

1 **BURSOR & FISHER, P.A.**
L. Timothy Fisher (State Bar No. 191626)
2 1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
3 Telephone: (925) 300-4455
Facsimile: (925) 407-2700
4 E-Mail: ltfisher@bursor.com

5 **BURSOR & FISHER, P.A.**
Scott A. Bursor (State Bar No. 276006)
6 888 Seventh Avenue
New York, NY 10019
7 Telephone: (212) 989-9113
Facsimile: (212) 989-9163
8 E-Mail: scott@bursor.com

9 **NICHOLAS & TOMASEVIC, LLP**
Alex M. Tomasevic (State Bar No. 245598)
10 Craig M. Nicholas (State Bar No. 178444)
225 Broadway, 19th Floor
11 San Diego, California 92101
Telephone: (619) 325-0492
12 Facsimile: (619) 325-0496
E-Mail: cnicholas@nicholaslaw.org
13 atomasevic@nicholaslaw.org

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 Defendants.
24

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 ALFONSO
MENDOZA 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

25
26
27
28

1 I, Alfonso Mendoza, declare:

2
3 1. I am a citizen of California, and I live in Covina, California. I am a Plaintiff in this
4 case. I make this declaration in support of my request that the Court certify this case as a class
5 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. I purchased Lipozene from ORI's toll-free number while at home in Covina,
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. ... Sir, how would you summarize what this case is about?

16 A. It's about a product that I myself purchased because I
17 thought it would help me lose some weight. And I followed
18 all the instructions that the bottle asked for, and it never did
19 anything for me, so I stopped taking them. ...

20 ...

21 Q. ... What did you think would happen when you purchased
22 this product, Lipozene?

23 A. Well, I thought it would help me lose weight.

24 Q. And was that in response to an advertisement?

25 A. Yes.

26 Q. What advertisement did you see?

27 A. On television.

28 ...

Q. Can you describe it to me?

A. Oh, it just showed where you take the pill and it started
burning fat. And people – they had people talking, "Oh, I
lost 40 pounds; I lost 30 pounds." And so this was in the
evening. And the next morning I called in, the number that
they showed on the screen, to order the product.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

...

Q. Let me see if you can be a little more specific. You said this ad was on TV, right?

A. Yes.

Q. So what were the pictures? What visual images did you see?

A. Mostly like young women. You know, "Oh, I lost weight; I did this and I did it with Lipozene"; and it showed, like, a stomach after taking the pill. But they started reducing weight.

...

Q. And forgive me for being tedious, but to the best you can remember, what specific statements can you remember being made in the ad?

A. "Lose weight; it's safe." That's about it.

...

Q. So how many bottles total did you think you bought?

A. I thought I bought four. Three, four bottles.

3/22/18 Mendoza Dep. at 27:19-24, 28:16-29:1, 29:7-13, 30:1-9, 30:20-25, 53:17-19 (objections omitted).

Q. One representation was that the commercial indicated the product would help you lose weight; right?

A. Uh-huh, yes.

Q. You relied on that?

A. Yes.

Q. Another representation from the commercial was that the product would help you burn fat?

A. Yes.

Q. You relied on that?

A. Yes.

Q. The third representation you're saying is that the commercial indicated the product was safe?

A. Yes.

Q. And you relied on that?

A. Yes.

8/5/14 Mendoza Dep. at 33:10-25.

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

7 Q. You believe that you first contacted the law firm that's
8 representing you in your case about three months after you
9 stopped taking the Lipozene product; is that right?

10 A. Yes.

11 Q. Did you ever sign a letter or an agreement with that law
12 firm?

13 A. Yes.

14 Q. You – an engagement letter, does that sound right? Doesn't
15 matter. You believe you did sign an agreement with –

16 A. I believe so.

17 8/5/14 Mendoza Dep. at 59:19-60:5.

