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14 *Attorneys for Plaintiffs*

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF SAN DIEGO

17 DEMARIE FERNANDEZ, ALFONSO
MENDOZA, and FRED DURAN on behalf of
18 themselves and those similarly situated,

19 Plaintiffs,

20 v.

21 OBESITY RESEARCH INSTITUTE,
LLC; CONTINUITY PRODUCTS, LLC;
HENNY DEN UIJL; SANDRA DEN
22 UIJL; WEST COAST LABORATORIES,
INC.; and DOES 13 through 100, inclusive,
23

24 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/10/2020 at 05:16:00 PM
Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

Case No. 37-2013-00048664-CU-BT-CTL

**DECLARATION OF DEMARIE
FERNANDEZ IN SUPPORT OF
PLAINTIFFS' RENEWED MOTION FOR
CLASS CERTIFICATION**

Judge: Hon. John S. Meyer

Complaint Filed: May 14, 2013
Remittitur Filed: September 16, 2016
FAC Filed February 23, 2017

1 I, DeMarie Fernandez, declare:

2
3 1. I am a citizen of California, and I live in Vacaville, California. I am a Plaintiff in
4 this case. I make this declaration in support of my request that the Court certify this case as a
5 class action, appoint me as a class representative, and appoint Bursor & Fisher, P.A. and Nicholas
6 & Tomasevic, LLP as class counsel. The statements made in this Declaration are based on my
7 personal knowledge and, if called as a witness, I could and would testify to them.

8 2. In late 2012, I purchased Lipozene from a Walmart retail store in Vacaville,
9 California. Prior to my purchase, I saw the product labeling saying that Lipozene was “Safe and
10 Effective” and was “Clinically Proven” to “Reduce Weight” and “Reduce Body Fat.” The
11 container also contained an image of a Lipozene pill directly dissolving body fat on contact and
12 said that “78% of weight lost is pure body fat!” I understood those claims to mean that Lipozene
13 was safe and effective for weight loss and control. I would not have purchased Lipozene if I
14 knew the product was mislabeled and ineffective, as I confirmed at my deposition:

15 Q. So, what is the, what is the purpose of the lawsuit, then?

16 A. False information.

17 Q. False information as to what?

18 A. They misrepresented themselves in their ads to the product.

19 Q. And when you say “they”, you’re indicating Obesity
20 Research Clinic?

21 A. Correct.

22 Q. And when you say that they misrepresented the sales in the
23 ads, what product are you talking about?

24 A. Lipozene.

25 ...

26 Q. ... I’d like [to] talk about that, that purchase. Where did you
27 purchase the product Lipozene?

28 A. Walmart.

Q. Which Walmart?

A. Vacaville, Helen Power Drive

...

Q. Do you recall where on the shelf the Lipozene was located?

1 A. One of the top shelves.
 2 Q. How much of the product did you purchase?
 3 A. There was two bottles.
 4 Q. Did you buy two separate bottles or was it one package with
 two bottles?
 5 A. One.
 6 Q. One package that contained two bottles?
 7 A. Correct.
 8 ...
 9 Q. ... Which representations on the label are you talking about
 were substantial factors influencing your decision to
 purchase Lipozene?
 10 A. Where it stated that it was safe and effective to reduce
 11 weight and body fat.
 12 Q. The product packaging says that it's safe?
 13 A. Yes.
 14 Q. And the product packaging says that it's effective?
 15 A. Yes.

15 8/7/14 Fernandez Dep. at 8:8-21, 14:14-19, 18:5-18, 33:15-34:1 (objections omitted).

16 3. I assisted with my lawyers' investigation by describing the events surrounding my
 17 purchase of Lipozene. Specifically, I described where I purchased Lipozene, when I purchased it,
 18 why I purchased it, how I purchased it (e.g., online versus retail, cash versus credit), and what
 19 representations I reviewed and relied upon when making my purchase. I also provided my
 20 attorneys with any relevant documentation for their review. I also testified to these things at my
 21 deposition:

22 Q. And what was the, what was the purpose of you reaching
 out to the Bursor law firm in connection with Lipozene?
 23 A. It failed to live up to its claims.
 24 Q. So what was your purpose in contacting them?
 25 A. It failed to live up to its claims.
 26 Q. I understand that. And I appreciate that, that response. I
 want to know it failed to live up to its claims. What was
 27 your purpose in contacting the Bursor law firm?
 28 A. Lipozene didn't work and I felt that it needed to be known.

