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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES, SOUTHEAST DISTRICT

COORDINATION PROCEEDING SPECIAL) JCCP No. : 004032  
TITLE (RULE 1550(b) ) DEPT: SE”D”  
DIET DRUG CASES )  
\_\_\_\_\_) PHARMACY DEFENDANTS’ MASTER  
THIS DOCUMENT RELATES TO ALL ) ANSWER TO PLAINTIFFS’ FIRST  
ACTIONS ) AMENDED MASTER COMPLAINT  
\_\_\_\_\_)

The pharmacy defendants, for themselves alone, answer the First Amended Master Complaint (hereinafter the "Amended 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, where appropriate.

2. Under the provisions of Code of Civil Procedure Section 431.30(d), the pharmacy defendants deny each and every allegation of the Amended Complaint and the whole thereof, and further deny that plaintiff has been damaged in the sum alleged or any sum whatsoever. The pharmacy 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 pharmacy defendants whether negligent, careless, intentional, unlawful, or of any nature alleged or otherwise and deny that the pharmacy defendants were in any way negligent, careless, reckless, wanton or unlawful.

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**FOR A FIRST AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

3. Plaintiff's Second Cause of Action of Negligence fails to state facts sufficient to constitute a cause of action.

**FOR A SECOND AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

4. Plaintiff's Third Cause of Action of Negligence Per Se fails to state facts sufficient to constitute a cause of action.

**FOR A THIRD AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

5. Plaintiff's Eighth Cause of Action of Violation of Business & Professions Code Section 17200 fails to state facts sufficient to constitute a cause of action.

**FOR A FOURTH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

6. Plaintiff's Ninth Cause of Action of Violation of Business & Professions Code Section 17500 fails to state facts sufficient to constitute a cause of action.

**FOR A FIFTH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

7. Plaintiff's Tenth Cause of Action of Loss of Consortium fails to state facts sufficient to constitute a cause of action.

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**FOR A SIXTH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

8. Plaintiff's Amended Complaint fails to state facts sufficient to constitute a cause of action.

**FOR A SEVENTH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

9. That each of the alleged causes of action stated in the Amended Complaint is barred, in whole or in part, by the applicable statute of limitations, including, but not limited to, Code of Civil Procedure Sections 338, 339(1), 340(3), 340.4, and 340.5.

**FOR AN EIGHTH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

10. Plaintiff's claims are barred by primary jurisdiction doctrine.

**FOR A NINTH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

11. Plaintiff has no standing to bring this action.

**FOR A TENTH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

12. Plaintiff failed to join all necessary and indispensable parties.

**FOR AN ELEVENTH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

13. That pursuant to Business & Professions Code Section 6146, Code of Civil Procedure Sections 340.5, 364, 667.7, and 1029.6, Civil Code Sections 1714.8, 3333.1, and

1 3333.2, pharmacy defendants fall within the ambit of Medical Injury Compensation Reform Act  
2 and all rights, immunities, defenses, and benefits thereof.

3 **FOR A TWELFTH AFFIRMATIVE DEFENSE,**

4 **SEPARATE AND DISTINCT FROM THE FOREGOING,**

5 **THIS ANSWERING DEFENDANT ALLEGES:**

6 14. Plaintiff's injuries, if any, and damages awarded for same, if any, are limited by  
7 Civil Code Sections 3333.1 and 3333.2, and Code of Civil Procedure Section 667.7.

8 **FOR A THIRTEENTH AFFIRMATIVE DEFENSE,**

9 **SEPARATE AND DISTINCT FROM THE FOREGOING,**

10 **THIS ANSWERING DEFENDANT ALLEGES:**

11 15. Plaintiff's claims are barred under Section 4 *et seq.* of the Restatement (Third) of  
12 Torts: *Products Liability*.

13 **FOR A FOURTEENTH AFFIRMATIVE DEFENSE,**

14 **SEPARATE AND DISTINCT FROM THE FOREGOING,**

15 **THIS ANSWERING DEFENDANT ALLEGES:**

16 16. Plaintiff's claims are subject to Restatement (Third) of Torts: Product Liability  
17 Section 6(c).

18 **FOR A FIFTEENTH AFFIRMATIVE DEFENSE,**

19 **SEPARATE AND DISTINCT FROM THE FOREGOING,**

20 **THIS ANSWERING DEFENDANT ALLEGES:**

21 17. Plaintiff's causes of action are barred by the State of the Art Doctrine.

22 **FOR A SIXTEENTH AFFIRMATIVE DEFENSE,**

23 **SEPARATE AND DISTINCT FROM THE FOREGOING,**

24 **THIS ANSWERING DEFENDANT ALLEGES:**

25 18. Any injury or damage mentioned in the Amended Complaint and allegedly  
26 sustained by Plaintiff or Plaintiff's decedent was the result of the natural course of a disease or  
27 condition, or the natural or expected result of a reasonable treatment rendered for the disease or  
28 condition, and this answering defendant is thus not liable under Civil Code Section 1714.8.

