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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:)	GENERAL ORDER NO. 5:
ALL ACTIONS)	<u>DISCOVERY</u>
)	
)	
_____)	

I.
RULES GOVERNING DISCOVERY PRIOR TO ASSIGNMENT OF TRIAL DATE

A. DISCOVERY INITIATION DATE

For purposes of this Order and for purposes of discovery in all cases, the Court establishes a “discovery initiation date” (“DID”) which is:

1. July 17, 1998 for those civil actions that were originally filed before July 1, 1998 or;
2. the first day of the month following the date that a civil action is filed to the extent that such an event occurs on or after July 1, 1998.

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B. **TRIAL DATES**

The Court anticipates that the total number of Diet Drug cases in this coordinated proceeding will increase substantially over the course of the next several months. Accordingly, the Court deems it premature at this time to institute a mechanism by which Diet Drug cases will be set for trial. A Status Conference will be scheduled on or about December 18, 1998 at which time the Court will take up the issue of the mechanism by which Diet Drug cases will be set for trial, although it is not anticipated that any Diet Drug case will be set for trial at that time. Plaintiffs' right to move for trial setting preference prior to the December 18, 1998 Status Conference is preserved.

C. **DEFENDANTS' DISCOVERY**

1. **Fact Sheets and Medical Authorizations.**

Within 60 days of the DID, each plaintiff shall deliver to each defendant named in that plaintiff's complaint and/or Notice of Adoption of Master Complaint and to all liaison counsel, a completed Fact Sheet in the form attached to this Order as Exhibit "A". The completed Fact Sheet shall be made under oath, answered completely and preserving objections, and accompanied by a completed List of Medical Providers, all responsive documents as requested in paragraph VIII of the Fact Sheet, and executed authorizations for the release of records from each health care provider, mental health care provider (where permitted by this order), employer, educational institution, and/or insurer identified in the Fact Sheet, as well as authorizations for the release of records relating to any social security, worker's compensation, state or county health facility, federally funded health facility (i.e. Veteran's Administration Hospital) or other disability claim.

2. **Records Acquisition**

a. Upon receipt of a completed Fact Sheet and/or any information identifying a plaintiff's health care provider, employer, educational institution, disability provider

1 and/or insurer, defendants may immediately undertake to obtain those records either in
2 accordance with Code of Civil Procedure §1987 or by use of written authorizations. Defendants
3 who opt to obtain records by use of authorization must give written notice to plaintiff's counsel
4 of their intent to do so. If after receipt of such written notice plaintiff's counsel does not move
5 for protective order within fifteen (15) days, then defendants may proceed to obtain the records.

6 b. If defendants learn of a health care provider not identified in the
7 Fact Sheet, defendants may, at their option:

8 1. subpoena those records in accordance with Code of Civil
9 Procedure §1987; and/or

10 2. request, in writing, that plaintiff sign, notarize and provide
11 to the requesting party, authorizations for the release of records from such provider in the form
12 attached hereto as Exhibit "A". Upon receipt of such written request, plaintiff shall deliver
13 executed authorizations within fifteen (15) calendar days thereafter. If a plaintiff objects to the
14 production of some or all of said records, plaintiff shall file and serve, in lieu of providing a
15 requesting defendant with an executed authorization for said records, a motion for protective
16 order within fifteen (15) calendar days of any written request for authorization. If plaintiff fails
17 to file a motion for protective order within the proscribed time, then all objections to the
18 requested authorization[s] and acquisition of the records are waived.

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20 3. **Psychiatric Records**

21 Defendants shall be entitled to obtain psychiatric records of a plaintiff,
22 without leave of court, if that plaintiff makes a claim for neurotoxic injury or a claim for mental
23 or emotional injury over and above that usually associated with the physical injuries claimed. In
24 all other cases, Defendants shall obtain leave of court before obtaining psychiatric records of a
25 Diet Drug plaintiff. The custodian of any records sought to be acquired by court order should
26 be served with a copy of the motion to obtain.

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4. **Case-Specific Discovery**

As of the DID, the pharmaceutical defendants may initiate product identification discovery in cases which have been served, when product identification is in issue. Such discovery may include depositions of non-parties and custodians of records, as well as “case-specific” interrogatories, inspection demands and request for admissions to plaintiff, provided that such discovery is limited to product identification and not duplicative of the Fact Sheet.

As of the DID, the Health Care Providers Defendants may propound non-duplicative, non-contention, case-specific written discovery to individuals in cases which have been served, with plaintiff’s responses on each case due pursuant to the governing provisions of the Code of Civil Procedure, but in no event shall responses become due earlier than thirty (30) days after the due date for responses to the Fact Sheet. Individual plaintiffs may serve reciprocal non-duplicative, non-contention, case-specific written discovery to Health Care Provider Defendants, with Health Care Provider Defendants’ responses on each case similarly due by applicable code provisions but no sooner than thirty (30) days after responses to generic discovery are due to the Health Care Provider Defendants. Responses to this discovery shall also be governed by the governing provisions of the Code of Civil Procedure.

Except as otherwise provided in this and other General Orders, all other case-specific written discovery is stayed until further order of this Court.

5. **Communications With Health Care Providers**

Unless otherwise specified in this or other general orders, communications with health care providers shall be governed by the relevant provisions of the Code of Civil Procedure and other applicable California law.

Defendants may contact the office of a health care provider for the purpose of scheduling that health care provider’s deposition. However, Defendants are ordered not to communicate directly with the health care provider during this process.

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D. **PLAINTIFFS' DISCOVERY**

It is the intention of this Court to coordinate plaintiffs' discovery, to the extent possible, with MDL 1203 and other jurisdictions, and to avoid duplicating discovery previously initiated or completed.

