

BURSOR & FISHER, P.A.

L. Timothy Fisher (State Bar No. 191626)
Neal J. Deckant (State Bar No. 322946)
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-Mail: ltfisher@bursor.com
ndeckant@bursor.com

BURSOR & FISHER, P.A.

Scott A. Bursor (State Bar No. 276006)
2665 S. Bayshore Dr., Suite 220
Miami, FL 33133-5402
Telephone: (305) 330-5512
Facsimile: (305) 676-9006
E-Mail: scott@bursor.com

NICHOLAS & TOMASEVIC, LLP

Alex M. Tomasevic (State Bar No. 245598)
Craig M. Nicholas (State Bar No. 178444)
225 Broadway, 19th Floor
San Diego, California 92101
Telephone: (619) 325-0492
Facsimile: (619) 325-0496
E-Mail: cnicholas@nblaw.org
atomasevic@nblaw.org

Attorneys for Plaintiffs

VENABLE LLP

Daniel S. Silverman (State Bar No. 137864)
2049 Century Park East, Suite 2300
Los Angeles, CA 90067
Telephone: (310) 229-0373
Facsimile: (310) 229-9901
E-Mail: DSSilverman@venable.com

Attorneys for Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND 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

**CLASS ACTION SETTLEMENT
AGREEMENT**

Judge: Hon. John S. Meyer

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

1 This Class Action Settlement Agreement ("Settlement Agreement"), is made and entered
2 into by and between the Class Representatives DeMarie Fernandez, Alfonso Mendoza, and Fred
3 Duran (collectively "Plaintiffs"), on behalf of themselves and the Settlement Class, and Defendants
4 Obesity Research Institute, LLC, Continuity Products, LLC, Henny den Uijl, and Sandra den Uijl
5 (collectively "Defendants"), to settle and compromise this Action and to settle, resolve, and
6 discharge the Released Claims, as defined below, according to the terms and conditions herein.

7 **PREAMBLE**

8 1. WHEREAS, on May 13, 2013, Fred Duran filed the initial Complaint against
9 Defendants (the "Action").

10 2. WHEREAS, on May 16, 2013, DeMarie Fernandez and Alfonso Mendoza filed a
11 complaint in the matter captioned *Fernandez, et al. v. Obesity Research Institute, et al.*, Case No.
12 2:13-CV-00975-MCE-KJN (E.D. Cal.) ("*Fernandez Action*").

13 3. WHEREAS, on February 23, 2017, Fred Duran, DeMarie Fernandez, and Alfonso
14 Mendoza filed a consolidated First Amended Class Action Complaint in this Action.

15 4. WHEREAS, on July 14, 2017, Fred Duran, DeMarie Fernandez, and Alfonso
16 Mendoza filed a consolidated Second Amended Class Action Complaint in this Action.

17 5. WHEREAS, the Plaintiffs allege that Defendants have engaged in acts that violate
18 state consumer protections laws (including California's False Advertising Laws ("FAL"), Bus. &
19 Prof. Code § 17500, *et seq.*, California's Unfair Competition Laws ("UCL"), and California's
20 Consumers Legal Remedies Act ("CLRA"), Civil Code § 1750, *et seq.*), as well as giving rise to
21 causes of action for breach of express warranty, breach of the implied warranty of merchantability,
22 unjust enrichment, negligent misrepresentation, fraudulent concealment / nondisclosure, intentional
23 misrepresentation, and fraud, and that as a direct result of such violations, Plaintiffs and the putative
24 class have suffered monetary damages and also seek equitable remedies.

25 6. WHEREAS, at all times Defendants have disputed and continue to dispute all the
26 allegations Plaintiffs assert in this Action and have denied and continue to deny wrong doing
27 whatsoever. Defendants deny that they committed any wrongful act or violation of any law or duty
28 including, but not limited to, those alleged in the Action. Defendants maintain that they have acted

1 properly at all times and were and are in compliance with all applicable laws, statutes and
2 regulations and with all policies adopted by applicable regulatory agencies. Defendants deny that
3 Plaintiffs are entitled to any form of damages or relief based on the conduct alleged in the Action or
4 otherwise. Defendants enter into this Agreement solely to avoid legal costs and inconvenience that
5 would be incurred if it had to continue to litigate the claims made in the Action.

6 7. WHEREAS, based upon the discovery taken to date, investigation, and evaluation of
7 the facts and law relating to the matters alleged in the pleadings, plus the risks and uncertainties of
8 continued litigation and all factors bearing on the merits of settlement, the Plaintiffs and Defendants
9 have agreed to settle the claims asserted in the Action pursuant to provisions of this Settlement
10 Agreement.

11 NOW, THEREFORE, subject to the Final Approval of the Court as required herein and by
12 applicable law and rules, the Settling Parties hereby agree, in consideration of the mutual promises
13 and covenants contained herein, that any Released Claims against any Released Parties shall be
14 settled, compromised and forever released upon the following terms and conditions.

15 **TERMS AND CONDITIONS OF THE SETTLEMENT**

16 **1. DEFINITIONS**

17 As used in this Settlement Agreement and the related documents attached hereto as exhibits,
18 the terms set forth below shall have the meanings set forth below.

19 1.1. "Action" means the civil action entitled *Duran, et al. v. Obesity Research Institute,*
20 *LLC, et al.*, Case No. 37-2013-00048664-CU-BT-CTL, currently pending in the Superior Court for
21 the State of California, County of San Diego.

22 1.2. "Claim" or "Settlement Claim" means a claim for payment submitted by a
23 Settlement Class Member to the Claims Administrator as provided in this Settlement Agreement.