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**FOR A SEVENTEENTH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

19. Plaintiff failed to comply with the statutory provision governing actions brought by successor in interest as provided in Civil Code Section 377.32.

**FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

20. That at all times mentioned in the Amended Complaint, Plaintiff conducted himself/herself in a negligent manner, such negligence proximately caused and contributed to the damages alleged, and Plaintiff's recovery from this answering defendant, if any, shall thereby be reduced in proportion to the amount of negligence attributable to the Plaintiff.

**FOR A NINETEENTH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

**21.** That at all times mentioned in the Amended Complaint, Plaintiff, knowing the probable consequences thereof, placed himself/herself in such a position of danger and freely and voluntarily participated in all activities alleged herein, and thereby assumed all the risks attendant thereto.

**FOR A TWENTIETH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

22. That at all times mentioned in the Amended Complaint, persons or entities other than this answering defendant so negligently, carelessly, and recklessly conducted themselves so as to proximately cause the incident, the alleged injuries, and damages, if any, sustained by Plaintiff.

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**FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

23. That if any loss, injury, damage or detriment occurred as alleged in Plaintiff's Amended Complaint, and such loss, injury, damage or detriment was caused and contributed to by the actions of persons or entities other than that of this answering defendant, plaintiff's recovery from this answering defendant, if any, shall be reduced in proportion to the percentage of other persons' or entities' negligence or fault. Civil Code Section 1431.2.

**FOR AN TWENTY-SECOND AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

24. That at all times mentioned in the Amended Complaint, persons or entities other than this answering defendant so negligently, carelessly, and recklessly conducted themselves so as to proximately cause the incident, the alleged injuries, and damages, and such conduct was the intervening and superseding cause of the incident, the alleged injuries, and damages, if any, sustained by Plaintiff or Plaintiff's decedent, Plaintiff's recovery from this answering defendant, if any, shall be barred completely.

**FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

25. That if, in fact, any dangerous or defective condition existed in the product referred to in the Amended Complaint, and such condition was caused and created by the unreasonable and unforeseeable misuse and abuse of the product by persons other than this answering defendant, or any of his/her agents, servants or employees, Plaintiff's right of recovery from this answering defendant is thereby reduced by the amount which said negligence, abuse, and misuse contributed to this incident.

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**FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

26. The allegations in the Amended Complaint are pre-empted by the provisions of the federal Food, Drug, and Cosmetic Act and the regulations promulgated pursuant to that Act.

**FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

27. That at all times mentioned in the Amended Complaint, every reasonable effort was made by this answering defendant to comply with the statutes, regulations, and/or ordinances under the circumstances alleged, and any non-compliance, if existed at all, was justified under the circumstances alleged.

**FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

28. That at all times mentioned in the Amended Complaint, in performing the professional duties, this answering defendant acted reasonably in accordance with custom and within the established structure and hierarchy of the pharmaceutical and health care industries and professions.

**FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE,**  
**SEPARATE AND DISTINCT FROM THE FOREGOING,**  
**THIS ANSWERING DEFENDANT ALLEGES:**

29. That his/her conduct is protected by the First Amendment to the United States Constitution and Article I, Section 2 of the California Constitution.

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**FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE,**

1                                   **SEPARATE AND DISTINCT FROM THE FOREGOING,**

2                                   **THIS ANSWERING DEFENDANT ALLEGES:**

3                   30.       That at all times mentioned in the Amended Complaint, Plaintiff, at his/her own  
4 free will, made independent investigation of the activities alleged herein, and decided to undertake  
5 these very activities based upon the result of such independent investigation, and are thus barred  
6 from any recovery from this answering defendant.

7                                   **FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE,**

8                                   **SEPARATE AND DISTINCT FROM THE FOREGOING,**

9                                   **THIS ANSWERING DEFENDANT ALLEGES:**

10                   31.       Plaintiff lacks standing to prosecute a claim for injunctive and/or monetary relief  
11 pursuant to Business & Professions Code Sections 17200, 17203, 17205, 17500, and 17535.

12                                   **FOR A THIRTIETH AFFIRMATIVE DEFENSE,**

13                                   **SEPARATE AND DISTINCT FROM THE FOREGOING,**

14                                   **THIS ANSWERING DEFENDANT ALLEGES:**

15                   32.       That the Amended Complaint fails to state facts sufficient to state a claim for  
16 injunctive relief pursuant to Business & Professions Code Sections 17200, 17203, 17205, 17500,  
17 and 17535.

18                                   **FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE,**

19                                   **SEPARATE AND DISTINCT FROM THE FOREGOING,**

20                                   **THIS ANSWERING DEFENDANT ALLEGES:**

21                   33.       That the Amended Complaint and each alleged cause of action therein that  
22 purport to state a claim against this answering defendant are barred by the doctrine of unclean  
23 hands by reason of plaintiff's conduct and actions.

