

PAUL & JANOFSKY  
A PROFESSIONAL CORPORATION  
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SANTA MONICA, CA 90401-2103  
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1 defendants' sincerity or truthfulness in making them.

2 198. Had Plaintiff's physicians known that the Individual Defendants'  
3 representations were untrue, they would not have repeated the representations to the  
4 Plaintiff and would not have recommended and prescribed these drugs for use by her.

5 199. Had Plaintiff known that the Individual Defendants' representations were  
6 untrue, she would not have relied on the representations, as repeated to her by her  
7 physicians, would not have relied on her physicians' recommendations regarding use of  
8 these drugs, and would not have used the drugs.

9 200. As a direct result of the Individual Defendants' representations, the drugs  
10 solicited, marketed, and promoted by them to Plaintiff's physicians were recommended and  
11 prescribed by the physicians to the Plaintiff, and the Plaintiff used the drugs for a prolonged  
12 period of time and was thereby caused to suffer injury and damage, including, but not  
13 limited to, breast cancer and surgery.

14 201. Plaintiff's reliance on the Individual Defendants' representations was a  
15 substantial factor in causing her harm.

16 202. As the result of, and proximately caused by, the actions or inactions of the  
17 defendants, and each of them, and their servants, employees, agents, assistants and  
18 consultants, and each of them, Plaintiff was caused to suffer breast cancer, surgery and  
19 treatment for said surgery, all of which injuries have caused and continue to cause the  
20 Plaintiff mental and physical pain and suffering, all to her general damage in an amount  
21 which will be stated according to proof pursuant to *California Code of Civil Procedure* §  
22 425.10, which amount is in excess of the statutory limit of the Superior Court.

23 203. As a direct and proximate result of the aforesaid conduct of the defendants,  
24 and each of them, Plaintiff was compelled to and did employ the services of hospitals,  
25 nurses, surgeons and the like, to care for and treat her and did incur hospital, medical,  
26 professional and incidental expenses, and the Plaintiff is informed and thereupon alleges  
27 that by reason of said injuries, she will necessarily incur additional like expenses for an  
28 indefinite period of time in the future. When said amounts are ascertained, the Plaintiff will

1 ask leave of this Court to amend this Complaint and allege said amounts.

2 204. As a result of these events, as described above, Plaintiff has suffered  
3 permanent injury and disability, which is irreversible and she has incurred special damages  
4 in the form of loss of earnings and loss of future earning capacity, which amount is in  
5 excess of the jurisdictional minimum of the Court and will be as shown according to proof  
6 at the time of trial.

7 **COUNT IX - BREACH OF EXPRESS WARRANTY**

8 **(Against the Wyeth Defendants and DOES 51 through 76)**

9 205. All other paragraphs of this complaint are incorporated by reference herein  
10 as if fully set forth at length, and it is further alleged that:

11 206. The Wyeth Defendants and DOES 51 through 76, through description,  
12 affirmation of fact, and promise relating to their hormone therapy drugs, including  
13 Premarin, Prempro, Premphase, and medroxyprogesterone acetate, to the FDA,  
14 prescribing physicians, and the general public, including the Plaintiff, expressly warranted  
15 that their products were both efficacious and safe for its intended use.

16 207. These warranties came in the form of: (i) publicly-made written and verbal  
17 assurances of the safety and efficacy of hormone therapy drugs by the Wyeth Defendants  
18 and DOES 51 through 76, (ii) press releases, interviews and dissemination via the media  
19 of promotional information, the sole purpose of which was to create and increase demand  
20 for hormone therapy drugs, which utterly failed utterly to warn of the risks inherent to the  
21 ingestion of hormone therapy; (iii) verbal assurances made by the Wyeth Defendants and  
22 DOES 51 through 76 regarding hormone therapy, and the downplaying of any risk  
23 associated with the drug; (iv) false and misleading written information, supplied by the  
24 Wyeth Defendants and DOES 51 through 76, and published in the *Physicians Desk*  
25 *Reference* on an annual basis, upon which physicians were forced to rely in prescribing  
26 hormone therapy drugs during the period of Plaintiff's ingestion of hormone therapy drugs  
27 including, but not limited to, information relating the recommended duration of the use of  
28 the drugs; (v) promotional pamphlets and brochures published and distributed by the

1 Wyeth Defendants and DOES 51 through 76 and directed to consumers; and (vi)  
2 advertisements. The documents referred to in this paragraph were created by and at the  
3 direction of the Wyeth Defendants and DOES 51 through 76 and, therefore, are in the their  
4 possession and control.

