

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

**FILED**  
Clerk of the Superior Court  
**OCT 28 2019**  
By: H. CHAVARIN, Deputy

**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] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Date: October 18, 2019  
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, Class Representatives DeMarie Fernandez, Alfonso Mendoza, and Fred Duran,  
2 and Defendants Obesity Research Institute, LLC, Continuity Products, LLC, Henny den Uijl, and  
3 Sandra den Uijl, have reached a proposed settlement and compromise of the claims in the above-  
4 captioned matter, which is embodied in a Class Action Settlement Agreement (the "Settlement  
5 Agreement") that has been provided to the Court;

6           WHEREAS, the parties have applied to the Court for preliminary approval of the proposed  
7 Settlement; and

8           WHEREAS, the capitalized terms herein shall have the same meaning as in the Settlement  
9 Agreement;

10          NOW, THEREFORE, the Court, having read and considered the Settlement Agreement and  
11 accompanying documents, as well as the Motion for Preliminary Approval of Class Action  
12 Settlement and supporting papers, and the parties to the Settlement Agreement having consented to  
13 the entry of this order, and good cause appearing,

14          IT IS HEREBY ORDERED AS FOLLOWS:

15          1.       Subject to further consideration by the Court at the time of the Final Approval  
16 Hearing, the Court preliminarily approves the Settlement as fair, reasonable, and adequate to the  
17 Settlement Class, as falling within the range of possible final approval, and as meriting submission  
18 to the Settlement Class for its consideration.

19          2.       For purposes of the Settlement only, the Court certifies the Settlement Class, which  
20 consists of all persons in the United States of America who purchased Lipozene at any time during  
21 the Class Period (*i.e.*, from August 10, 2012 through the date of preliminary approval).

22          3.       The Court preliminarily finds, solely for purposes of considering this Settlement,  
23 that the requirements of Cal. Code Civ. Proc. § 382 are satisfied, including requirements for the  
24 existence of an ascertainable class, a well-defined community of interest, and manageability of a  
25 settlement class, that common issues of law and fact predominate, and that a settlement class is  
26 superior to alternative means of resolving the claims and disputes at issue in this Action.

27          4.       The Court appoints Bursor & Fisher, P.A. and Nicholas & Tomasevic, LLP as Class  
28 Counsel for purposes of this settlement. The Court preliminarily finds that the Class

1 Representatives and Class Counsel fairly and adequately represent and protect the interests of the  
2 absent Settlement Class Members in accordance with Cal. Code Civ. Proc. § 382.

3 5. A Final Approval Hearing shall be held before this Court at 10:30 a.m., on February  
4 7, 2020, in Department SD-64, of the San Diego Superior Court, to address: (a) whether the  
5 proposed Settlement should be finally approved as fair, reasonable and adequate; (b) whether the  
6 Final Approval Order and Judgment should be entered; (c) whether the application for approval of  
7 the payment of attorneys' fees to Class Counsel by Defendants should be approved; (d) whether  
8 Class Counsel's application for reimbursement of expenses and the payment of incentive awards to  
9 the Class Representatives should be approved; and (e) any other matters that the Court deems  
10 appropriate.

11 6. The Court approves, as to form and content, the Publication Notice, substantially in  
12 the form attached as Exhibit C to the Settlement Agreement. On, or before, November 18, 2019,  
13 Class Counsel are directed to cause the publication notice to be published substantially in the form  
14 of Exhibit C hereto as follows:

15 *People* magazine – one publication; and

16 *San Diego Union Tribune* – once a week for four (4) consecutive weeks.

17 7. The Court hereby approves the long-form Notice attached as Exhibit B to the  
18 Settlement Agreement, which shall be disseminated by the Settlement Administrator in the manner  
19 provided in ¶ 5.4.3 of the Settlement Agreement and in the Finegan Declaration, or before,  
20 November 18, 2019.

21 8. The Court finds that the Parties' plan for providing notice to the Settlement Class  
22 described in ¶ 5.4.3 of the Settlement Agreement and in the Finegan Declaration constitutes the  
23 best notice practicable under the circumstances and shall constitute due and sufficient notice to the  
24 Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of  
25 the Settlement Agreement, and the Final Approval Hearing, and complies fully with the  
26 requirements of the California Rules of Court, the California Code of Civil Procedure, the  
27 Constitution of the State of California, the United States Constitution, and other applicable laws.  
28

1           9.       The Court further finds that the notice plan described in ¶ 5.4.3 of the Settlement  
2 Agreement and in the Finegan Declaration will adequately inform members of the Settlement Class  
3 of their right to exclude themselves from the Settlement Class so as not to be bound by the terms of  
4 the Settlement Agreement.

