

defendant shall do so by filing an amendment to the Amended Master Complaint naming the new defendant as a Doe defendant

2. Date: Friday, February 19, 1999		DEPT. SE D	
HONORABLE DANIEL SOLIS PRATT	Judge	S. WORTHEN	Deputy Clerk
Y. KRANTZ Sheriff	Deputy	J. LIBERTY Reporter	Court
10:00 am	JCCP004032	Plaintiff	
	IN RE: DIET DRUG CASES	Defendant Counsel	

within twenty (20) days from the date that this order is signed.

For all existing defendants, the answer previously filed shall be deemed filed as their answer to the Amended Master Complaint. If any existing defendant wants to file a different answer or response, that defendant will have thirty (30) days from the date the order is signed to file said response.

Any plaintiff who names a new defendant shall have thirty (30) days from the date that this order is signed to serve the new defendant, with the exception of the Servier defendants. Plaintiffs shall have five (5) months from the date of this order is signed to serve the Servier defendants. Plaintiffs shall serve all new defendants with a copy of the Amended Master Complaint, the Doe Amendment to the Amended Master Complaint and the Adoption of the (original) Master Complaint.

Any new defendants shall have thirty (30) days from the date of service of the Amended Master Complaint, the Doe Amendment to the Amended Master Complaint and the Adoption of the (original) Master Complaint to respond.

Plaintiffs' counsel may prepare the proofs of service of the Amended Master Complaint, the Doe Amendment to the Amended Master Complaint and the Adoption of the (original) Master Complaint, but need not file them unless otherwise instructed by the Court.

The Court will liberally permit an amendment to a complaint where to do so furthers justice and does not prejudice the defendant. See, *Berman v. Bromberg* (1997) 56 Cal.App.4th 936, 945. "Moreover, it is irrelevant that new legal theories are introduced so long as the proposed amendments 'relate to the same general set of facts.'" Ibid. quoting K

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Plaintiff

IN RE: DIET DRUG CASES

Defendant
Counsel

Kittredge Sports Co. v. Superior Court (1989) 213 Cal.App.3d 1045, 1048.

Market share liability is applicable when the product is fungible, the product cannot be traced to a specific manufacturer through no fault of plaintiffs, and plaintiff joins a substantial share of the manufacturers. *Sindell v. Abbott Laboratories* (1980) 26 Cal.3d 588.

Though these elements are adequately alleged in paragraph 43 of the proposed amended master complaint, plaintiffs have not shown the problem of identification of phentermine defendants is so widespread as to justify adding a market share theory of liability to the master complaint. Therefore, all references to a market share theory of liability are stricken from the proposed amended master complaint.

Individual plaintiffs who seek to allege a market share theory may do so on noticed motion accompanied by supporting declarations regarding their efforts to identify the phentermine manufacturers.

Order granting motion is signed and filed this date.

The status conference set on the master case and petition regarding setting of trial dates presently set for 3-05-99, are advanced to this date and continued to 3-08-99, at 10:00 a.m., in this department.

Motions to specially set in cases DD000408 and DD000010 presently set for 3-05-99 are advanced to this date and continued to 3-08-99, at 10:00 a.m., in this department.

Briefs regarding consolidation of plaintiffs at trial and selection of cases for trial are to be submitted to Department SE-D by 3-03-99. Service to be accomplished by fax.