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2. Amendments.

The master pleadings may be amended pursuant to stipulation by all liaison counsel, after consultation with and the approval of their management committees. Such stipulations must be in writing and shall be filed in the master coordination file and served on all liaison counsel along with the amended pleadings. Absent stipulation, a master pleading may only be amended for good cause upon noticed motion.

B. Filing And Serving Master Pleadings

1. Master Complaint.

The original master complaint shall be filed in the master coordination file and served on all liaison counsel on June 16, 1998. Any subsequent amended master complaint shall be filed on a date stipulated to or chosen by the coordination court, and served upon all liaison counsel. Filing of the master complaint does not operate as a substitute for the obligation of any plaintiff or their counsel timely to file a complaint or to adopt the master complaint by filing an "Adoption Form," as set forth below, in accordance with the statute of limitations applicable to each such plaintiff's claim and any applicable tolling provisions.

2. Master Answers.

Master answers for each defendant party category (e.g., product liability, health care providers) shall be filed in the master coordination file and served upon all liaison counsel no later than thirty (30) days after the filings of the master complaint. The filing of original master answers in these coordinated proceedings on this date is required for purposes of expediting drafting of the pleadings and any related law and motion activity and will be considered independent from any challenges to the master complaint. Filing of a master answer does not affect a party's right and ability to challenge the master complaint by way of demurrer, motion to strike, or motion for judgment on the pleadings or the right to compel arbitration pursuant to agreement and/or contract, as set forth in Section I.C. below. Any subsequent amended master

1 answers shall be filed on a date stipulated to or chosen by the coordination court, and served upon
2 all liaison counsel.

3 **C. Challenges To Original Master Pleadings**

4 **1. Initial Challenge**

5 The Steering Committee for each party category, after consultation with their
6 constituent members, shall determine if and how any master pleadings, or amended version
7 therefore, shall be challenged. Any procedural vehicle sanctioned by the Code of Civil Procedure,
8 shall be available for making an initial challenge to any master pleading, including demurrers and
9 motions to strike. The parties, for whatever reason, may decide not to make an initial challenge to
10 a master pleading, even though such a challenge is available. Whether to exercise an initial
11 challenge as outlined in this Section of the Case Management Order in no way waives the rights of
12 the parties to raise a pleading issue in subsequent stages of the litigation by way of any available
13 procedural vehicle such as motions for summary judgment, motions for judgment on the pleadings,
14 or motions to strike (pursuant to C.C.P. Section 436)

15 **2. Challenges to Original Master Complaint**

16 All challenges to the original master complaint, including by way of demurrer or
17 motion to strike, must be filed in the master coordination file and served upon all liaison counsel no
18 later than sixty (60) days after the date on which the master complaint is deemed filed. Plaintiffs'
19 opposition briefs and defendants' replies shall be filed and served no later than thirty (30) and forty-
20 five (45) days thereafter, respectively.

21 **3. Challenges To Original Master Answers**

22 Challenges to any original master answer must be filed in the master coordination
23 file and served upon all liaison counsel no later than thirty (30) days from the date on which the
24 answers are filed. Defendants' opposition briefs and plaintiffs' replies shall be filed and served no
25 later than thirty (30) and forty-five (45) days thereafter, respectively.

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4. Briefs

Each defendant party-category may file one opening brief in support of any challenge it makes to the master complaint, not to exceed thirty (30) pages in length. All parties within a party-category will be deemed to have joined the challenge, except to the extent a party disavows, in writing, the position(s) taken in a challenge. Plaintiffs may file one brief in opposition to any challenge filed by any defendant party-category, with each such brief not to exceed twenty (20) pages in length. Each defendant party-category may file a reply brief, not to exceed ten (10) pages in length.

Plaintiffs may file one brief in support of any challenge made to any Master Answer filed by any defendant party-category, not to exceed twenty (20) pages in length. Each defendant party-category may file one brief in opposition to any challenge filed by plaintiffs, with each such brief not to exceed twenty (20) pages in length. Plaintiffs may file a reply brief, not to exceed ten (10) pages in length.

5. Hearing – Oral Argument

The hearing date on any challenges to the master complaint and/or the master answer shall be set by the Court.

D. Adoption of Master Pleadings in Individual Cases

1. Effect of Master Pleadings on Individual Cases.

An operative master pleading shall be deemed the controlling complaint/answer in any and all coordinated Diet Drug case, and shall operate as an amended pleading to any complaint/answer previously filed in any individual case, without the need for stipulation or additional order of the coordination court, upon the filing of notice of adoption form discussed below.

2. Procedure for Adopting the Master Complaint in Individual Diet Drug Cases.

Attachment "1" is an "adoption form" entitled COMPLAINT FOR DAMAGES; NOTICE RE: DIET DRUG LITIGATION COORDINATION; NOTICE RE: ADOPTION OF MASTER COMPLAINT. This adoption form must be used in each Diet Drug case, including

1 those in which a prior complaint was filed, a new case, the case has already been coordinated,
2 and/or the case is included in any previous petition for coordination. Each plaintiff shall file and
3 serve an adoption of the operative master complaint utilizing the adoption form attached to this
4 order. The adoption form shall control all new diet drug cases and shall supersede all existing
5 complaints with respect to the naming of defendants and the pleading of causes of action in
6 individual cases. Defendants DOES 1 - 100 named in the master complaint are hereby deemed
7 named in all individual actions.