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

20 Q. ... Have you ever reviewed the complaint that you filed
21 against the makers of Lipozene?

22 A. Yes.

23 Q. You have?

24 A. Yes.

25 Q. How long did you spend reviewing it before?

26 A. An hour, yeah.

27 Q. Was there anything in that complaint that you thought was
28 incorrect or inaccurate?

 A. No.

 Q. Why did you review the complaint?

 A. Why?

 Q. Yeah.

 A. To know what was – what was going on.

1 Q. And to know what was being said?
2 A. Yes.
3 ...
4 Q. And I'll repeat the question. Is one of the reasons why you
5 reviewed the complaint to make sure the information in it
6 was correct before it was filed?
7 A. Yes.
8 ...
9 Q. Was there anything in this complaint, Exhibit 3, that you
10 saw that you thought was inaccurate or false?
11 A. No.
12 Q. Okay. The – if you look at the top of Exhibit 3, sir, let me
13 reach over if I could, filed 05/16/13. So it was filed May
14 16th of 2013. Does that sound about right?
15 A. Yes.
16 Q. Do you believe that you reviewed it for about an hour before
17 it was filed on that date?
18 A. I'm just trying to get a date.
19 Q. Does that sound right?
20 A. Yes, yes.

21 8/5/14 Mendoza Dep. at 29:15-30:30:7, 30:18-21, 41:6-22 (objections omitted).

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

24 6. I believe that I am qualified to serve as a class representative in this case. I hired
25 qualified, experienced lawyers who have a successful track record in consumer class actions
26 involving false and misleading advertising claims. Also, I have supervised and consulted
27 periodically with my counsel to review, discuss, and determine the actions to be taken and
28 decisions to be made in pursuit of this case on behalf of all class members:

Q. I understand you've had discussions – several discussions
with Mr. Deckant. But have you been kept involved in –
have you been informed about the developments in this
case? ... In plain English, have they let you know what's
going on?
A. Yes.

3/22/18 Mendoza Dep. at 106:10-18 (objections omitted).

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

10 Q. And you had your deposition taken before in connection
11 with my client, Obesity Research Institute, correct?

12 A. Yes.

13 ...

14 Q. Do you remember when your prior deposition in connection
15 with ORI took place?

16 A. I don't remember the exact date, but it's been about four
17 years.

18 Q. If I told you that it was August 5th, 2014, would that sound
19 about right?

20 A. Yes.

21 ...

22 Q. And, Mr. Mendoza, could you please describe for the record
23 what these two bottles that you and your counsel produced
24 here today are?

25 A. Lipozene.

26 Q. And where did you find these?

27 A. Above the refrigerator.

28 Q. And are these two of the bottles that you bought?

 A. Yes.

 ...

 Q. I'll put it in a little plainer English. Are you aware that we
 asked for documents from you, we asked your counsel for
 them?

 A. Yes. Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

...
Q. Did you do anything to try to find documents?
A. Well, the only thing I've tried to find was the invoice for the purchase of the products. And I was looking for the bottles, you know, or anything, and I told him I didn't have anything.
Q. Did you find the invoice?
A. No.
Q. Were you – did you look for any documents besides the invoice and the bottles?
A. Yes.
Q. What else did you look for?
A. Whatever I could find that had anything to do with the purchase.

3/22/18 Mendoza Dep. at 13:11-14,13:24-14:5, 52:23-53:7, 107:22-25, 108:3-18 (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. Well, do you have an understanding of what a class action is?
A. Yes.
Q. What is your understanding?
A. It's a – for several people, more than one person.
Q. Can you be more specific? What is the “more than one person” trying to do?
A. Get their money back.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Q. So they're parties to a lawsuit?
A. Yes.
...
Q. Are you aware that there's a class that is alleged in this lawsuit?
A. Yes.
Q. How would you define the class in this lawsuit?
A. (No audible response)
Q. Let me rephrase that. Do you have an understanding of what the class is alleged to be in this lawsuit?
A. Yes.
Q. What is your understanding?
A. That there's people that purchased the product and are not happy with it.
Q. Like you.
A. Yes. Exactly.

3/22/18 Mendoza Dep. at 83:6-16, 84:1-14.

Q. Do you understand that as a plaintiff in this case in which you're trying to represent other people that you have a duty to represent them?
A. Yes, I understand that.
Q. Have you ever heard the term "fiduciary duty"?
A. Yes.
Q. Do you believe that you have a fiduciary duty as a class representative?
A. Yes.
Q. What have you done to try to fulfill your fiduciary duty to the class so far?
A. Just [be] part of the lawsuit.

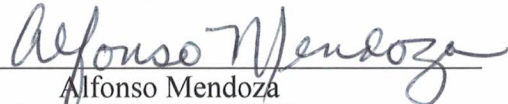
8/5/14 Mendoza Dep. at 44:4-16 (objections omitted).

- 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 15 day of January, 2019 in Covina, California.



Alfonso Mendoza