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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

IN RE DIET DRUG LITIGATION)	Judicial Council Coordination
_____)	Proceeding No. 4032
THIS DOCUMENT RELATES TO:)	<u>GENERAL ORDER NO. 1:</u>
ALL ACTIONS)	<u>CASE MANAGEMENT</u>
)	
)	
_____)	

I. PRETRIAL COORDINATION

This Order, and any additional general orders entered in this litigation, shall govern each case coordinated in Judicial Council Proceeding 4032 and all other cases brought by or on behalf of any person alleging injury due, either in whole or in part, to the use of fenfluramine, dexfenfluramine, and/or phentermine, individually or in common ("Diet Drug Cases"), which are coordinated in this proceeding pursuant to Section 404, et seq. of the Code of Civil Procedure and/or Rule 1544 of the California Rules of Court. The procedures and protocols contained in this Order shall supersede any conflicting provisions in the Code of Civil Procedure, the Rules of Court, the local rules of the various counties, and any other conflicting statutory, judicial or regulatory provisions; provided, however, that the parties do not waive the right to argue that such conflicting provisions should be applied in this litigation. This Order does not constitute a

1 determination that these actions should be consolidated for trial, and does not have the effect of
2 making any person or entity a party to an action in which he, she or it has not been named and
3 served.

4 **II. MASTER DOCKET AND FILE**

5 The Clerk will maintain a Master Docket and Case File under the style "In re Diet Drugs
6 Litigation," Judicial Council Coordination Proceeding No. 4032. All orders, pleadings, motions,
7 and other documents will, when filed and docketed in the Master Case File, be deemed filed and
8 docketed in each individual case to the extent applicable.

9 **III. CAPTIONS; SEPARATE FILING**

10 Pleadings, motions and other documents will bear a caption similar to that of this Order.
11 If generally applicable to all of the coordinated actions, they shall include in their caption the
12 notation that they relate to "ALL ACTIONS" and shall be filed and docketed only in the Master
13 File. Documents intended to apply only to particular cases will indicate in their caption the name
14 and case number of the case(s) to which they apply, and extra copies shall be provided to the
15 Clerk to facilitate filing and docketing both in the Master File and the specified individual case
16 files.

17 **IV. STAY OF PROCEEDINGS**

18 All of the Diet Drug Cases that are currently included in Judicial Council Coordination
19 Proceeding 4032, all cases included in the list of cases identified in Plaintiffs' Petition for
20 Coordination of Add-On Cases, dated April 15, 1998 or in the list of cases identified in
21 defendant American Home Products Corporation's Petitions for Coordination of Add-On Cases,
22 dated April 24, 1998 and May 29, 1998, and all other pending California state court Diet Drug
23 cases are stayed except as to specific proceedings outlined in this order, or in subsequent orders,
24 until this Court has had an opportunity to consider a plan for coordinated discovery at an
25 upcoming pretrial conference. All prior discovery to which responses have not been served, all
26 dates on which responsive pleadings are due, all status conference dates, hearing dates and trial
27 dates previously set, are hereby deemed vacated. It is also the intent of this Order that any
28

1 future Diet Drug Cases will be stayed pending their coordination herein, except for participation
2 in the coordinated proceedings herein.

3 **V. ORGANIZATION OF PLAINTIFFS' COUNSEL**

4 **A. Plaintiffs' Liaison Counsel.**

5 **1. Designation of Plaintiffs' Liaison Counsel.**

6 The Court designates the following firm to serve as Plaintiffs' Liaison Counsel:

7 Mark P. Robinson, Jr., Esq.
8 Joseph Dunn, Esq.
9 The Robinson & Calcagnie Law Firm
10 28202 Cabot Road, Suite 200
11 Laguna Niguel, CA 92677
12 Fax: (949) 347-8774
13 Phone: (949) 347-8855

14 **2. Responsibility of Plaintiffs' Liaison Counsel.**

15 Plaintiffs' Liaison Counsel shall have the following responsibilities:

16 a. To maintain and distribute to the Court, to counsel for plaintiffs, and to
17 counsel for defendants an up-to-date comprehensive Service List of all plaintiffs' counsel
18 (including the date of the most recent revision).

19 b. To receive and distribute to plaintiffs' counsel, as appropriate, orders,
20 notices and correspondence from the Court.

21 c. To maintain and make available to other plaintiffs' counsel, on reasonable
22 notice and at reasonable times, a complete set of all pleadings and orders filed and/or served in
23 these coordinated proceedings.

