

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MDR

IN RE: DIET DRUGS (Phentermine /  
Fenfluramine / Dexfenfluramine)  
PRODUCTS LIABILITY LITIGATION

MDL NO. 1203 (E.D. Pa.)

E.D. Pa. Case No. 2:05-cv-25647 (HB)

This document relates to:

ALL CASES

**AMENDED NOTICE OF GENERIC  
DEPOSITION OF DR. MITCHELL LEVINE  
PURSUANT TO AMENDED SPECIAL  
DISCOVERY MASTER MEMORANDUM  
NO. 43**

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that, pursuant to Rules 30 and 34 of the Federal Rules of Civil Procedure and pursuant to MDL Pre-Trial Orders Nos. 21 and 3370 and Amended Special Discovery Master Memorandum No. 43, Plaintiff, through her attorneys, shall take the deposition of the following generic expert identified by Defendants, at the following time and location.

<b>Dr. Mitchell Levine</b>	<b>Friday, August 18, 2006 at 10:00 a.m.</b> Wildman Harrold 225 W. Wacker Drive, Suite 3000 Chicago, Illinois 60606 Phone: (312) 201-2000
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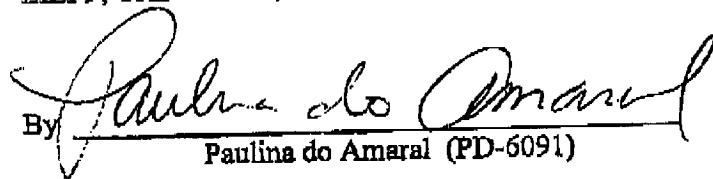
The deposition shall be taken before a person duly authorized to administer oaths, and will continue from day-to-day until completed, excluding weekends and holidays. The depositions shall be recorded stenographically and on audiotape.

The deponent shall produce copies or permit inspection 10 days before the deposition of all the documents described in Attachment A to the attached subpoena at the location specified.

You are invited to participate and attend. Counsel seeking to examine this witness shall coordinate their examinations through the PMC and liaison counsel for the defendants to avoid repetitive questioning. Counsel seeking to attend only should contact the undersigned.

Dated: August 9, 2006

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

By   
Paulina do Amaral (PD-6091)

Paulina do Amaral  
Daniel P. Chiplock  
Lieff, Cabraser, Heimann & Bernstein, LLP  
780 Third Avenue, 48th Floor  
New York, NY 10017  
(212) 355-9500  
(212) 355-9592 (Fax)

Richard M. Heimann  
Donald C. Arbitblit  
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Lieff, Cabraser, Heimann & Bernstein, LLP  
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San Francisco, CA 94111  
(415) 956-1000  
(415) 956-1008 (Fax)

Attorneys for Plaintiff

556616.1

Issued by the  
UNITED STATES DISTRICT COURT

SOUTHERN

DISTRICT OF

NEW YORK

IN RE: DIET DRUG PRODUCTS LIABILITY  
LITIGATION

AMENDED SUBPOENA IN A CIVIL  
CASE

This document relates to:

ALL CASES

CASE NUMBER: MDL 1203

TO: **Dr. Mitchell Levine**  
**c/o Paul B. Kerrigan, Esq.**  
**Reed Smith, LLP**  
**2500 One Liberty Place**  
**1650 Market Street**  
**Philadelphia, PA 19103-7301**

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION <b>Whidman Harrold</b> <b>225 W. Wacker Drive,</b> <b>Suite 3000</b> <b>Chicago, Illinois 60606</b> <b>Phone: (312) 201-2000</b>	DATE AND TIME <b>August 18, 2006 at 10:00 a.m.</b>
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below (list documents or objects):

PLACE <b>See Attachment A, Lief, Cabraser, Heimann &amp; Bernstein, LLP</b> <b>780 Third Avenue, 48th Floor, New York, NY 10017</b>	DATE AND TIME <b>August 08, 2006 at 10:00 a.m.</b>
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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PROOF OF SERVICE

DATE PLACE

SERVED August 9, 2006 at Reed Smith, LLP, 2500 One Liberty Place, 1650 Market Street, Philadelphia, PA 19103-7301

SERVED ON (PRINT NAME) Paul B. Kerrigan, Esq.	MANNER OF SERVICE Federal Express and E-mail
SERVED BY (PRINT NAME) Paulina do Amaral	TITLE Attorney

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_ DATE SIGNATURE OF SERVER

Lieff, Cabraser, Heimann & Bernstein, LLP, 780 Third Avenue, 48th Floor, NY, NY 10017  
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection

has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On a timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend a trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected materials and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specified events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to

whom the subpoena is addressed will be reasonably compensated, the court may order appearance and production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

<b>IN RE: DIET DRUGS (Phentermine/Fenfluramine/Dexfenfluramine) PRODUCTS LIABILITY LITIGATION</b>
This document relates to:  <p style="text-align: center;"><b>ALL CASES</b></p>

MDL No. 1203 (E.D.P.A.)

**PROOF OF SERVICE BY FACSIMILE AND U.S. MAIL**

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 780 Third Avenue, New York, NY 10017.

I am readily familiar with Lief, Cabraser, Heimann & Bernstein, LLP's practice for collection and processing of documents for mailing with the United States Postal Service, and that practice is that the documents are deposited with the United States Postal Service with postage fully prepaid the same day as the day of collection in the ordinary course of business.

I am readily familiar with Lief, Cabraser, Heimann & Bernstein, LLP's practice for collection and processing of documents for facsimile transmission, and that practice is that the documents are transmitted electronically via fax machine the same day as the date listed on this Proof of Service.

On August 9, 2006, I served the following document(s) upon the persons listed below by facsimile transmission and also by U.S. mail by placing the document(s) in a sealed envelope for deposit in the United States Postal Service through the regular mail collection process at the law offices of Lief, Cabraser, Heimann & Bernstein, LLP, 780 Third Avenue,

New York, NY 10017, to be served by mail addressed as follows:

1. **AMENDED NOTICE OF GENERIC DEPOSITION OF DR. MITCHELL LEVINE PURSUANT TO AMENDED SPECIAL DISCOVERY MASTER MEMORANDUM NO. 43;**
2. **AMENDED SUBPOENA IN A CIVIL CASE**
3. **PROOF OF SERVICE BY FACSIMILE AND U.S. MAIL.**

<p>Michael T. Scott Paul Kerrigan Ira S. Lefton Reed Smith, LLP 2500 One Liberty Place 1650 Market Street Philadelphia, PA 19103 (215) 851-8100 (215) 851-1420 (Fax)</p>	<p>Arnold Levin Michael D. Fishbein Levin, Fishbein, Sedran &amp; Berman Suite 500, 510 Walnut Street Philadelphia, Pa 19106-3697 Phone: (215) 592-1500 Fax: (215) 592-4663</p>
<p>Paul Rheingold David Rheingold Hunter Shkolnik Rheingold, Valet, Rheingold, Shkolnik &amp; McCartney 113 East 37th St. New York, NY 10016 Tel: 212) 684-1880 ext. 323 Fax (212) 689-8156</p>	

I declare under penalty of perjury under the laws of the State of New York that the above is true and correct.

Executed on August 9, 2006, at New York, New York.