24 1.3. "Claim Form" or "Settlement Claim Form" means a claim form, substantially in the
25 form of Exhibit A attached hereto, to be submitted by Claimants seeking payment pursuant to this
26 Settlement Agreement to the Claims Administrator. The Claim Form may be accessed online using
27 the unique Class Member identifier provided by the Claims/Notice Administrator. The
28

1 Claims/Notice Administrator shall send an automated follow-up e-mail to any Class Member who
2 requests a Class Member identifier but does not submit a claim within 24 hours.

3 1.4. "Claim Fund" means the sum of money that Defendants shall make available for
4 payment of Valid Claims.

5 1.5. "Claim Period" means the period of time during which a Settlement Class Member
6 must submit a Claim Form to be eligible to receive a payment as part of the Settlement, which shall
7 begin when Notice goes out and shall extend for a period of ninety (90) days thereafter. If the period
8 ends on a weekend or holiday, the period shall extend to the next business day.

9 1.6. "Claimant" means a Settlement Class Member who submits a claim for payment.

10 1.7. "Claims Administrator" refers to the Heffler Claims Group, which is the
11 independent, third-party claims administrator jointly selected by the Parties to provide notice to the
12 Settlement Class, and to administer the claims process.

13 1.8. "Class Action Settlement Agreement," "Settlement Agreement," "Settlement," or
14 "Agreement" means this Class Action Settlement Agreement, including the attached exhibits.

15 1.9. "Class Counsel" means the Class Representative's counsel of record in the Action:
16 Craig M. Nicholas, Alex M. Tomasevic, and the law firm of Nicholas & Tomasevic, LLP; and Scott
17 A. Bursor, L. Timothy Fisher, Neal J. Deckant, and the law firm of Bursor & Fisher, P.A.

18 1.10. "Class Period" means the time period between August 10, 2012 through the date the
19 Preliminary Approval Order is entered.

20 1.11. "Class Representatives" means, collectively, DeMarie Fernandez, Alfonso Mendoza,
21 and Fred Duran.

22 1.12. "Court" means the Superior Court for the State of California, County of San Diego.

23 1.13. "Covered Product" means Lipozene.

24 1.14. "Defendants" mean Obesity Research Institute, LLC, Continuity Products, LLC,
25 Henny den Uijl, and Sandra den Uijl, as well as their past, present, and future officers, directors,
26 shareholders, employees, predecessors, affiliates, parents, subsidiaries, partners, distributors,
27 principals, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors,
28

1 coconspirators, buyers, independent contractors, attorneys, representatives, heirs, executors, experts,
2 consultants, and assigns of all of the foregoing persons and entities.

3 1.15. "Defendants' Counsel" means Defendants' counsel of record in the Action, Daniel S.
4 Silverman, and the law firm of Venable LLP.

5 1.16. "Fee and Cost Application" means the written motion or application by which the
6 Class Representative and/or Class Counsel request that the Court award attorneys' fees, costs,
7 expenses and incentive awards.

8 1.17. "Final Approval Hearing" means the hearing scheduled to take place at least ninety
9 days after the date of entry of the Preliminary Approval Order at which the Court shall: (a)
10 determine whether to grant final approval to this Settlement Agreement and to certify the Settlement
11 Class; (b) consider any timely objections to this Settlement and all responses thereto; and (c) rule on
12 the Fee and Cost Application.

13 1.18. "Final Approval Order" means the order in which the Court grants final approval of
14 this Settlement Agreement, certifies the Settlement Class, and authorizes the entry of a final
15 judgment and dismissal of the Action with prejudice.

16 1.19. "Final Settlement Approval Date" or the "Effective Date" means the first date by
17 which all of the following events shall have occurred: the Court has entered the Final Approval
18 Order on the docket in the Action, and (a) the time to appeal from such order has expired and no
19 appeal has been timely filed, (b) if such an appeal has been filed, it has finally been resolved and
20 has resulted in an affirmation of the Final Approval Order, or (c) the Court, following the resolution
21 of the appeal, enters a further order or orders approving settlement on the terms set forth herein, and
22 either no further appeal is taken from such order(s) or any such appeal results in affirmation of such
23 order(s). Neither the pendency of the Fee and Cost Application, nor any appeal pertaining solely to
24 a decision on the Fee and Cost Application, shall in any way delay or preclude the Final Approval
25 Order from becoming final.

26 1.20. "Household" means any number of Persons cohabitating and related by blood or
27 marriage in the same dwelling unit or physical address.
28

1 1.21. “Lipozene” shall mean the Lipozene products at issue in the Action, in any size or
2 formulation.

3 1.22. “Media Plan” means the notice plan, in substantially the form attached hereto as
4 Exhibit E, developed by the Notice Administrator to notify the Settlement Class of the Notice and to
5 command the Class Members’ attention about their rights under the Settlement.

6 1.23. “Notice” shall mean a document substantially in the form of Exhibit B hereto, and
7 “Summary Notice,” meaning a document substantially in the form of Exhibit C hereto, to be
8 disseminated in accordance with the Preliminary Approval Order, informing persons who fall
9 within the Settlement Class definition of, among other things, the pendency of the Action, the
10 material terms of the proposed Settlement, and their options with respect thereto.

11 1.24. “Notice Date” means the date after the Court provides Preliminary Approval of this
12 Settlement Agreement, by which the Claims Administrator shall commence dissemination of Notice
13 to the Settlement Class.

14 1.25. “Notice Plan” means the method of providing the Settlement Class with notice of the
15 Settlement Agreement, as approved by the Court.

16 1.26. “Notice Response Deadline” means the deadline for all members of the Settlement
17 Class to respond to the Notice and shall be the last day of the Claim Period.

18 1.27. “Opt-Out Date” means the date that is the end of the period to request exclusion from
19 the Settlement Class established by the Court and set forth in the Notice.

20 1.28. “Participating Claimant” means a Claimant who submits a Qualifying Settlement
21 Claim Form in response to the Notice.

