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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:	)	FIRST AMENDED
	)	GENERAL ORDER NO. 3:
ALL ACTIONS	)	<u>MASTER PLEADINGS</u>
	)	
	)	
	)	
_____	)	

Having heard the comments and proposals of the parties and pursuant to California Rules of Court 1541:

**IT IS HEREBY ORDERED:**

**I. COMPLAINTS AND RESPONSIVE PLEADINGS**

**A. Drafting Master Pleadings**

**1. Original Master Pleadings**

Each party-category (i.e. plaintiffs, product liability defendants, health care providers) shall draft a master complaint or master answers for use in all coordinated cases. The master complaint and master answers will endeavor to set forth all pertinent causes of action, damages, and affirmative defenses of common concern which the parties believe, in good faith, are viable in California. The master complaint shall properly identify all potential defendants, to

1 the extent possible.

2 **2. Amendments**

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

8 **B. Filing and Serving Master Pleadings**

9 **1. Master Complaint**

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

17 **2. Master Answers**

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

1           **C.     Challenges to Original Master Pleadings**

2                   **1.     Initial Challenge**

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

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

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

19                   **3.     Challenges to Original Master Answers**

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

24                   **4.     Briefs**

25                   Each defendant party-category may file one opening brief in support of any  
26 challenge it makes to the master complaint, not to exceed thirty (30) pages in length. All parties  
27 within a party-category will be deemed to have joined the challenge, except to the extent a party  
28 disavows, in writing, the position(s) taken in challenge. Plaintiffs may file one brief in

1 opposition to any challenge filed by any defendant party-category, with each such brief not to  
2 exceed twenty (20) pages in length. Each defendant party-category may file a reply brief, not to  
3 exceed ten (10) pages in length.

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

9 **5. Hearing - Oral Argument**

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

12 **D. Adoption of Master Pleadings in Individual Cases**

13 **1. Effect of Master Pleadings on Individual Cases**

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

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

21 Attachment "1" is an "adoption form" entitled COMPLAINT FOR DAMAGES;  
22 NOTICE RE: DIET DRUG LITIGATION COORDINATION; NOTICE RE: ADOPTION OF  
23 MASTER COMPLAINT. This adoption form must be used in each Diet Drug case, including  
24 those in which a prior complaint was filed, a new case, the case had already been coordinated,  
25 and/or the case is included in any previous petition for coordination. Each plaintiff shall file and  
26 serve an adoption of the operative master complaint utilizing the adoption form attached to this  
27 order. The adoption form shall control all new diet drug cases and shall supersede all existing  
28 complaints with respect to the naming of defendants and the pleading of causes of action in  
individual cases. Defendants DOES 1 - 100 named in the master complaint are hereby deemed

1 named in all individual actions.

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

10                           **a.       Compliance with C.C.P. Section 377.32.**

11                           Where applicable, Plaintiff shall comply with the provisions of  
12 Code of Civil Procedure, Section 377.32 at the time of filing of the Notice of Adoption of the  
13 Master Complaint.

14                           **b.       Cases Previously Coordinated**  
15                           **and/or Included in Any Petition**  
16                           **for Coordination**

17                           In all Diet Drug cases which are either currently coordinated in  
18 Judicial Council Coordination Proceeding No. 4032 or the subject of a petition for coordination  
19 as of the date of this Amended General Order, or any other cases filed prior to the filing of the  
20 Master Complaint, plaintiffs in each such case shall file, and mail a copy of the completed  
21 Attachment "1" on liaison counsel (mailing the adoption form to liaison counsel does not  
22 constitute service), on or before September 1, 1998.

23                           **c.       Dismissal for Existing Cases in Which an Adoption Form is**  
24                           **not filed on or Before September 1, 1998.**

25                           A Diet Drug case which is either currently coordinated in Judicial Council Coordination  
26 Proceeding No. 4032 or the subject of a petition for coordination as of the date of this Amended  
27 General Order, is subject to dismissal by the Court if the plaintiff fails to comply with section  
28 I(D)(2)(b) of this General Order. The Court, without the necessity of noticed motion or  
hearing, shall dismiss any such Diet Drug case, without prejudice, fifteen (15) days after  
counsel for plaintiff has been served with written notice, in the form attached hereto as

1 Attachment "3".

2 **d. "New" Cases**

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

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

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

17 **a. Cases Coordinated by the Judicial Council or the**  
18 **Coordination Court**

19 Where a case has already been coordinated by the Judicial Council or by the  
20 Coordination Court, defendants shall file and serve their Adoption of Master Answers on or  
21 before October 1, 1998 or thirty (30) days from the date on which a defendant has been served  
22 with the Adoption of Master Complaint and Product Identification Due Diligence Statement,  
23 whichever is longer. The Adoption form shall be filed only in the coordination court.

24 **b. All Other Cases**

25 With respect to all other Diet Drug cases, defendants shall file their Adoption of  
26 Master Answer within thirty (30) days after the date on which an individual case is coordinated,  
27 or thirty (30) days after a defendant has been served with process, whichever is longer. Diet  
28 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

1 not file or serve an Adoption in such cases until the case is coordinated and in compliance with  
2 the time limitations outlined above. Where the coordination court denies a Petition for  
3 Coordination in an individual case, defendants in the case will have thirty (30) days from the  
4 date on which the court denies the Petition in which to file a responsive pleading in the  
5 appropriate jurisdiction.

6 **II. ADDING CASES ON TO THE COORDINATED PROCEEDINGS**

7 **A. Add-On Procedures -- In General**

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

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

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

25 **C. Opposition to Coordination**

26 Where a party submits notice of opposition to coordination, the court will set a  
27 hearing for determination of the issue and will provide notice of the hearing date to the party  
28 opposing coordination. The opposing party shall notify all parties who have been served in the  
case of the hearing date in writing. The filing of a notice of opposition shall serve to stay all

1 proceedings in the case other than service of defendants pending a resolution of the issue of  
2 coordination. The party opposing coordination shall submit points and authorities and other  
3 relevant materials in support of that opposition no later than fifteen (15) days before the date of  
4 the hearing. Responding points and authorities shall be filed and served no later than five (5)  
5 days prior to the hearing. All other procedures concerning opposition to coordination shall be  
6 governed by applicable sections of the Rules of Court.

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

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

12  
13  
14 **IT IS SO ORDERED:**

15  
16 Dated:

\_\_\_\_\_  
Judge Daniel S. Pratt