24 d. Plaintiffs' Liaison Counsel shall have no other responsibilities, and, except
25 as to the plaintiffs that it individually represents, is not authorized to bind or act on behalf of all,
26 or any, of the plaintiffs in any matter without the consent and authorization of the Plaintiffs'
27 Management Committee.
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B. Plaintiffs' Executive Committee

1. Designation of Plaintiffs' Executive Committee.

The Court designates the following firms to serve on the Plaintiffs' Executive Committee:

Cotchett, Pitre & Simon
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Fax: (650) 697-0577
Phone: (650) 697-6000

Greene, Broillet, Taylor,
Wheeler & Panish, LLP
100 Wilshire Boulevard
Santa Monica, CA 90401
Fax: (310) 576-1220
Phone: (310) 576-1200

Lieff, Cabraser, Heimann & Bernstein, LLP
275 Battery Street, 30th Floor
San Francisco, CA 94111-3339
Fax: (415) 956-1008
Phone: (415) 956-1000

Lopez, Hodes, Restaino, Milman & Skikos
2424 S.E. Bristol, Suite 250
Newport Beach, CA 92660
Fax: (949) 756-1902
Phone: (949) 756-9300

Paul & Janofsky
1401 Ocean Avenue, Suite 200
Santa Monica, CA 90401
Fax: (310) 458-6823
Phone: (310) 458-7900

The Robinson & Calcagnie Law Firm
28202 Cabot Road, Suite 200
Laguna Niguel, CA 92677
Fax: (949) 347-8774
Phone: (949) 347-8855

Sherman Dan Petoyan Salkow & Weber
9454 Wilshire Boulevard, Suite 550
Beverly Hills, CA 90212
Fax: (310) 276-5871
Phone: (310) 275-5077

Thorsnes, Bartolotta, McGuire & Padilla
2550 Fifth Avenue, Suite 1100
San Diego, CA 92103
Fax: (619) 236-9653
Phone: (619) 236-9363

Law Offices of Thomas J. Brandi
44 Montgomery Street, Suite 1050
San Francisco, CA 94104
Fax: (415) 989-1801
Phone: (415) 989-1800

2. Responsibility of Plaintiffs' Executive Committee.

The Plaintiffs' Executive Committee shall have the following responsibilities with respect to matters of common concern to all plaintiffs:

- a. To act on behalf of plaintiffs at pretrial conferences and hearings;

1 b. To brief and argue motions for the plaintiffs and file opposing briefs and
2 argue motions in proceedings initiated by other parties (except as to matters specifically
3 directed to individual plaintiffs and their counsel);

4 c. To initiate and conduct discovery proceedings, except that discovery and
5 motions initiated by defendants directed to named individual plaintiffs shall be handled by the
6 attorney for those individuals;

7 d. To coordinate and communicate with defendants' counsel with respect to
8 the matters addressed in this paragraph;

9 e. To negotiate and enter into stipulations with defendants' counsel with
10 respect to pretrial matters;

11 f. To call meetings of plaintiffs' counsel when appropriate and to consult
12 with plaintiffs' counsel on matters of common concern;

13 g. To maintain time and expense records for work performed by or on
14 behalf of the Plaintiffs' Executive Committee, and to otherwise monitor work performed by the
15 Plaintiffs' Executive Committee and those it has specifically authorized to perform work on
16 behalf of the Plaintiffs' Executive Committee.

17 h. To perform all tasks reasonably necessary to carry out the functions of
18 the Plaintiffs' Executive Committee and to properly coordinate plaintiffs' pretrial activities; and

19 i. Except as to matters relevant only to a specific case, counsel who wish
20 to initiate discovery or file motions must first seek authorization from the Plaintiffs' Executive
21 Committee to initiate such motions or discovery. If, after reasonable consultation with the
22 Plaintiffs' Executive Committee and for good cause, such counsel disagrees with the Plaintiffs'
23 Executive Committee's determination, then counsel may petition the Court for relief to initiate
24 such discovery or motions.

25 **3. Plaintiffs' Subcommittees.**

26 The Plaintiffs' Executive Committee may designate subcommittees to perform services
27 on behalf of plaintiffs and may designate additional plaintiffs' counsel to serve on such
28 subcommittees.