22 1.29. “Parties” means the Plaintiffs and the Defendants. “Party” shall refer to each of
23 them individually.

24 1.30. “Person” means any natural person, individual, corporation, partnership, limited
25 partnership, association, joint stock company, estate, legal representative, trust, unincorporated
26 association, government or any political subdivision or agency thereof, any business or legal entity,
27 and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives, and
28 assignees.

1 1.31. "Plaintiffs" means DeMarie Fernandez, Alfonso Mendoza, and Fred Duran.

2 1.32. "Preliminary Approval Order" means the order in which the Court grants its
3 preliminary approval of this Settlement Agreement and preliminarily certifies the Settlement Class,
4 authorizes dissemination of Notice to the Settlement Class, and appoints the Claims Administrator.

5 1.33. "Proof of Purchase" shall mean documentary evidence (*e.g.*, a Receipt) establishing
6 the purchase of Lipozene, the date of purchase, and the purchase price. To constitute a purchase for
7 which a Claimant is eligible to submit a Claim, all payments must have been made in full. For
8 purchases made on the Lipozene.com website or through Defendants' toll-free number, a qualifying
9 "Receipt" may consist of a credit card statement depicting such a purchase unless the purchase price
10 was already previously refunded to the claimant by Defendants as a return transaction or if the
11 transaction resulted in a charge back.

12 1.34. "Publication Notice" means the long-form and short-form notices, substantially in
13 the form of Exhibits B and C attached hereto. The long-form Publication Notice and the short-form
14 Publication Notice will be published as set forth in the Preliminary Approval Order.

15 1.35. "Released Claims" means all of the claims alleged in the Second Amended Class
16 Action Complaint filed in the Action.

17 1.36. A "Qualifying Settlement Claim Form" shall mean a Claim Form that is fully
18 completed, properly executed and received by the Claims Administrator before the end of the Claim
19 Period. A "Qualifying Settlement Claim Form" must be either returned via U.S. mail or via online
20 through the Class Settlement Website to be created and maintained by the Claims Administrator, at
21 the Participating Claimant's discretion. The Claims Administrator reserves the right to seek
22 additional information beyond the Qualifying Settlement Claim Form, as necessary.

23 1.37. "Receipt" means documentary evidence establishing the purchase of the one or more
24 Covered Product, the date of purchase and the purchase price. However, for purchases made on the
25 Lipozene.com website or through Defendants' toll-free number, a qualifying Receipt may consist of
26 a credit card statement, as described in Section 1.33 above.

27 1.38. "Released Parties" and "Released Persons" means Defendants; all of Defendants'
28 past and present respective parents, subsidiaries, divisions, affiliates, persons and entities directly or

1 indirectly under its or their control in the past or in the present; Defendants’ respective assignors,
2 predecessors, successors, and assigns; all past or present partners, shareholders, managers,
3 members, directors, officers, employees, agents, attorneys, insurers, accountants, and
4 representatives of any and all of the foregoing; and Defendants’ manufacturers, distributors, and
5 suppliers of the Lipozene product identified and constituting the subject matter in the Action.

6 1.39. “Releasing Parties” means all Settlement Class Members.

7 1.40. “Request for Exclusion” means a valid request for exclusion from a member of the
8 Settlement Class. To be valid, a request for exclusion must: (a) be submitted by the member of the
9 Settlement Class; (b) be submitted to the Claims Administrator and postmarked by a date no later
10 than the Notice Response Deadline; (c) contain the submitter’s name, address and telephone
11 number; and (d) otherwise comply with the instructions set forth in the Notice.

12 1.41. “Settlement” means the settlement set forth in this Class Action Settlement
13 Agreement.

14 1.42. “Settlement Class” means, collectively, all persons in the United States of America
15 who purchased Lipozene at any time during the Class Period. Excluded from the Settlement Class
16 are any officers, directors, or employees of Defendant, and the immediate family member of any
17 such person. Also excluded is any judge who may preside over this case.

18 1.43. “Settling Parties” means, collectively, Defendants, the Class Representatives, and all
19 Settlement Class Members.

20 1.44. “Settlement Class Member” means any member of the Settlement Class who does
21 not submit a timely and valid Request for Exclusion.

22 1.45. “Valid Claim” means a claim for reimbursement submitted by a Settlement Class
23 Member that satisfies all the criteria for submission of a Qualifying Settlement Claim Form and any
24 additional information reasonably requested by the Claims Administrator.

25 1.46. The singular of any defined term includes the plural, and the plural of any defined
26 term includes the singular.

1 **2. DENIAL OF WRONGDOING AND LIABILITY**

2 2.1. Defendants, while continuing to deny all allegations of wrongdoing and disclaiming
3 all liability with respect to all claims, consider it desirable to resolve the action on the terms stated
4 herein to avoid further expense, inconvenience, and burden, and therefore have determined that this
5 Settlement on the terms set forth herein is in Defendants' best interests. Neither the Settlement
6 Agreement nor any actions taken to carry out the Settlement are intended to be, nor may they be
7 deemed or construed to be, an admission or concession of liability, or of the validity of any claim,
8 defense, or of any point of fact or law on the part of any party. Defendants deny the material
9 allegations of the complaint in this Action. Neither this Settlement Agreement, nor the fact of the
10 Settlement, nor settlement proceedings, nor the settlement negotiations, nor any related document,
11 shall be used as an admission of any fault or omission by Defendants, or be offered or received in
12 evidence as an admission, concession, presumption, or inference of any wrongdoing by Defendants
13 in any proceeding.

