Article I, Section 2 of the Constitution of the
23 State of California;
24 k. the Due Process Clause of Article I, Section 7 of the Constitution of the
25 State of California;
26 l. the Takings Clause of Article I, Section 19 of the Constitution of the
27 State of California;
28

1 m. the Excessive Fines Clause of Article I, Section 17 of the Constitution of
2 the State of California;

3 n. the Equal Protection Clause of Article I, Section 7 of the Constitution of
4 the State of California.

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6 **FOR A TWENTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE**

7 29. With respect to plaintiff's demand for punitive damages, the
8 Fenfluramine/Dexfenfluramine defendants specifically incorporate by reference any and all
9 standards or limitations regarding the determination and enforceability of punitive damage
10 awards which are set forth in the decision of *BMW of North America v. Gore*, 116 U.S. 1589
11 (1996).

12
13 **FOR A TWENTY-EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE**

14 30. The Fenfluramine/Dexfenfluramine defendants are informed and believe and upon
15 such information and belief allege that to the extent the claims stated in the Master Complaint
16 have been settled, compromised, or otherwise discharged, the Fenfluramine/Dexfenfluramine
17 defendants are entitled to a set-off.

18
19 **FOR A TWENTY-NINTH, SEPARATE AND AFFIRMATIVE DEFENSE**

20 31. The Fenfluramine/Dexfenfluramine defendants allege that plaintiff's claims are
21 barred by the primary jurisdiction doctrine.

22
23 **FOR A THIRTIETH, SEPARATE AND AFFIRMATIVE DEFENSE**

24 32. The Fenfluramine/Dexfenfluramine defendants allege that plaintiff's claims are
25 barred by additional defenses that may arise during the course of this litigation which they
26 reserve the right to assert based upon further investigation and discovery.

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WHEREFORE, the Fenfluramine/Dexfenfluramine defendants pray as follows:

1. That plaintiff take nothing by virtue of the Master Complaint;
2. For judgment in their favor;
3. For all costs of suit incurred herein; and
4. For such other and further relief as the court may deem just and proper.

DEMAND FOR JURY TRIAL

The Fenfluramine/Dexfenfluramine defendants demand a trial by jury on all causes of action and issues which may, under the law, be tried.