8 Where a spouse or other individual related to a Diet Drug plaintiff is included as a
9 party-plaintiff, only one adoption form need be filed. However, multiple unrelated plaintiffs may
10 not appear on a single adoption form. To the extent that any complaint previously filed in a
11 coordinated diet drug case purports to sue, in one action, on behalf of multiple unrelated plaintiffs,
12 the court orders that the action of each individual unrelated plaintiff is deemed severed, without
13 prejudice to plaintiffs to subsequently bring motions for consolidation, effective as of the date of
14 this case management order. Adoption forms should be chosen, filed, and served in the following
15 manner:

16 **a. Cases Previously Coordinated and/or Included in Any Petition**
17 **for Coordination.**

18 Where a Diet Drug case was previously included in Judicial Council Coordination
19 Proceeding No. 4032, plaintiffs in each such case shall file the completed Attachment "1" in the
20 coordination court, and shall serve the completed form on all previously served defendants.
21 Thereafter, the completed form shall be served on any additional defendants in lieu of any
22 complaint.

23 **b. Cases Previously Filed But Not Coordinated and/or Included in**
24 **Any Previous Petition for Coordination.**

25 Where a complaint in a Diet Drug case was filed in a California state court, but has
26 not been coordinated and is not identified in any previous petition for coordination, plaintiffs in
27 each such case shall file the completed Attachment "1" in the appropriate court in the "home"
28 jurisdiction (e.g. Los Angeles County, San Francisco County, etc.), as well as in the coordination

1 court, and shall serve the form on all defendants previously served. Thereafter, the form shall be
2 served on any additional defendants in lieu of any complaint.

3 **c. "New" Cases.**

4 All Diet Drug cases filed subsequent to the date of this Case Management Order
5 shall utilize, in lieu of any other complaint or pleading demanding relief, Attachment "1", which
6 shall be filed in the appropriate court in the "home" jurisdiction (e.g. Los Angeles County, San
7 Francisco County, etc.), and in the coordination court, and shall be attached to any summons
8 issued and served on any defendants in lieu of any other complaint.

9 **3. Procedure for Adopting Master Answers in Individual Diet Drug**
10 **Cases.**

11 Defendants shall file and serve an "Adoption of Master Answer" in each
12 coordinated diet drug case where an answer was not previously filed utilizing the form attached to
13 this order as Attachment "2". (Attachment "2" will be filed at a later date). No default shall be
14 taken against a defendant where such defendant has adopted the Master Complaint in a least one
15 (1) coordinated case. In those cases where an answer was previously filed by a defendant, the
16 master answer shall be deemed filed and shall supercede the original answer. In those cases where
17 the Adoption of Master Answer form is required it shall be filed and served in the following
18 manner:

19 **a. Cases Coordinated by the Judicial Council or the Coordination**
20 **Court.**

21 Where a case has already been coordinated by the Judicial Council or by the
22 Coordination Court, defendants served in those cases shall file their Adoption of Master Answers
23 on or before _____, 1998 or thirty (30) days from the date on which a defendant has
24 been served with process, whichever is longer. The Adoption form shall be filed only in the
25 coordination court.
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b. All Other Cases.

With respect to all other Diet Drug cases, defendants shall file their Adoption of Master Answer within thirty (30) days after the date on which an individual case is coordinated, or thirty (30) days after a defendant has been served with process, whichever is longer. Diet Drug cases which have not had a determination of whether they will be added to the coordinated proceedings are deemed stayed pending that determination and, accordingly, defendants need not file or serve an Adoption in such cases until the case is coordinated and in compliance with the time limitations outlined above. Where the coordination court denies a Petition for Coordination in an individual case, defendants in the case will have thirty (30) days from the date on which the court denies the Petition in which to file a responsive pleading in the appropriate jurisdiction.

II. ADDING CASES ON TO THE COORDINATED PROCEEDINGS

A. Add-On Procedures -- In General

The following rules are intended to streamline and modify, but do not supersede, the add-on procedures outlined in the Rules of Court, and any party is free to utilize the petition procedures outlined in the Rules of Court. The alternative procedures articulated in this case management order are designed to maximize the expeditious identification of litigation which potentially qualifies for coordination and the determination of whether individual cases should be so coordinated.

B. Streamlined Add-On Procedures for Judicial Council Coordination Proceedings

Identification of Diet Drug cases which have not been previously coordinated or listed on any previous petition for coordination, shall be initiated by the plaintiffs' filing of Attachment "1" to this case management order. The "notice" portion of Attachment "1" shall indicate that a case is eligible for coordination, and will further indicate whether a plaintiff intends to object to coordination. Where a plaintiff indicates in the notice opposition to coordination, the court will make a coordination determination in accordance with the procedures outlined below in subsection C. If a plaintiff does not indicate opposition to coordination in the notice, the case will

1 automatically be deemed coordinated upon the court's receipt of the notice, and the court will
2 thereupon add the case to the coordination docket.

3 **C. Opposition to Coordination**

4 Where a party submits notice of opposition to coordination, the court will set a
5 hearing for determination of the issue and will provide notice of the hearing date to the party
6 opposing coordination. The opposing party shall notify all parties who have been served in the
7 case of the hearing date in writing. The filing of a notice of opposition shall serve to stay all
8 proceedings in the case other than service of defendants pending a resolution of the issue of
9 coordination. The party opposing coordination shall submit points and authorities and other
10 relevant materials in support of that opposition no later than fifteen (15) days before the date of the
11 hearing. Responding points and authorities shall be filed and served no later than five (5) days
12 prior to the hearing. All other procedures concerning opposition to coordination shall be governed
13 by applicable sections of the Rules of Court.

14 **D. Notice of Related Case Filing**

15 Each of the defendants shall notify the Court and Liaison Counsel for each party-
16 category of any related Diet Drug case that has been filed in California in which it has been named
17 as a defendant, but for which no coordination petition has been filed, no less than ten (10) days
18 prior to the time that an answer or challenge to the complaint is to be filed.

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20 **IT IS SO ORDERED.**

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22 Dated: _____

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The Honorable Daniel Solis Pratt,

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Coordination Trial Judge

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