14 **3. THE BENEFITS OF SETTLEMENT**

15 3.1. Class Counsel and the Class Representative recognize and acknowledge the expense
16 and length of continued proceedings that would be necessary to prosecute the Action against
17 Defendants through trial and appeals. Class Counsel also has taken into account the uncertain
18 outcome and the risk of any litigation, especially in complex actions such as this Action, as well as
19 the difficulties and delays inherent in such litigation. Class Counsel is mindful of the inherent
20 problems of proof and possible defenses to the claims asserted in the Action. Class Counsel
21 believes that the proposed Settlement set forth in this Settlement Agreement confers substantial
22 benefits upon the Settlement Class. Based on their evaluation of all of these factors, the Class
23 Representative and Class Counsel have determined that the Settlement Agreement is in the best
24 interests of the Class Representative and the Settlement Class.

25 **4. SETTLEMENT CONSIDERATION**

26 4.1. **Injunctive Relief**

27 4.1.1. Defendants will provide the Settlement Class injunctive relief by way of
28 modification of marketing language for Lipozene so that the following statements no longer appear

1 in its commercials or other marketing materials within ninety (90) days after the Effective Date:
2 “Lipozene is so powerful ...” and “Lipozene is specifically designed to target fat.” Nothing in this
3 provision shall prevent Defendants from making changes to Lipozene labels, packaging, or
4 marketing materials not inconsistent with the foregoing, or as necessary to comply with
5 governmental or regulatory requirements.

6 4.1.2. To the extent that any state and/or federal statute, regulation, policies, and/or code
7 may at any time impose other, further, different and/or conflicting obligations or duties on
8 Defendants at any time with respect to Lipozene, this Settlement Agreement, as well as the Court’s
9 continuing jurisdiction with respect to implementation and enforcement of the terms of this
10 Settlement Agreement, shall cease as to the Settlement Class’ and Defendants’ conduct covered by
11 that statute, regulation and/or code as of the effective date of such statute, regulation, and/or code.

12 4.2. **Monetary Relief**

13 4.2.1. Defendants shall provide a total of up to four million, six hundred thousand dollars
14 (\$4,600,000) for payment of Valid Claims.

15 4.2.2. The amount of the refund for any Valid Claim shall be determined as follows:

16 (a) For any Participating Claimant who provides a Proof of Purchase, the Participating
17 Claimant shall be entitled to a refund of the amount(s) shown on the Proof of Purchase, up to \$15
18 per unit, with a cap of 4 units per such Participating Claimant (unit is only product paid for and
19 defined as a buy-one, get one free, or a single bottle individual purchase, not promotional offers).

20 (b) For any Participating Claimant who does not provide a Proof of Purchase, but who
21 submits a Claim Form, either online or via mail, attesting, swearing or affirming under penalty of
22 perjury that he or she purchased Lipozene during the Class Period, the actual amount paid to each
23 Participating Claimant will be \$7 per unit of Lipozene, with a cap of 1 unit per such claimant (unit
24 is only product paid for and defined as a buy-one, get one free, or a single bottle individual
25 purchase, not promotional offers).

26 4.2.3. Only one Claim per Household is eligible.

27 4.2.4. Participating Claimants cannot combine claims with Proofs of Purchase with claims
28 without Proofs of Purchase.

1
2 4.2.5. This Settlement Agreement does not create any vested property interest or unclaimed
3 property rights for Settlement Class Members who do not file Valid Claims or who do not cash a
4 settlement check or if the Settlement is terminated.

5 4.2.6. Every Claimant will have the opportunity to select an electronic payment option on
6 the Claim Form for payment of a Claim. Should a Claimant select such electronic means, within
7 thirty (30) days after the Effective Date, the Claims Administrator shall send to each such Claimant
8 an email (or a postcard, if no email address is available) that (a) explains that the Court has granted
9 final approval of the Settlement; (b) confirms the actual amount of the Claimant's potential benefit;
10 and (c) provides a menu of cost-effective electronic payment options, including direct deposit and
11 various digital payment methods. Each such Claimant shall select one of the identified payment
12 options and provide the information required to make the payment (*i.e.*, routing and account
13 numbers for a direct deposit or email address or phone number for a digital payment) within thirty
14 (30) days after the email or postcard requesting the Claimant's payment preference is sent. If any
15 Claimant fails to submit his or her preferred payment option (and the information necessary to make
16 such payment) by the thirty (30) day deadline, the Claims Administrator shall send a reminder email
17 (or postcard, if no email address is available) requesting the information needed to receive a share
18 of the Claim Fund. Upon receipt of the payment option election, the Claims Administrator shall
19 within sixty (60) days cause the distribution of the Claimant's share of the Claim Fund pursuant to
20 the payment option selected by each Claimant. All settlement checks issued to Claimants will be
21 valid and negotiable for a period of one hundred twenty (120) days.

22 4.2.7. Adequate and customary procedures and standards will be used by the Claims
23 Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims. The
24 Claims Administrator shall have the right to audit claims to prevent payment of fraudulent claims
25 and shall have the right to request additional information from Claimants (beyond the online claim
26 form), including speaking with Claimants, if necessary. The Claims Administrator shall have sole
27 discretion to determine what is a Valid Claim, and shall only make payment of what it deems to be
28

1 a Valid Claim and may reject claims that it deems to be invalid or evidence of fraud or abuse. The
2 determination of validity of Claims shall occur within sixty (60) days after the Effective Date.

3 4.2.8. The Claims Administrator shall approve or deny all claims, and its decision shall be
4 final, binding, and non-appealable by either Party or by Settlement Class Members except that
5 Plaintiffs' counsel and Defendants shall have the right to audit claims and to challenge the Claims
6 Administrator's decision by motion to the Court. Defendants' choice not to audit the validity of any
7 one or more Claim Form shall not constitute or be construed as a waiver or relinquishment of any
8 audit or other rights as to any other Claim Form, individually or as a group, and similarly shall not
9 be construed as a waiver or relinquishment by the Party as to any of its audit and other rights under
10 this Agreement. Nothing in this Agreement or claims process creates a claim by any Person against
11 Class Representatives, Defendants, Defendants' counsel, or the Claims Administrator based on any
12 determination of a Valid Claim, distributions, or awards made in accordance with this Agreement
13 and the Exhibits hereto, and all relief shall be solely as provided in this Agreement and by its
14 Claims process. Neither Plaintiffs nor Defendants, nor their counsel, shall have any liability
15 whatsoever for any act or omission of the Claims Administrator.