1 **VI. ORGANIZATION OF DEFENDANTS' COUNSEL**

2 **A. Designation of Defendants' Liaison Counsel**

3 The following categories of defendants to the coordinated litigation shall each select a
4 liaison counsel. As of the date of this case management order, the liaisons chosen by the parties
5 and approved by the Court are as follows:

6 **1. Fenfluramine/Dexfenfluramine Defendants.**

7 The Court designates the following firm to serve as liaison counsel for defendants who
8 are licensors, manufacturers and/or distributors of fenfluramine and/or dexfenfluramine:

9 Timothy B. Bradford, Esq.
10 Crosby, Heafy, Roach & May
11 700 South Flower Street
12 Suite 2200
13 Los Angeles, California 90017-4209
14 Fax: (213) 896-8080
15 Phone: (213) 896-8000

16 **2. Phentermine Defendants.**

17 The Court designates the following firm to serve as liaison counsel, for the defendants
18 who are licensors, manufacturers and/or distributors of phentermine:

19 Thomas M. Moore, Esq.
20 Haight, Brown & Bonesteel, L.L.P.
21 1620 26th Street, Suite 4000 North
22 P.O. Box 680
23 Santa Monica, CA 90406-0680
24 Fax: (310) 829-5117
25 Phone: (310) 449-6000

26 **3. Health Care Providers.**

27 The Court designates the following firm to serve as liaison counsel for the defendants
28 who treated the plaintiffs and prescribed fenfluramine, phentermine and/or dexfenfluramine to
them:

Patricia Carmichael, Esq.
Tuverson & Hillyard
4675 MacArthur Ct., Suite 650
Newport Beach, CA 92660-1897
Fax: (714) 752-5437
Phone: (714) 752-7855

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B. Responsibilities of Defendants' Liaison Counsel

Each of Defendants' Liaison Counsel shall have the following responsibilities:

1. To maintain and distribute to the Court, to counsel for plaintiffs and to counsel for defendants an up-to-date comprehensive Service List of the members of their group (including the date of the most recent revision);
2. To receive and distribute, as appropriate, to members of their group orders, notices, and correspondence from the Court;
3. To coordinate the filing of notices and papers by members of their group, including the designation of responsibilities to encourage the filing of a single set of papers by members of their group in situations where such group members have a common position; and
4. To maintain and make available to members of their group at reasonable times and at reasonable hours, a complete file of all pleadings and orders served and/or filed in these coordinated proceedings.
5. Defendants' Liaison Counsel shall have no other responsibilities, and, except with respect to the named parties that each such Defendants' Liaison Counsel represents, is not authorized to bind or act on behalf of the other members of their group.

C. Steering Committees

1. Steering Committee For Phentermine Defendants

The Court designates the following firms to serve on the Steering Committee for the defendants who are licensors, manufacturers and/or distributors of phentermine:

Ann M. Asiano, Esq.
Bradley, Curley & Asiano, P.C.
150 Spear Street, 12th Floor
San Francisco, CA 94105-1535
Fax: (415) 442-4884
Phone: (415) 442-4888

R. Joseph Decker, Esq.
Prindle, Decker & Amaro
310 Golden Shore, 4th Floor
P.O. Box 22711
Long Beach, CA 90801-5511
Fax: (562) 495-0564
Phone: (562) 436-3946

1 Joseph F. Butler, Esq.
2 McKenna & Cuneo, L.L.P.
3 444 South Flower Street
4 Los Angeles, CA 90071-2901
5 Fax: (213) 234-6330
6 Phone: (213) 688-1000

Michael F. Healy, Esq.
Sedgwick, Detert, Moran & Arnold
One Embarcadero Center
16th Floor
San Francisco, CA 94111-3628
Fax: (415) 781-2635
Phone: (415) 781-7900

6 Thomas M. Moore, Esq.
7 Haight Brown & Bonesteel, L.L.P.
8 1620 26th Street
9 Suite 4000 North
10 Santa Monica, CA 90404-4038
11 Fax: (310) 829-5117
12 Phone: (310) 449-6000

Robert J. Gibson, Esq.
Snell & Wilmer L.L.P.
1920 Main Street, Suite 1200
P.O. Box 19601
Irvine, California 92623-9601
Fax: (949) 955-2507
Phone: (949) 253-2701

2. Steering Committee For Health Care Provider Defendants

The Court designates the following firms to serve on the Steering Committee for the defendants who treated the plaintiffs and prescribed fenfluramine, phentermine and/or dexfenfluramine to them:

15 Ramune Barkus, Esq.
16 Hemer, Barkus & Clark
17 550 No. Brand Blvd., Suite 1800
18 Glendale, CA 91203
19 Fax: (818) 241-2014
20 Phone: (818) 241-8999

Barry Marsh, Esq.
Hinshaw, Winkler, Draa, Marsh & Still
152 No. 3rd Street, Suite 300
San Jose, CA 95115-0030
Fax: (408) 280-0966
Phone: (408) 293-5959