Pursuant to Pretrial Order No. 22 in MDL 1203, the Plaintiffs' Management Committee has already served one set of comprehensive interrogatories and requests for production of documents on each defendant who is alleged to have marketed or sold the diet drugs which are the subject of this litigation. Defendants have served verified responses to this discovery and have delivered responsive documents to the MDL depository. The MDL depository is available to the plaintiffs in this litigation.

Depositions of defendants' current and former officers, directors, managing agents, sales representatives and employees have been or will be noticed in MDL 1203 and other jurisdictions beginning in the Fall of 1998.

1. **Production of Documents By Manufacturer Defendants**

On August 15, 1998, each defendant which is alleged to have manufactured, distributed, marketed or sold the diet drugs ("pharmaceutical defendants") shall begin producing in these proceedings, each and every document it has previously produced in MDL 1203 to Plaintiffs' Liaison counsel. As the pharmaceutical defendants subsequently produce documents in MDL 1203, they shall be under a continuing duty to produce such documents in this proceeding within thirty (30) days of their production in MDL 1203, absent a stipulation between counsel. Pharmaceutical defendants shall produce documents or CD-ROMs at actual cost of reproduction and shipping. No other request for production of documents may be propounded to the pharmaceutical defendants in this coordinated proceeding unless authorized by this Court upon a showing of good cause.

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2. **Interrogatories to Pharmaceutical Defendants**

All interrogatories served on and interrogatory responses served by any pharmaceutical defendant in MDL 1203 shall be provided to Plaintiffs' Liaison Counsel and Health Care Provider Liaison Counsel within thirty (30) days of this Order or within thirty (30) days of being served, whichever date is later.

The Plaintiffs' Executive Committee may serve one additional set of generic interrogatories to each pharmaceutical defendant, not to exceed (65), provided that such interrogatories are not duplicative of interrogatories propounded in MDL 1203. No other interrogatories may be propounded to the pharmaceutical defendants in this coordinated proceeding unless authorized by this Court upon a showing of good cause.

3. **Document Discovery To All Other Defendants**

Within 30 days of adoption of the Master Answer in a Diet Drug case, the Health Care Provider Defendants shall produce to the attorneys listed on the proof of service on the Notice of Adoption of Master Answer and Product Identification Due Diligence Statement, the medical chart for the plaintiff upon payment of reasonable charges. The Court determines that such production is authorized pursuant to Civil Code §56. Motions to compel shall be governed by Code of Civil Procedure §§2025 and 2031.

For defendants who have not been previously required to produce documents in MDL 1203, Plaintiffs' Executive Committee may serve, in accordance with Code of Civil Procedure §2025 and §2031, a master set of requests for production and interrogatories on all such defendants. Defendants shall have sixty (60) days to respond to such discovery. Prior to the filing of a motion to compel, the parties shall meet and confer in a good faith effort to resolve objections which may be raised by such defendants. Following the meet and confer process, the Court will schedule a hearing to resolve the remaining objections and make all appropriate orders concerning production of responses and documents.

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4. **Corporate Defendant Witness Depositions**

The Court’s stay shall remain in effect with respect to the depositions of corporate defendants, their current and former employees, officers, directors and managing agents. It is anticipated that these depositions will be taken in MDL 1203 and other jurisdictions. Any such deposition may be cross-noticed in this coordinated litigation. Beginning on September 1, 1998, parties may cross-notice depositions taken in MDL 1203 or other jurisdictions. Depositions which are cross-noticed in this proceeding shall not be taken again, absent a showing of good cause. Depositions of those representatives reasonably believed to be involved in sales and distribution in California should be so identified in the notice.

II.

RULES GOVERNING DISCOVERY SUBSEQUENT TO ASSIGNMENT OF TRIAL DATE

A. **DEPOSITIONS**

All depositions in this coordinated proceeding shall be governed by the applicable provisions of Code of Civil Procedure §2025.

1. **Cooperation**

Counsel are expected to cooperate with, and be courteous to, each other and deponents. The parties will endeavor to avoid scheduling a multiplicity of depositions so as not to create undue burden on any party, or result in unnecessary expense in relation to the information to be sought. In conducting depositions, the parties shall use their best efforts to avoid duplicative examination of the witness and shall cooperate in the allocation of time.

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2. **Out-of-State Depositions**

Any party, upon receipt of information identifying a non-party witness who is not a resident of California, may request, in writing, that any and all other parties execute a stipulation for out-of-state commission for that witness' deposition. Upon receipt of such written request, the attorney for such party shall deliver an executed stipulation within ten (10) calendar days thereafter, or move for a protective order. In the event a party fails to move for a protective order within the proscribed time, all objections to the request for stipulation for out-of-state commission and the deposition are waived and the Court will issue the out-of-state commission upon application ten days after notice.

III.

RESOLUTION OF DISCOVERY DISPUTES

All parties to a discovery dispute are directed to make good faith efforts to meet, confer and resolve discovery disputes before these are presented to the Court. Should no resolution be reached through the informal meet and confer process, the parties may elect to resolve the dispute by formal motion on regular notice as governed by the California Discovery Act of 1986. The Court may choose to hear the dispute itself, assign the dispute to another judge of this Court for hearing, or appoint a Discovery Master to hear and resolve the dispute.

If a party wishes to resolve a discovery dispute by expedited resolution, it shall notify the Court and Liaison counsel by facsimile of the nature of the dispute and why the dispute should be resolved on an expedited basis. Once the Court is satisfied that the dispute should be heard on an expedited basis, the Court may choose to hear the dispute itself, assign the dispute

1 to another judge of this Court for hearing, or appoint a Discovery Master to hear and resolve the
2 dispute on an expedited basis.

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4 IT IS SO ORDERED:

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6 Dated:

Judge Daniel S. Pratt

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