16 4.2.9. Payments to Participating Claimants may be subject to pro rata reduction if the
17 aggregate number of Valid Claims exceeds four million, six hundred thousand dollars (\$4,600,000).

18 **5. ADMINISTRATION AND NOTICE**

19 5.1. All costs and expenses of administering the Settlement Agreement and providing
20 Notice in accordance with the Preliminary Approval Order (the "Administrative Costs") shall be
21 paid by Defendants.

22 **5.2. Appointment and Retention of Claims Administrator**

23 5.2.1. The Parties retained Heffler Claims Group as a Notice Administrator and Claims
24 Administrator to implement the terms of the Settlement Agreement.

25 5.2.2. The Claims Administrator will facilitate the notice process by assisting the Parties in
26 the implementation of the Notice Plan and administering all aspects of the Settlement.
27
28

1 5.3. **Class Settlement Website**

2 5.3.1. The Claims Administrator will create and maintain the Class Settlement Website, to
3 be activated within fifteen (15) days of the entry of the Preliminary Approval Order by the Court.
4 The Claims Administrator’s responsibilities will also include securing an appropriate URL. The
5 Class Settlement Website will post the settlement documents and case-related documents such as
6 the Settlement Agreement, the Long-Form Notice, the Claim Form, and the Preliminary Approval
7 Order. In addition, the Class Settlement Website will include procedural information regarding the
8 status of the Court-approval process, such as an announcement of the Final Approval Hearing Date,
9 when the Final Approval Order and Judgment have been entered, and when the Effective Date has
10 been reached. Claimants will be able to submit their claims electronically via the Class Settlement
11 Website.

12 5.3.2. The Class Settlement Website will terminate (be removed from the internet) and no
13 longer be maintained by the Claims Administrator thirty (30) days after either (a) the Effective Date
14 or (b) the date on which the Settlement Agreement is terminated or otherwise not approved by a
15 court, whichever is later. The Claims Administrator will then transfer ownership of the URL to
16 Defendants.

17 5.3.3. All costs and expenses related to the Class Settlement Website shall be paid by
18 Defendants.

19 5.4. **Notice Plan**

20 5.4.1. The class notice shall conform to all applicable requirements of the California Rules
21 of Court, California Code of Civil Procedure, the United States Constitution (including the Due
22 Process Clauses), and any other applicable law, and shall otherwise be in the manner and form
23 agreed upon by the Parties and approved by the Court. The class notice shall constitute the best
24 notice that is practicable under the circumstances.

25 5.4.2. Within thirty (30) days after entry of the Preliminary Approval Order by the Court of
26 this Settlement Agreement, the Claims Administrator shall provide notice to the Settlement Class
27 according to the Notice Plan.
28

1 5.4.3. The Notice Plan shall be designed to achieve no less than 70% reach. Notice shall be
2 provided as outlined in the Media Plan. Direct notice shall be provided by e-mail if an e-mail
3 address is within the possession, custody, or control of Defendants, or U.S. Mail in the event that e-
4 mail is not available but a U.S. Mail address is within the possession, custody, or control of
5 Defendants. Defendants shall have the right to review and approve class notice and all settlement
6 documents filed with the Court (including the motion for preliminary approval and motion for final
7 approval, including supporting documents thereto). Such approval shall not be unreasonably
8 withheld.

9 5.4.4. The Parties agree to the content of these notices substantially in the forms attached to
10 this Agreement as Exhibits B and C.

11 5.5. **Taxes**

12 5.5.1. Settlement Class Members, the Class Representative, and Class Counsel shall be
13 responsible for paying any and all federal, state, and local taxes due on any payments made to them
14 pursuant to the Settlement Agreement.

15 **6. RELEASES**

16 6.1. Effective as of the Final Settlement Approval Date, each and all members of the
17 Class will release and forever discharge any and all claims or causes of action arising from the
18 factual allegations and/or legal claims made in the Action, whether in law or equity, whether
19 seeking damages or any other relief (including attorneys' fees), of any kind or character, known or
20 unknown, that are now recognized by law or that may be created or recognized in the future by
21 statute, regulation, judicial decision, or in any other manner, based upon any federal or state
22 statutory or common law, including, without limitation, claims sounding in tort, contract, and the
23 consumer protection laws of the United States or of any state or other jurisdiction within the United
24 States, as well as under the unfair or deceptive trade practices, trade regulation, consumer fraud,
25 misrepresentation, and false advertising law of the United States or any state or other jurisdiction
26 within the United States (the "Released Claims"). Excluded from the Released Claims are (a) any
27 and all claims for personal injury, wrongful death, and/or emotional distress arising from personal
28 injury and (b) any antitrust claim arising from a conspiracy among, or collusive agreement between,

1 Defendants and one or more of their competitors. Each and every term of this paragraph shall inure
2 to the benefit of each and all of the Released Persons, and each and all of their respective successors
3 and personal representatives, which persons and entities are intended to be beneficiaries of this
4 paragraph.

5 **7. CLASS CERTIFICATION**

6 7.1. The Parties agree that, for settlement purposes only, this Action shall be certified as a
7 class action pursuant to section 382 of the California Code of Civil Procedure and rule 3.769 of the
8 California Rules of Court with the Class Representatives serving as class representatives and Class
9 Counsel as counsel for the Settlement Class.

