

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
JCCP 004032**

Date: Monday, April 12, 1999			<b>DEPT. SE D</b>
HONORABLE DANIEL SOLIS PRATT	Judge	S. RAINWATER	Deputy Clerk
Y. KRANTZ	Deputy Sheriff	J. LIBERTY	Court Reporter
<b>10:00 am</b>	JCCP004032	Plaintiff Counsel	
	IN RE: DIET DRUG CASES	Defendant Counsel	

NATURE OF PROCEEDINGS: MASTER CASE STATUS CONFERENCE; DEMURRER OF PHARMACY DEFENDANTS TO THE AMENDED MASTER COMPLAINT; HEARING ON SELECTION OF CASES TO BE SET FOR TRIAL

The demurrer is called for hearing and argued. The matter stands submitted. Later, the Court orders the tentative ruling to stand.

The demurrer is **OVERRULED**. CCP §430.10(e).

Defendants have 30 days to answer the master complaint. See Los Angeles County Local Rule 7.7(a)(3).

A demurrer admits the truth of all material factual allegations in the complaint. Committee on Children's Television, Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 214.

This demurrer revolves around one question: Did the defendant pharmacists owe their patients a duty to warn of the potential danger presented by Fen-Phen.

The existence of duty is a legal question decided by the court. The question turns on whether the pharmacist-patient relationship is such that the dispensing pharmacist has an obligation to use reasonable care to avoid or prevent foreseeable injury to the

patient. It is informed by public policy, which itself may be evidenced by statutes and regulations.

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The court finds the Legislature has articulated a public policy in favor of imposing upon pharmacists a duty of care to patients. 16 CCR 1707.2(c)(2). Whether this duty includes warning a patient specifically of the dangers of Fen-Phen is a question of fact not to be decided upon demurrer.

Therefore, the demurrer to the negligence causes of action is overruled.

The complaint also alleges the pharmacists knowingly misrepresented to plaintiffs and the public that Fen-Phen was safe. ¶¶ 129, 138. This suffices to state a cause of action under B&P §§ 17200 and 17500. Therefore, the demurrer to the 8<sup>th</sup> and 9<sup>th</sup> causes of action is overruled.

The Court issues Proposed General Order No. 9 **INITIAL SELECTION FOR CASES TO BE SET FOR TRIAL:**

The matter is argued.

The Court orders the Fleming case DD#000362 stricken from the list as it includes a pharmacy defendant. The Court orders trials to commence October 4, 1999 pursuant to the request of counsel for defendant AHP etc.

The issue remains submitted for decision. Later, the Court issues the revised **GENERAL ORDER NO. 9** (which is signed and filed this date) as follows:

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The following cases will be set for trial beginning October 4, 1999 and continuing until all cases have been tried or settled.

They have been divided into five groups as follows:

1. Primary Pulmonary Hypertension: five cases.
2. Moderate Valve: four cases.
3. Severe Valve: four cases.
4. Mild Valve: five cases.
5. Other: four cases.

The cases chosen are as follows:

**PRIMARY PULMONARY HYPERTENSION**

1. Cindy Mickle                      DD # 000010              Trial 10-4-1999
2. Carla Longacre              DD # 000041
3. Nancy Hall                      DD # 000134
4. Stanley Case                      DD # 000493
5. Kathleen Stotler              DD # 000637

**SEVERE VALVE**

- 1. Kristi Bowman DD # 000556 Trial 11-1-1999
- 2. Shirley Lutman DD # 000028

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**10:00 am**

JCCP004032

Plaintiff  
Counsel

IN RE: DIET DRUG CASES

Defendant  
Counsel

- 3. Patricia Visser DD # 000235
- 4. Jerry Tuptelend DD # 000001

**MODERATE VALVE**

- 1. Cynthia Chupp DD # 000017 Trial 12-1-1999
- 2. Ann Dancy DD # 000074
- 3. Cynthia Verson DD # 000093
- 4. Herminea Haroutounian DD # 000147

**MILD VALVE**

- 1. Patricia Butcher DD # 000073 Trial 1-3-2000
- 2. Michelle Williams DD # 000136
- 3. Alicia Anderson DD # 000298
- 4. Vicki Nicoletto DD # 000351

5. Gilbert Munoz

DD # 000248

**OTHER**

1. Tomika Burch

DD # 000067 Trial 1-31-2000

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HONORABLE DANIEL SOLIS PRATT Judge

S. RAINWATER

Deputy Clerk

Y. KRANTZ Deputy Sheriff

J. LIBERTY

Court Reporter

**10:00 am**

JCCP004032

Plaintiff  
Counsel

IN RE: DIET DRUG CASES

Defendant  
Counsel

2. Francine Parsley

DD # 000188

3. Raymonda Harris

DD # 000347

4. Maria Felli

DD # 000359

The Court lifts the discovery stay as to the trial selected cases only. The stay remains in effect as to all other cases.

The Court orders any ***CONTINUED STATUS CONFERENCE / TRIAL SETTING CONFERENCE*** previously set now vacated. ***INITIAL STATUS CONFERENCES*** shall continue to proceed as scheduled.

Counsel appearing on behalf of the plaintiffs: MARK ROBINSON, SHARON ARKIN, ARTHUR SHERMAN, WILLIAM HIRSCH, CARLOS PRIETTO, JOHN ZARIAN, CAREY ROSE, AMY ESKIN, NANCY FINEMAN, GEOFFREY WELLS, FREDERICK DUDEK, MICHAEL GROBATY, ANNE ANDREWS, JOHN C. THORNTON, TINA NIEVES.

Counsel appearing on behalf of defendants: TIMOTHY BRADFORD, DAVID STANLEY, PATRICIA CARMICHAEL, THOMAS MOORE, MARK SPOONER, BARBARA REARDON, ANN ASIANO, JOSEPH CARLUCCI, JOHN MULVANA, DANIEL WATKINS, FOSTER FURCOLO, JAMES MURRAY, JANE OLIVAS, JANE OLIVAS, KATHLEEN WATERS, BARBARA BERNDT, ELIZABETH FLATLEY, PHILLIPHOWARD, LISA KING, JENNIFER CHAN, NANCY MORRISON, SUSAN HACK, PAUL CARRON, H. GREGORY NELCH, APRIL JOHNSON, MELISSA FINK, ELLEN DARLING, STUART GORDON, JAMES

HANSEN, MIRIAM SCHIMMEL, LAUREL VREELAND, SHEILA SALOMIN, MICHAEL HEALY, KRISTI HELGESON, STEVEN MOYER, JOSEPHINE LAI, STEPHEN DREHER, GREGG FARLEY, CATHY SHIPE, MICHAEL RUGGLES, CHRISTOPHER BAYUK AND JANET KEUPER, JOSEPH BUTLER, JESSICA TAKANO and ALEXANDER COBB.