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ELECTRONICALLY RECEIVED
Superior Court of California,
County of San Diego
01/10/2020 at 05:02:36 PM
Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

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

Plaintiffs,

v.

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

Defendants.

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

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Date: February 7, 2020
Time: 10:30 a.m.
Dept: SD-64
Judge: Hon. John S. Meyer

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

1 WHEREAS, on October 28, 2019, this Court entered an Order Granting Preliminary
2 Approval of Settlement (the “Preliminary Approval Order”), preliminarily approving the proposed
3 settlement of the Action pursuant to the terms of the Class Action Settlement Agreement (the
4 “Settlement Agreement”) and directing that notice be given to the members of the Settlement Class;

5 WHEREAS, the capitalized terms herein shall have the same meaning as in the Settlement
6 Agreement;

7 WHEREAS, pursuant to the Parties’ plan for providing notice to the Settlement Class (the
8 “Notice Plan”), the Settlement Class was notified by postcard, email, and web posting of the terms
9 of the proposed Settlement and of a Final Approval Hearing to determine, *inter alia*, whether the
10 terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release
11 and dismissal of the Released Claims against the Released Parties; and

12 WHEREAS, a Final Approval Hearing was held on February 7, 2020. Prior to the Final
13 Approval Hearing, proof of completion of the Notice Plan was filed with the Court in the form of
14 the January 10, 2020 Declaration of Jeanne C. Finegan of Heffler Claims Group LLC. Settlement
15 Class Members were therefore notified of their right to appear at the hearing in support of or in
16 opposition to the proposed Settlement;

17 NOW, THEREFORE, the Court, having heard the oral presentations made at the Final
18 Approval Hearing, and having reviewed all of the submissions presented with respect to the
19 proposed Settlement, and having determined that the Settlement is fair, adequate, and reasonable,
20 and having reviewed the materials in connection therewith, it is hereby ORDERED, ADJUDGED
21 AND DECREED THAT:

22 1. The capitalized terms used in this Final Approval Order and Judgment shall have the
23 same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

24 2. The Court has jurisdiction over the subject matter of this Action and over all claims
25 raised therein and all Parties thereto, including the Settlement Class.

26 3. The Court finds, solely for purposes of this Settlement, that the requirements of Cal.
27 Code Civ. Proc. § 382 are satisfied, including requirements for the existence of an ascertainable
28 class, a community of interest, and manageability of a settlement class, that common issues of law

1 and fact predominate, and that a settlement class is superior to alternative means of resolving the
2 claims and disputes at issue in this Action.

3 4. For purposes of the Settlement and this Final Approval Order and Judgment, the
4 Settlement Class shall consist of all persons in the United States of America who purchased
5 Lipozene at any time from August 10, 2012 through October 28, 2019. Excluded from the
6 Settlement Class are any officers, directors, or employees of Defendant, and the immediate family
7 member of any such person. Also excluded is any judge who may preside over this case.

8 5. The Settlement Class Members bound by this Final Approval Order and Judgment
9 shall include all persons falling within the definition of the Settlement Class who did not submit a
10 timely and valid Request for Exclusion. Those persons who have requested exclusion are identified
11 on Exhibit A hereto.

12 6. The Court finds that the Notice Plan, set forth in Section V of the Settlement
13 Agreement and in the September 24, 2019 Declaration of Jeanne C. Finegan, effectuated pursuant
14 to the Preliminary Approval Order, constitutes the best notice practicable under the circumstances
15 and shall constitute due and sufficient notice to the Settlement Class of the pendency of this Action,
16 certification of the Settlement Class for settlement purposes only, the terms of the Settlement
17 Agreement, and the Final Approval Hearing, and satisfies the requirements of California law and
18 federal due process of law.

19 7. The Settlement, as set forth in the Settlement Agreement, is in all respects fair,
20 reasonable, adequate, and in the best interests of the Settlement Class, and it is approved. The
21 Parties shall effectuate the Settlement Agreement according to its terms. The Settlement
22 Agreement and every term and provision thereof shall be deemed incorporated herein as if
23 explicitly set forth and shall have the full force of an Order of this Court.

24 8. Plaintiffs' request for an award of attorneys' fees and reimbursement of expenses to
25 Class Counsel in the amount of \$1,400,000, payable by Defendants, is granted in full. The Court
26 finds that the fee award is well within the range of reasonableness. Additionally, the hours Class
27 Counsel worked and the rates charged by Class Counsel are reasonable given the complexity of this
28 case and the local marketplace, and the costs and expenses were reasonably incurred for the benefit

1 of the Class. The Court also orders payment of incentive awards in the amount of \$7,500 to each of
2 the three Class Representatives. Defendants shall make the payments to Class Counsel and the
3 Class Representatives in accordance with the terms of the Settlement Agreement.

4 9. Upon the Effective Date, the Releasing Parties shall have, by operation of this Final
5 Approval Order and Judgment, fully, finally and forever released, relinquished, and discharged the
6 Released Parties from all Released Claims pursuant to Section VI of the Settlement Agreement.

7 10. As of the Effective Date, Settlement Class Members are hereby permanently barred
8 and enjoined from instituting, commencing or prosecuting, either directly or in any other capacity,
9 any Released Claim against any of the Released Parties.

10 11. This Final Approval Order and Judgment, the Settlement Agreement, the Settlement
11 which it reflects, and any and all acts, statements, documents or proceedings relating to the
12 Settlement are not, and shall not be construed as, or used as an admission by or against the
13 Released Parties of any fault, wrongdoing, or liability on their part, of the validity of any Released
14 Claim, or of the existence or amount of damages.

15 12. The claims of the Class Representatives and all Settlement Class Members in this
16 Action are hereby dismissed in their entirety with prejudice. Except as otherwise provided in this
17 Judgment and/or in any Order(s) that this Court may issue awarding attorneys' fees and/or expenses
18 in this Action, entered in response to Class Counsel's motion(s) therefor brought in connection with
19 the Settlement, the Parties shall bear their own costs and attorneys' fees. Without affecting the
20 finality of the Judgment hereby entered, the Court reserves jurisdiction over the implementation of
21 the Settlement, including enforcement and administration of the Settlement Agreement, including
22 any releases in connection therewith, the enforcement of the injunction entered simultaneously
23 herewith and any other matters related or ancillary to the foregoing.

24 **IT IS SO ORDERED.**

25
26 Dated:

27 _____
Honorable John S. Meyer
28 Judge of the Superior Court