10 7.2. In the event the Settlement Agreement is terminated or for any reason the Settlement
11 Agreement is not effectuated, the certification of the Settlement Class shall be vacated and the
12 Action shall proceed as if the Settlement Class had not been certified.

13 **8. SETTLEMENT HEARING**

14 8.1. Promptly after execution of this Settlement Agreement, the Parties will submit the
15 Settlement Agreement together with its Exhibits to the Court and will request that the Court grant
16 preliminary approval of the Settlement Agreement, issue the Preliminary Approval Order, and
17 schedule a hearing on whether the Settlement Agreement should be granted final approval and
18 whether the Fee and Cost Application should be granted (*i.e.*, the Final Approval Hearing).

19 **8.2. Procedures for Objecting to the Class Action Settlement Agreement**

20 8.2.1. Settlement Class Members shall have the right to appear and show cause, if they
21 have any reason why the terms of this Settlement Agreement should not be given Final Approval,
22 subject to each of the subprovisions in Section 8.2. Any objection to this Settlement Agreement,
23 including any of its terms or provisions, must be in writing, filed with the Court, with a copy served
24 on Class Counsel, Counsel for Defendants, and the Claims Administrator at the addresses set forth
25 in the Class Notice, and postmarked no later than the Notice Response Deadline. Settlement Class
26 Members may object either on their own or through an attorney hired at their own expense.

27 8.2.2. If a Settlement Class Member hires an attorney to represent him or her at the Final
28 Approval Hearing, he or she must do so at his or her own expense.

1 8.2.3. Any objection regarding or related to the Settlement Agreement shall contain a
2 caption or title that identifies it as “Objection to Class Settlement in *Duran v. Obesity Research*
3 *Institute, LLC*, Case No. 37-2013-00048664-CU-BT-CTL” and also shall contain the following
4 information: (i) the objector’s name, address, and telephone number; (ii) the name, address, and
5 telephone number of any attorney for the objector with respect to the objection; (iii) the factual
6 basis and legal grounds for the objection, including any documents sufficient to establish the basis
7 for their standing as a Settlement Class Member, e.g., Proof of Purchase, or verification under oath
8 as to the approximate date(s) and location(s) of their purchase(s) of Lipozene; and (iv) identification
9 of the case name, case number, and court for any prior class action lawsuit in which the objector
10 and the objector’s attorney (if applicable) has objected to a proposed class action settlement, the
11 general nature of such prior objection(s), and the outcome of said prior objection(s). If an objecting
12 party chooses to appear at the hearing, no later than the Notice Response Deadline, a notice of
13 intention to appear, either in person or through an attorney, must be filed with the Court and list the
14 name, address, telephone number, facsimile number, and email address of the attorney, if any, who
15 will appear.

16 8.2.4. If a Settlement Class Member wishes to present witnesses or evidence at the Final
17 Approval Hearing in support of a timely and validly submitted objection, all witnesses must be
18 identified in the objection, and true and correct copies of all supporting evidence must be appended
19 to, or filed and served with, the objection. Failure to identify witnesses or provide copies of
20 supporting evidence in this manner waives any right to introduce such testimony or evidence at the
21 Final Approval Hearing. While the declaration described above is prima facie evidence that the
22 objector is a member of the Settlement Class, Class Representative or Defendants or both may take
23 discovery regarding the matter, subject to Court approval.

24 8.2.5. Any Settlement Class Member who does not object to the Settlement Agreement is
25 deemed to be a Settlement Class Member and bound by the Settlement Agreement or any further
26 orders of the Court in this Action.

1 8.3. **Right to Respond to Objections**

2 8.3.1. Class Counsel and Defendants shall have the right, but not the obligation, to respond
3 to any objection no later than seven (7) days prior to the Final Approval Hearing. The Settling
4 Party so responding shall file a copy of the response with the Court, and shall serve a copy, by
5 regular mail, hand or overnight delivery, to the objector (or counsel for the objector) and to counsel
6 for Class Representative and Defendants.

7 8.4. **Opt Outs**

8 8.4.1. Any Settlement Class Member who does not wish to participate in this Settlement
9 Agreement must write to the Claims Administrator stating an intention to be “excluded” from this
10 Settlement Agreement by the Opt-Out Date. This written Request for Exclusion must be sent via
11 first class United States mail to the Claims Administrator at the address set forth in the Class Notice
12 and postmarked no later than the Notice Response Deadline. The Request for Exclusion must be
13 personally signed by the Class Member. So-called “mass” or “class” opt-outs shall not be allowed.

14 8.4.2. Any Settlement Class Member who does not request exclusion from the Settlement
15 has the right to object to the Settlement as set forth in Section 8.2. If a Class Member submits a
16 written Request for Exclusion, he or she shall be deemed to have complied with the terms of the
17 opt-out procedure and shall not be bound by the Settlement Agreement if approved by the Court.
18 However, any objector who has not timely requested exclusion from the Settlement will be bound
19 by the terms of the Settlement Agreement and by all proceedings, orders and judgments in the
20 Action.

21 **9. ATTORNEYS’ FEES, COSTS, AND EXPENSES AND INCENTIVE AWARDS**

22 9.1. Class Counsel may apply to the Court for an award of attorneys’ fees and costs in a
23 total amount not to exceed one million, four hundred thousand dollars (\$1,400,000), which shall
24 include Class Counsel’s costs and expenses incurred on behalf of the Plaintiffs and the Class, to
25 which Defendants shall not object. Defendants shall pay any fees and costs awarded to Class
26 Counsel, subject to the conditions herein.