1 Q. You wanted to sue the company?

2 A. Sure.

3 ...

4 Q. After you sent the email to the Bursor firm regarding your
5 interest in pursuing a claim against the makers of Lipozene,
6 did you engage them then as counsel?

7 A. Yes.

8 Q. Signed an engagement agreement with them? I don't want
9 to know the content of the conversation you had with them,
10 but did you sign an engagement agreement with them?

11 A. Yes.

12 8/7/14 Fernandez Dep. at 51:15-52:6, 55:5-14 (objections omitted).

13 4. Based on this information, my attorneys prepared a Class Action Complaint. I
14 carefully reviewed the Complaint for accuracy and approved it before it was filed:

15 Q. What is this document? Do you know what this document
16 is?

17 A. I believe it's the complaint.

18 Q. That's correct. Do you see on the top there, Ms. Fernandez,
19 where it says, "Filed – "

20 A. Yes.

21 Q. – May 16th, 2013"? Do you see that?

22 A. Yes.

23 Q. Do you have an understanding that that was when your
24 lawsuit was filed?

25 A. Yes.

26 ...

27 Q. Did you receive the complaint prior to it being filed?

28 A. Yes.

8/4/17 Fernandez Dep. at 45:9-20, 53:24-54:1 (objections omitted).

Q. Were you involved in any part of the process of amending
the Complaint in this action?

A. Sure.

...

Q. Okay. When did you discuss with your lawyers amending
this Complaint?

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A. I don't know exactly.
Q. Was it before it was filed, or after it was filed?
A. Before.
Q. Okay. Did they ask your permission?
A. Yes.
Q. Okay. So you were consulted about amending the Complaint?
A. Yes.
Q. Okay. Now who were your original attorneys in the *Fernandez* matter? And when I – when I say “the *Fernandez* matter”, I’m not taking your name in vain, I’m referring to your original lawsuit, which was in the Eastern District of California, I think it was Sacramento. So who were your original lawyers in that action?
A. Bursor & Fisher.
Q. Okay. And who are the new attorneys that now represent you in connection with this matter?
A. They are the same.

3/23/18 Fernandez Dep. at 20:10-12, 20:25-21:18.

5. My lawyers have kept me informed about their efforts to litigate this matter. I discussed the motion for class certification with them and gave my approval prior to filing it:

Q. Okay. Are you aware that in April of last year your attorneys filed a motion to appoint themselves as class counsel?
A. Yes.
Q. Okay. Did they ask for your permission to do that?
A. Yes.
Q. And you gave it to them?
A. Yes.

3/23/18 Fernandez Dep. at 91:13-21.

6. I believe that I am qualified to serve as a class representative in this case. I hired qualified, experienced lawyers who have a successful track record in consumer class actions involving false and misleading advertising claims. Also, I have supervised and consulted

1 periodically with my counsel to review, discuss, and determine the actions to be taken and
2 decisions to be made in pursuit of this case on behalf of all class members:

3 Q. And a couple of months later, in April of 2017, there was a –
4 something called a demurrer to this First Amended
5 Complaint. We filed a demurrer, that's a motion in court.
Are you aware of that?

6 A. Yes.

7 Q. Okay. Were you involved in that proceeding in any way?

8 A. Through my lawyers.

9 Q. Did you have any direct involvement in it?

10 A. I referred to my lawyers on that.

11 Q. Did they talk to you about the demurrer?

12 A. Yes.

13 ...

14 Q. Okay. And then there was also an attempt by another law
15 firm to become part of this lawsuit. My question is, are you
16 aware of that?

17 A. I think so.

18 Q. Okay. What was your – how were you made aware of it?

19 A. Through my lawyer.

20 Q. Okay. Did you have any involvement in responding to that
21 effort?

22 A. I don't know. I just talked to my lawyer about it.

23 Q. Okay.

24 A. He made me aware of it.

25 ...

26 Q. The reporter has marked, and I've handed to you and your
27 Counsel, a copy of the Second Amended Class Action
28 Complaint in this case, it's Fernandez Exhibit 3, and I've
given you a copy. This Second Amended Complaint was
filed in July of 2017, just last year. Were you aware of that?