20 Duncan Barr, Esq.
21 O'Connor, Cohn, Dillon & Barr
22 101 Howard Street, Fifth Floor
23 San Francisco, CA 94105-1619
24 Fax: (415) 281-8890
25 Phone: (415) 281-8888

Elizabeth Flatley, Esq.
LaFollette, Johnson, De Haas, Fesler & Ames
2677 North Main Street, Suite 901
Santa Ana, CA 92705
Fax: (714) 972-0379
Phone: (714) 558-7008

24 Patricia Carmichael, Esq.
25 Tuverson & Hillyard
26 4675 MacArthur Ct., Suite 650
27 Newport Beach, CA 92660-1897
28 Fax: (714) 752-5437
Phone: (714) 752-7855

George Ziser, Esq.
Larson & Burham
1901 Harrison Street, 11th Floor
P.O. Box 119
Oakland, CA 94604
Fax: (510) 835-6666
Phone: (510) 444-6800

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3. Responsibilities Of Steering Committee for Phentermine Defendants

The Phentermine Defendants’ Steering Committee identified above shall have the following responsibilities:

- a. To act, including appearing at pre-trial conferences and hearings, initiating discovery and entering into stipulations, for named parties which each Steering Committee serves on behalf of with respect to matters of common concern (i.e., except as to matters specifically addressed to individual defendants and their counsel) provided that all non-committee member defendants concur in such act or stipulation; and
- b. To coordinate and communicate with plaintiffs’ Executive Committee, Defendants’ Steering Committees and the Court with respect to the matters addressed in this paragraph.

4. Responsibilities Of Steering Committee for Health Care Provider Defendants

The Health Care Provider Defendants’ Steering Committee identified above shall have the following responsibilities:

- a. To act on behalf of Health Care Provider Defendants at pre-trial conferences and hearings;
- b. To coordinate the briefs and arguments on behalf of the Health Care Provider Defendants on issues which have a general effect on those defendants;
- c. To coordinate all other submissions to the court on matters of general interest to Health Care Provider Defendants; and
- d. To coordinate communications with plaintiffs’ Counsel, counsel for Phentermine Defendants and counsel for Fenfluramine Defendants on issues of general interest to Health Care Provider Defendants.

1 **VII. ADMISSION OF ATTORNEYS**

2 Any attorney admitted to practice before a court of general jurisdiction in one of the
3 fifty states or the District of Columbia, but who is not a member of the bar of this State, and
4 who has associated a California attorney as co-counsel in any of the coordinated Diet Drug
5 Cases, shall be deemed admitted *pro hac vice* to practice before this Court in connection with
6 these actions only. No further procedures are required for such counsel to be admitted to
7 practice before this Court for the purpose of these actions.

8 **VIII. PRIVILEGED COMMUNICATIONS**

9 The coordination trial judge recognizes that cooperation among counsel and the parties
10 is essential for the orderly and expeditious resolution of the litigation. The communication,
11 transmission or dissemination of information of common interest among plaintiffs' counsel,
12 among defendants' counsel, or among the parties, shall be protected by the attorney-client
13 privilege, the protections afforded by the attorney work product doctrine, the protections
14 afforded to material prepared for litigation or any other privilege to which a party may
15 otherwise be entitled. Any cooperative efforts shall not in any way be used against any of the
16 parties, be cited as purported evidence of conspiracy, wrongful action or wrongful conduct, and
17 shall not be communicated to any jury.

18 **IX. GENERAL ORDERS.**

19 **A. Use of General Orders.**

20 To the extent possible, the Court will resolve questions of law and procedure which
21 impact most or all of the coordinated cases by issuing General Orders. General Orders may be
22 considered based on the petition of any party, or on the Court's own motion, but in no event
23 shall a General Order be issued without notice to all potentially affected parties, and said parties
24 shall be given a reasonable opportunity to oppose any proposed order.

25 **B. Procedure.**

26 Any party to the litigation may file a "Petition for General Order." Said petition shall be
27 filed in the Court's master file, and shall be served in accordance with this Case Management
28 Order. Any such petition shall be properly noticed for hearing at least fifteen (15) days from
the date of the petition (or twenty (20) days if the petition is served by mail).