27 9.2. The Class Representatives, DeMarie Fernandez, Alfonso Mendoza, and Fred Duran,
28 may apply to the Court for a Class Representative incentive payment of not more than \$7,500

1 apiece. Defendants shall pay the amount as awarded by the Court, not to exceed \$7,500 per Class
2 Representative. Defendants agree not to oppose Plaintiffs' application for an incentive award not to
3 exceed \$7,500 for any of the Plaintiffs. Any incentive payments awarded by the Court will be
4 payable by Defendants to the Class Representatives within ten days after the Effective Date.

5 9.3. The first one-third of the attorneys' fees referenced in Section 9.1, if approved by the
6 Court, shall be payable within 30 days following the date of entry of the Final Approval Order and
7 fee and cost award, subject to Class Counsel providing a stipulated undertaking in the form attached
8 hereto as Exhibit D. The second one-third of such attorneys' fees shall be payable within six
9 months thereafter. The remaining one-third of such attorneys' fees shall be payable within six
10 months thereafter. Contemporaneous with the Settlement Agreement, Henny and Sandra den Uijl
11 (the "Personal Guarantors") will each execute a personal guarantee, personally guaranteeing
12 payment of all attorneys' fees awarded to Class Counsel by the Court under this Agreement.

13 9.4. Class Counsel shall dismiss this Action with prejudice within five (5) days of the
14 Final Approval Order being entered by the Court. Subject to the above, Class Counsel also agrees
15 to dismiss with prejudice, contemporaneously with this Action, the *Fernandez* Action. Defendants'
16 performance under this Agreement is contingent upon dismissal with prejudice of the *Fernandez*
17 Action, with no costs to Defendants, other than those attorneys' fees awarded by the Court in
18 furtherance of this Settlement Agreement. Defendants shall not be responsible for payment of any
19 amount of attorneys' fees awarded by the Court in the present Action until the *Fernandez* Action is
20 dismissed with prejudice.

21 9.5. Plaintiffs and their counsel will provide their best efforts in managing and defending against
22 any objectors should they arise. Class Counsel agree to pay any costs or fees arising from any
23 individual or entity objector if and when such objector arises. Defendants shall not be responsible
24 for paying any costs or fees arising from any individual or entity objector. Defendants shall not be
25 responsible for paying any other counsel, other than Class Counsel, and shall, in no event, be
26 responsible for payment of more than \$1,400,000 in fees and costs.

1 **10. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION**

2 10.1. If this Settlement Agreement is not approved by the Court or the Settlement is
3 terminated or fails to become effective in accordance with the terms of this Settlement Agreement,
4 the Settling Parties will be restored to their respective positions in the Action as of the date the
5 Motion for Preliminary Approval is filed. In such event, the terms and provisions of this Settlement
6 Agreement will have no further force and effect with respect to the Settling Parties and will not be
7 used in this Action or in any other proceeding for any purpose, and any Judgment or order entered
8 by the Court in accordance with the terms of this Settlement Agreement will be treated as vacated.

9 10.2. No order of the Court or modification or reversal on appeal of any order of the Court
10 concerning any award of attorneys' fees, expenses, or costs to Class Counsel will constitute grounds
11 for cancellation or termination of this Settlement Agreement.

12 **11. MISCELLANEOUS PROVISIONS**

13 11.1. The Parties acknowledge that it is their intent to consummate this Settlement
14 Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate and
15 implement all terms and conditions of this Settlement Agreement and to exercise their best efforts to
16 accomplish the foregoing terms and conditions of this Settlement Agreement.

17 11.2. The Parties intend the Settlement to be a final and complete resolution of all disputes
18 between them with respect to the Action. The Settlement compromises claims that are contested
19 and will not be deemed an admission by any Settling Party as to the merits of any claim or defense.
20 The Parties agree that the consideration provided to the Settlement Class and the other terms of the
21 Settlement were negotiated in good faith by the Parties, and reflect a settlement that was reached
22 voluntarily after consultation with competent legal counsel.

23 11.3. Neither this Settlement Agreement nor the Settlement, nor any act performed or
24 document executed pursuant to or in furtherance of this Class Action Agreement or the Settlement
25 is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any
26 Released Claims, or of any wrongdoing or liability of Defendants; or is or may be deemed to be or
27 may be used as an admission of, or evidence of, any fault or omission of Defendants in any civil,
28 criminal, or administrative proceeding in any court, administrative agency or other tribunal. Any

1 party to this Action may file this Settlement Agreement and/or the Judgment in any action that may
2 be brought against it in order to support any defense or counterclaim, including without limitation
3 those based on principles of res judicata, collateral estoppel, release, good faith settlement,
4 judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar
5 defense or counterclaim.

6 11.4. All agreements made and orders entered during the course of the Action relating to
7 the confidentiality of information will survive this Settlement Agreement.

8 11.5. Any and all Exhibits to this Settlement Agreement are material and integral parts
9 hereof and are fully incorporated herein by this reference.

10 11.6. This Settlement Agreement may be amended or modified only by a written
11 instrument signed by or on behalf of all Parties or their respective successors-in-interest.

12 11.7. This Settlement Agreement and any Exhibits attached hereto constitute the entire
13 agreement among the Parties, and no representations, warranties, or inducements have been made to
14 any Party concerning this Settlement Agreement or its Exhibits other than the representations,
15 warranties, and covenants covered and memorialized in such documents. Except as otherwise
16 provided herein, the Parties will bear their own respective costs.

17 11.8. Class Counsel, on behalf of the Settlement Class, are expressly authorized by the
18 Class Representative to take all appropriate action required or permitted to be taken by the
19 Settlement Class pursuant to this Settlement Agreement to effectuate its terms, and are expressly
20 authorized to enter into any modifications or amendments to this Settlement Agreement on behalf of
21 the Settlement Class that Class Counsel deem appropriate.

22 11.9. Each counsel or other Person executing this Settlement Agreement or any of its
23 Exhibits on behalf of any Party hereby warrants that such Person has the full authority to do so.