A. Yes.

Q. Okay. And in August of 2017 the Defendants, whom I
represent, again, filed a demurrer challenging the sufficiency
of this, and we also filed a motion to strike. Were you
aware of that?

A. Yes. ...

1 3/23/18 Fernandez Dep. at 23:18-24:4, 25:4-16, 27:3-14.

2 7. I have actively participated in this litigation by providing detailed information for
3 the Complaint, which I reviewed prior to filing; by keeping up on developments in the case,
4 including the Court's rulings on Defendants' motions to dismiss and the parties' various
5 discovery motions; by responding to 33 Requests for Production; by searching for and producing
6 documents in discovery; by responding to 50 Interrogatories, and later serving amended
7 responses; by sitting for two depositions about my purchase and use of Lipozene; by meeting all
8 case deadlines to date; and by working with my lawyers to advance the lawsuit by moving for
9 class certification. Based on the interactions and my relationship with my attorneys, I believe
10 they will fairly and adequately represent me and the Class:

11 Q. Are you aware that my side made requests for production of
12 documents to you?

13 A. Yes.

14 Q. Okay. Were you consulted in responding to those requests?

15 A. Yes.

16 Q. What did you do, if anything, to try to find documents in
17 response to those requests?

18 A. I looked for them.

19 ...

20 Q. Sure. Are you aware that my side sent you written questions
21 in connection with this case, they are called interrogatories?

22 A. Okay.

23 Q. Are you aware of that?

24 A. Yes.

25 Q. Okay. And were you consulted in responding to these
26 written questions or interrogatories?

27 A. Yes.

28 Q. Okay. Are you aware that my side requested your
deposition back in October of last year?

A. Yes.

Q. And are you aware that you, or lawyers on your behalf filed
a protective order to try to prevent that?

A. Yes.

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...
Q. ... How frequently have you spoken with your attorneys in this case since February of 2017, last year?
A. I don't know of the frequency, but it's been several times.
...
Q. Okay. Have you been consulted about how this case should be handled?
A. Yes.

3/23/18 Fernandez Dep. at 87:6-14, 88:19-89:8, 89:12-16, 90:15-18 (objections omitted).

8. I understand the obligations of serving as a class representative. Specifically, I understand that, as a class representative, I have an obligation to assert and protect the interests of other class members and not act just for my own personal benefit. I do not have any conflicts with other class members, nor am I aware of any facts that may give rise to any conflicts. I will do my best to continue to protect the interests of other class members and will fairly and adequately represent the class to the best of my ability. I am prepared and willing to serve as a fiduciary on behalf of the class. I am also prepared to try this case through trial, and through any resulting appeals, on behalf of the class. In doing so, I will continue to work with class counsel on behalf of active class members:

Q. Okay. What do you think a "class action" is?
A. A group of people coming together to sue someone.
Q. And as a named Plaintiff, you're seeking to be a class representative, right?
A. Correct.
Q. Do you understand what that is?
A. I think so.
Q. What is your understanding?
A. That I would be the person used to speak for many.
Q. Who is "the class" in this case, how would you define it?
A. People that want to see a change in Lipozene.
Q. What change?
A. Well, a change in their advertising and labeling.

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Q. Can you identify specifically what changes in their advertising and labeling?

A. Well, that's not their – the current stuff isn't true; it doesn't help you lose weight, it doesn't help you lose the body fat. They miss – excuse me. They misrepresented themselves, I believe.

Q. Okay. And your definition of “the class”, is it everyone who bought Lipozene?

A. Correct.

Q. Does it – does it include people who saw the commercial, but didn't buy it?

A. People who bought Lipozene.

5/23/18 Fernandez Dep. at 69:12-70:15 (objections omitted).

9. It is my understanding that Defendants sold me the same products, labeled in the same way, as it did all other class members who bought Lipozene.

10. I estimate that I spent a total of 20 to 40 hours working with my lawyers on this case.

The above statements are of my own personal knowledge, and I make such statements under penalty of perjury under the laws of California and the United States of America.

Executed on this 10 day of January, 2019 in Vacaville, California.


DeMarie Fernandez