5           10.       Any member of the Settlement Class who desires to be excluded from the Settlement  
6 Class, and therefore not be bound by the terms of the Settlement Agreement, must send a timely  
7 and valid written Request for Exclusion, postmarked on, or before, January 24, 2020, to the  
8 Settlement Administrator (Duran v. ORI Settlement, PO Box 59269, Philadelphia, PA 19102-  
9 9269), pursuant to the instructions set forth in the Notice.

10           11.       Any person falling within the definition of the Settlement Class who elects to be  
11 excluded shall not be entitled to receive any of the benefits of the Settlement, shall not be bound by  
12 the release of any claims pursuant to the Settlement Agreement, and shall not be entitled to object  
13 to the Settlement or appear at the Final Approval Hearing. The names of all Persons timely  
14 submitting valid Requests for Exclusion shall be provided to the Court by Class Counsel.

15           12.       The Claims Deadline referenced in ¶ 1.5 of the Settlement Agreement shall be  
16 February 17, 2020. The Class Representatives will file with the Court their motion in support of  
17 final settlement approval, Fee and Expense Application(s), and supporting papers, no later than  
18 January 10, 2020.

19           13.       Any Settlement Class Member who does not submit a valid and timely Request for  
20 Exclusion may object to the Settlement Agreement, to Class Counsel's application(s) for attorney's  
21 fees, costs, expenses and/or incentive awards, or to the entry of the proposed Final Approval Order.  
22 Any such Settlement Class Member shall have the right to appear and be heard at the Final  
23 Approval Hearing, either personally or through an attorney retained at the Settlement Class  
24 Member's own expense. Any such Settlement Class Member must submit a valid written statement  
25 of the specific objections, and documentary evidence identifying the objector as a Settlement Class  
26 Member, postmarked on, or before, January 24, 2020, to the Settlement Administrator, pursuant to  
27 the instructions set forth in the Notice. Only Settlement Class Members who made such a  
28 submission shall be entitled to be heard at the Final Approval Hearing. Any such Settlement Class

1 Member can make these submissions by filing them with the Court, with a copy served on Class  
2 Counsel (L. Timothy Fisher, Bursor & Fisher, P.A., 1990 North California Blvd., Suite 940,  
3 Walnut Creek, CA 94596; and Alex M. Tomasevic, Nicholas & Tomasevic, LLP, 225 Broadway,  
4 19th Floor, San Diego, CA 92101), Counsel for Defendants (Daniel S. Silverman, Venable LLP,  
5 2049 Century Park East, Suite 2300, Los Angeles, CA 90067), and the Claims Administrator  
6 (Duran v. ORI Settlement, PO Box 59269, Philadelphia, PA 19102-9269). Any such Class  
7 Member must also provide contact information to allow the Class Representatives to serve any  
8 response to objections, or to provide notice of scheduling changes. The Class Representatives will  
9 file with the Court their response to any objections no later than January 31, 2020.

10 14. Any Settlement Class Member who does not make an objection in the time and  
11 manner provided shall be deemed to have waived such objection and shall be forever foreclosed  
12 from asserting any objection to the fairness or adequacy of the proposed settlement as incorporated  
13 in the Settlement Agreement, the payment of attorney's fees, costs and expenses, the Class  
14 Representative incentive awards, the allocation of settlement proceeds, or the Final Approval Order  
15 and Judgment.

16 15. In the event that the proposed Settlement is not approved by the Court, or in the  
17 event that the Settlement Agreement becomes null and void pursuant to its terms, this Order and all  
18 orders entered in connection therewith shall become null and void, shall be of no further force and  
19 effect, and shall not be used or referred to for any purposes whatsoever in this Action or in any  
20 other case or controversy; in such event the Settlement Agreement and all negotiations and  
21 proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and  
22 all of the Parties, who shall be restored to their respective positions as of the date and time  
23 immediately preceding the execution of the Settlement Agreement.

24 ///  
25 ///  
26 ///  
27 ///  
28 ///

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

16. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Settlement Class Members. The Final Approval Hearing may, from time to time and without further notice to the Settlement Class, be continued by order of the Court.

**IT IS SO ORDERED.**

Dated: OCT 28 2019

**JOHN S. MEYER**  
\_\_\_\_\_  
Honorable John S. Meyer  
Judge of the Superior Court

§