24 11.10. This Settlement Agreement may be executed in one or more counterparts. All
25 executed counterparts and each of them will be deemed to be one and the same instrument. A
26 complete set of original counterparts will be filed with the Court.

27 11.11. This Settlement Agreement will be binding upon, and inure to the benefit of, the
28 successors and assigns of the Settling Parties.

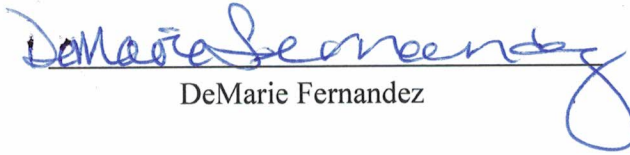
1 11.12. Except as provided herein, the Court will retain jurisdiction with respect to
2 implementation and enforcement of the terms of this Settlement Agreement, and all parties hereto
3 submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

4 11.13. None of the Settling Parties, or their respective counsel, will be deemed the drafter of
5 this Settlement Agreement or its Exhibits for purposes of construing the provisions thereof. The
6 language in all parts of this Settlement Agreement and its Exhibits will be interpreted according to
7 its fair meaning, and will not be interpreted for or against any of the Settling Parties as the drafter
8 thereof.

9 11.14. This Settlement Agreement and any Exhibits hereto will be construed and enforced in
10 accordance with, and governed by, the internal, substantive laws of the State of California without
11 giving effect to that State's choice-of-law principles.

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Dated: 9-4, 2019


DeMarie Fernandez

Dated: _____, 2019

Alfonso Mendoza

Dated: _____, 2019

Fred Duran

Dated: _____, 2019

Henny den Uijl
*On behalf of himself and Defendants Obesity Research
Institute, LLC and Continuity Products, LLC*

Dated: _____, 2019

Sandra den Uijl

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Dated: _____, 2019

DeMarie Fernandez

Dated: 9/4, 2019

Alfonso Mendoza
Alfonso Mendoza

Dated: _____, 2019

Fred Duran

Dated: _____, 2019

Henny den Uijl
*On behalf of himself and Defendants Obesity Research
Institute, LLC and Continuity Products, LLC*

Dated: _____, 2019

Sandra den Uijl

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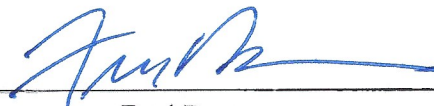
Dated: _____, 2019

DeMarie Fernandez

Dated: _____, 2019


Alfonso Mendoza

Dated: 9-4, 2019



Fred Duran

Dated: SEPT. 4, 2019



Henry Uijl
*On behalf of himself and Defendants Obesity Research
Institute, LLC and Continuity Products, LLC*

Dated: Sept 4, 2019



Sandra den Uijl

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APPROVED AS TO FORM AND CONTENT:

Dated: September 9, 2019

NICHOLAS & TOMASEVIC, LLP

By: 
Alex M. Tomasevic

Craig M. Nicholas (State Bar No. 178444)
Alex M. Tomasevic (State Bar No. 245598)
225 Broadway, 19th Floor
San Diego, California 92101
Telephone: (619) 325-0492
Facsimile: (619) 325-0496
E-Mail: cnicholas@nblaw.org
atomasevic@nblaw.org

Attorneys for Plaintiffs

Dated: Sept. 9, 2019

BURSOR & FISHER, P.A.

By: 
L. Timothy Fisher

L. Timothy Fisher (State Bar No. 191626)
Neal J. Deckant (State Bar No. 322946)
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-Mail: ltfisher@bursor.com
jluster@bursor.com

Attorneys for Plaintiffs

Dated: _____, 2019

VENABLE LLP

By: _____
Daniel S. Silverman

Daniel S. Silverman
2049 Century Park East, Suite 2300
Los Angeles, CA 90067
Telephone: (310) 229-0373
Facsimile: (310) 229-9901
E-Mail: dssilverman@venable.com

*Attorneys for Defendants Obesity Research Institute, LLC;
Continuity Products, LLC; Henny den Uijl; and Sandra den
Uijl*

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APPROVED AS TO FORM AND CONTENT:

Dated: _____, 2019

NICHOLAS & TOMASEVIC, LLP

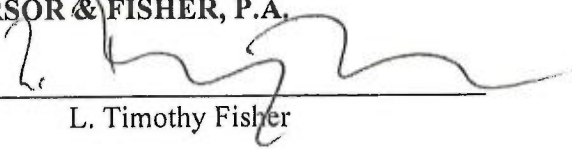
By: _____
Alex M. Tomasevic

Craig M. Nicholas (State Bar No. 178444)
Alex M. Tomasevic (State Bar No. 245598)
225 Broadway, 19th Floor
San Diego, California 92101
Telephone: (619) 325-0492
Facsimile: (619) 325-0496
E-Mail: cnicholas@nblaw.org
atomasevic@nblaw.org

Attorneys for Plaintiffs

Dated: Sept. 9, 2019

BURSOR & FISHER, P.A.

By: 
L. Timothy Fisher

L. Timothy Fisher (State Bar No. 191626)
Neal J. Deckant (State Bar No. 322946)
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-Mail: ltfisher@bursor.com
jluster@bursor.com

Attorneys for Plaintiffs

Dated: 9/9, 2019

VENABLE LLP

By: 
Daniel S. Silverman

Daniel S. Silverman
2049 Century Park East, Suite 2300
Los Angeles, CA 90067
Telephone: (310) 229-0373
Facsimile: (310) 229-9901
E-Mail: dssilverman@venable.com

*Attorneys for Defendants Obesity Research Institute, LLC;
Continuity Products, LLC; Henny den Uijl; and Sandra den
Uijl*