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10 Submitted on Behalf of the Plaintiffs' Executive Committee

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COORDINATION PROCEEDING)
SPECIAL TITLE: IN re DIET DRUGS (FEN-)
PHEN))
_____)
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Judicial Council Coordination
Proceeding No. 4032

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION TO AMEND
MASTER COMPLAINT**

Date: February 19, 1999
Time: 10:00 a.m.
Dept: SE-D
Hon. Daniel S. Pratt

1 Plaintiffs' Motion to Amend the Master Complaint came on regularly for hearing on February
2 19, 1999 before the Honorable Daniel S. Pratt of the above-entitled court after having been continued
3 from January 21, 1999 on the Court's own order.

4 The Court having reviewed the moving, opposition and reply papers, and all other papers in
5 this action, heard oral argument in this matter and finds as follows:

6 The Court will liberally permit an amendment to a complaint where to do so furthers justice
7 and does not prejudice the defendant. *See Berman v. Bromberg* (1997) 56 Cal.App.4th 936, 945.
8 "Moreover, it is irrelevant that new legal theories are introduced so long as the proposed amendments
9 'relate to the same general set of facts.'" *Ibid.* quoting *Kittredge Sports Co. v. Superior Court* (1989)
10 213 Cal.App.3d 1045, 1048.

11 Market share liability is applicable when the product is fungible, the product cannot be traced
12 to a specific manufacturer through no fault of plaintiffs, and plaintiff joins a substantial share of the
13 manufacturers. *Sindell v. Abbott Laboratories* (1980) 26 Cal.3d 588.

14 Though these elements are adequately alleged in paragraph 43 of the proposed Amended
15 Master Complaint, plaintiffs have not shown the problem of identification of phentermine defendants
16 is so widespread as to justify adding a market share theory of liability to the master complaint.

17 Individual plaintiffs who seek to allege a market share theory may do so on noticed motion
18 accompanied by supporting declarations regarding their efforts to identify the phentermine
19 manufacturers.

20 Based upon the above and good cause appearing therefor, IT IS ORDERED that:

21 1. Plaintiffs' Motion for Leave to Amend the Master Complaint is hereby GRANTED.
22 The proposed Amended Master Complaint, as modified (see below in paragraph 2) is DEEMED
23 FILED this date.

24 2. All reference to market share liability in the proposed Amended Master Complaint,
25 including those in paragraph 43 and in the headings to the First, Second and Third Causes of Action,
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1 are hereby STRICKEN.

2 3. Plaintiffs' and defendants' Requests for Judicial Notice are GRANTED.

3 4. The amended Master Complaint is DEEMED ADOPTED by all plaintiffs. Any
4 plaintiff who wishes to name an additional defendant shall do so by filing an Amendment to the
5 Amended Master Complaint naming the new defendant as a Doe defendant within twenty (20) days
6 from the date that this Order is signed.

7 5. For all existing defendants, the answers previously filed shall be DEEMED FILED as
8 their answer to the Amended Master Complaint. If any existing defendant wants to file a different
9 answer or response, that defendant will have thirty (30) days from the date the order is signed to file
10 said response.

11 6. Any plaintiff who names a new defendant shall have thirty (30) days from the date that
12 this order is signed to serve the new defendant, with the exception of the Servier defendants.
13 Plaintiffs shall have five (5) months from the date this Order is signed to serve the Servier defendants.
14 Plaintiffs shall serve all new defendants with a copy of the Amended Master Complaint, the Doe
15 Amendment to the Amended Master Complaint and the Adoption of the (original) Master Complaint.

16 7. Any new defendant shall have thirty (30) days from the date of service of the Amended
17 Master Complaint, the Doe Amendment to the Amended Master Complaint and the Adoption of the
18 (original) Master Complaint to respond.

19 8. Plaintiffs' counsel may prepare the Proofs of Service of the Amended Master
20 Complaint, the Doe Amendment to the Amended Master Complaint and the Adoption of the
21 (original) Master Complaint, but need not file them unless otherwise instructed by the Court.

22 Dated:

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Hon. Daniel Solis Pratt
Judge of the Superior Court