1 The Court encourages each party-category to file one opening brief in support of any
2 petition, not to exceed twenty-five (25) pages in length. If a party believes that it is necessary
3 to file a separate brief on one or more issues, it is nonetheless strongly encouraged to join in a
4 joint brief to the extent feasible, and repetition in the separate brief shall be avoided to the
5 extent possible. All parties within a party-category will be deemed to have joined in any joint
6 petition, except to the extent a party disavows, in writing, the positions taken in a petition.
7 Opposition briefs shall be subject to these same ground rules and shall be served at least five (5)
8 court days before the scheduled hearing date (including service by fax on all liaison counsel).
9 Reply briefs shall not exceed fifteen (15) pages in length and shall be served at least two (2)
10 court days before the scheduled hearing date (including service by fax on all liaison counsel).

11 Unless the Court orders otherwise, the prevailing party(ies) shall prepare an approved
12 general order for the Court’s signature and shall serve a notice of ruling, with the order
13 attached, on all liaison counsel. General orders shall be filed in the Court’s master file in
14 sequential order (i.e., “General Order No. 1,” “General Order No. 2”).

15 **X. SERVICE OF PLEADINGS AND ORDERS**

16 **A. Service Upon Plaintiffs' Counsel**

17 1. All communications from the Court including court orders may be served upon
18 Plaintiffs’ Liaison Counsel, who shall have the duty to serve copies of such communications
19 upon all plaintiffs’ counsel as expeditiously as the circumstances require.

20 2. All pleadings, notices and proposed orders emanating from defendants shall be
21 served by hand delivery or overnight mail upon Plaintiffs’ Liaison Counsel and shall also be
22 served by defendants upon all other plaintiffs’ counsel by first class mail. Any such pleadings,
23 notices and proposed orders related to a specific plaintiffs’ case shall also be served by hand
24 delivery or overnight mail on such plaintiff s counsel of record in the case.

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B. Service upon Defendants' Counsel

1. All communications from the Court including court orders may be served upon each of Defendants' Liaison Counsel, who shall have the duty to serve copies of such communications upon all defendants' counsel in their group as expeditiously as the circumstances require.

2. All pleadings, notices and proposed orders emanating from plaintiffs shall be served by hand delivery or overnight mail upon each of Defendants' Liaison Counsel, and by first class mail on all other defendants' counsel. Any such pleadings, notices and proposed orders relating to a specific defendant shall also be served by hand delivery or overnight mail on such defendant's counsel of record in the case.

C. Case Specific Documents

Notwithstanding the above, documents which require service but which relate only to a specific case or group of cases and which would not be of interest except to the parties directly affected by them shall be served directly on all Liaison Counsel and on the interested parties in accordance with applicable provisions of the Code of Civil Procedure.

XI. EX PARTE COMMUNICATIONS

Neither the parties nor their counsel may have *ex parte* communications, in any form, with the Court, except that counsel may correspond with the Court in response to inquiries or orders from the Court. Any such correspondence must simultaneously be served on all Liaison Counsel by the same means as it is transmitted to the Court (e.g., facsimile, first class mail, federal express, etc.).

All parties and their attorneys shall comply with California Rule of Court 379 and California Rules of Professional Responsibility Section 5-300 with respect to communications with the court and/or court staff. The court will not consider any *ex parte* communications not made in strict compliance with these provisions.

1 **XII. AGENDAS FOR PRETRIAL CONFERENCES**

2 The parties shall confer through Liaison Counsel at least two weeks before each
3 scheduled pretrial conference in an effort to agree upon items to suggest for inclusion in the
4 Court's agenda for the conference, and any such agreed-upon items shall be submitted to the
5 Court at least ten days before the date of the pretrial conference. To the extent that the parties
6 cannot agree upon a joint submission, they may separately suggest additional agenda items to
7 the Court at least ten days before the date of the pretrial conference. If a party intends to ask
8 the Court to consider a proposed General Order at a pretrial conference, the petition must be
9 filed and served as provided in Section IX, above, and if a party intends to ask the Court to
10 consider any other motion, the motion must be filed and served within the time required by the
11 applicable provisions of the Code of Civil Procedure and the rules of this Court.

12 **XIII. LATER FILED CASES**

13 The terms of this Order and all subsequent orders, rulings, and decisions of this Court
14 related to matters of common concern, shall apply to all Diet Drug Cases later instituted in or
15 transferred to this Court (including "add-on" cases transferred here), except on a showing of
16 good cause.

17 **XIV. CONTINUING JURISDICTION**

18 This Court reserves its jurisdiction to modify or amend this Order as it deems necessary
19 or appropriate under the developing circumstances of these coordinated proceedings.

20
21 IT IS SO ORDERED:

22
23 Dated:

24
25 _____
26 Judge Daniel S. Pratt
27
28