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28                                   **FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE,**

1                                   **SEPARATE AND DISTINCT FROM THE FOREGOING,**

2                                   **THIS ANSWERING DEFENDANT ALLEGES:**

3           34.       That the Amended Complaint and each alleged cause of action therein that purport  
4 to state a claim against this answering defendant are barred by the doctrine of waiver by reason of  
5 plaintiff's conduct and actions.

6                                   **FOR A THIRTY-THIRD AFFIRMATIVE DEFENSE,**

7                                   **SEPARATE AND DISTINCT FROM THE FOREGOING,**

8                                   **THIS ANSWERING DEFENDANT ALLEGES:**

9           35.       Plaintiff is estopped, by reason of his/her conduct and actions, from asserting each  
10 or any of his/her claims herein.

11                                  **FOR A THIRTY-FOURTH AFFIRMATIVE DEFENSE,**

12                                  **SEPARATE AND DISTINCT FROM THE FOREGOING,**

13                                  **THIS ANSWERING DEFENDANT ALLEGES:**

14           36.       That the Amended Complaint and each alleged cause of action therein that purport  
15 to state a claim against this answering defendant are barred by the doctrine of laches due to  
16 plaintiff's undue delay in bringing this action and causing prejudice to this answering defendant.

17                                  **FOR A THIRTY-FIFTH AFFIRMATIVE DEFENSE,**

18                                  **SEPARATE AND DISTINCT FROM THE FOREGOING,**

19                                  **THIS ANSWERING DEFENDANT ALLEGES:**

20           37.       Plaintiff's request for injunctive relief is barred by the doctrine of impossibility.

21                                  **FOR A THIRTY-SIXTH AFFIRMATIVE DEFENSE,**

22                                  **SEPARATE AND DISTINCT FROM THE FOREGOING,**

23                                  **THIS ANSWERING DEFENDANT ALLEGES:**

24           38.       Plaintiff had a duty to mitigate his/her damages and failed to do so, thus any  
25 recovery from this answering defendant shall thereby be reduced by the amount of damages which  
26 would have and could have been avoided had plaintiff taken the necessary actions to mitigate  
27 his/her damages.

28                                  **FOR A THIRTY-SEVENTH AFFIRMATIVE DEFENSE,**

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**SEPARATE AND DISTINCT FROM THE FOREGOING,**

**THIS ANSWERING DEFENDANT ALLEGES:**

39. Defendant was reasonably justified in his/her action with respect to plaintiff due to legitimate independent reasons unrelated to those complained of by plaintiff.

**FOR A THIRTY-EIGHTH AFFIRMATIVE DEFENSE,**

**SEPARATE AND DISTINCT FROM THE FOREGOING,**

**THIS ANSWERING DEFENDANT ALLEGES:**

40. That he/she is entitled to a reduction and/or set-off in the amount of any and all workers' compensation benefits paid or to be paid to plaintiff.

**FOR A THIRTY-NINTH AFFIRMATIVE DEFENSE,**

**SEPARATE AND DISTINCT FROM THE FOREGOING,**

**THIS ANSWERING DEFENDANT ALLEGES:**

41. That he/she reserves herein the right to assert additional defenses in the event new evidence or information, if any, comes to light during discovery and such evidence or information forms the basis of such additional defenses.

WHEREFORE, this answering defendant prays that judgment be entered in his/her favor and that plaintiff take nothing by the Amended Complaint on file herein, that this defendant be dismissed together with costs of suit incurred herein, and for such other and further relief as the court may deem just and proper.

STONE & HILES, LLP

By: \_\_\_\_\_  
RUSSEL D. HILES, ESQ.  
Liaison Counsel for Pharmacy Def.

TH\Fen-Phen\General\Pleading\Master Answer.Doc

**PROOF OF SERVICE BY MAIL**

(C.C.P. 1013a)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 9440 Santa Monica Boulevard, Penthouse, Beverly Hills, California 90210.

On May 26, 1999, I served the foregoing document(s) described as **PHARMACY DEFENDANTS' MASTER ANSWER TO PLAINTIFF'S FIRST AMENDED MASTER COMPLAINT** on all interested parties in this action by placing \_\_\_ the original X a true copy thereof enclosed in sealed envelopes addressed as follows:

**SEE ATTACHED SERVICE LIST**

X BY MAIL: As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

\_\_\_ BY ELECTRONIC TRANSFER: I caused all of the pages on the above entitled document to be sent to the recipient(s) noted on the Proof of Service via electronic transfer (FACSIMILE) at fax number: \_\_\_\_\_.

Executed on May 26, 1999, at Beverly Hills, California.

X STATE: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

\_\_\_ FEDERAL: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

\_\_\_\_\_  
CAROLYN WHITE

**SERVICE LIST**

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