5 208. At the time of these express warranties, the Wyeth Defendants and DOES  
6 51 through 76 had knowledge of the purpose for which hormone therapy was to be used  
7 and warranted it to be in all aspects safe, effective, and proper for such purpose.

8 209. The Wyeth Defendants and DOES 51 through 76's drugs do not conform to  
9 these express representations in that it is neither safe nor effective and its use produces  
10 serious adverse side effects.

11 210. As such, the Wyeth Defendants and DOES 51 through 76's products were  
12 neither in conformity to the promises, descriptions or affirmations of fact made about these  
13 drugs nor adequately contained, packaged, labeled or fit for the ordinary purposes for  
14 which such goods are used.

15 211. The Wyeth Defendants and DOES 51 through 76 thereafter breached their  
16 express warranties to Plaintiff in violation of California law by: (i) manufacturing, marketing,  
17 packaging, labeling, and selling hormone therapy to the Plaintiff in such a way that  
18 misstated the risks of injury, without warning or disclosure thereof by package and label  
19 of such risks to the Plaintiff or the prescribing physician or pharmacist, or without so  
20 modifying or excluding such express warranties; (ii) manufacturing, marketing, packaging,  
21 labeling, and selling hormone therapy to Plaintiff, which failed to counteract the negative  
22 health effects of menopause in a safe and permanent manner and without injury; and (iii)  
23 manufacturing, marketing, packaging, labeling, and selling hormone therapy to Plaintiff,  
24 thereby causing the Plaintiff serious physical injury and pain and suffering.

25 212. Plaintiff is entitled to punitive damages because the Wyeth Defendants and  
26 DOES 51 through 76's failure to warn was reckless and without regard for the public's  
27 safety and welfare. The Wyeth Defendants and DOES 51 through 76 misled both the  
28 medical community and the public at large, including Plaintiff, by making false

1 representations about the safety of their products. The Wyeth Defendants and DOES 51  
2 through 76 downplayed, understated, and disregarded their knowledge of the serious and  
3 permanent side effects associated with the use of hormone therapy, despite available  
4 information demonstrating that it was likely to cause serious and sometimes fatal side  
5 effects to users.

6 213. The Wyeth Defendants and DOES 51 through 76 were or should have been  
7 in possession of evidence demonstrating that their products caused serious side effects.  
8 Nevertheless, they continued to market their products by providing false and misleading  
9 information with regard to its safety and efficacy.

10 214. The Wyeth Defendants and DOES 51 through 76's actions, as described  
11 above, were performed willfully, intentionally, and with reckless disregard for the rights of  
12 the Plaintiff and the public.

13 215. As a result of the Wyeth Defendants and DOES 51 through 76's conduct, the  
14 Plaintiff suffered the injuries and damages specified herein.

15 216. Accordingly, Plaintiff seeks and is entitled to compensatory and punitive  
16 damages in an amount to be determined at trial.

17 **COUNT X - BREACH OF EXPRESS WARRANTY**

18 **(Against the MPA Defendants and DOES 51 through 76)**

19 217. All other paragraphs of this complaint are incorporated by reference herein  
20 as if fully set forth at length, and it is further alleged that:

21 218. The MPA Defendants and DOES 51 through 76, through description,  
22 affirmation of fact, and promise relating to their hormone therapy drug  
23 medroxyprogesterone acetate to the FDA, prescribing physicians, and the general public,  
24 including Plaintiff, expressly warranted that their product was both efficacious and safe for  
25 its intended use.

26 219. These warranties came in the form of: (i) publicly-made written and verbal  
27 assurances of the safety and efficacy of hormone therapy drugs by the MPA Defendants  
28 and DOES 51 through 76, (ii) press releases, interviews and dissemination via the media

1 of promotional information, the sole purpose of which was to create and increase demand  
2 for hormone therapy drugs, which utterly failed to warn of the risks inherent to the ingestion  
3 of hormone therapy; (iii) verbal assurances made by the MPA Defendants and DOES 51  
4 through 76 regarding hormone therapy, and the downplaying of any risk associated with  
5 the drug; (iv) false and misleading written information, supplied by the MPA Defendants  
6 and DOES 51 through 76, and published in the *Physicians Desk Reference* on an annual  
7 basis, upon which physicians were forced to rely in prescribing hormone therapy drugs  
8 during the period of Plaintiff's ingestion of hormone therapy drugs, including, but not limited  
9 to information relating the recommended duration of the use of the drugs; (v) promotional  
10 pamphlets and brochures published and distributed by the MPA Defendants and DOES  
11 51 through 76 and directed to consumers; and (vi) advertisements. The documents  
12 referred to in this paragraph were created by and at the direction of the MPA Defendants  
13 and DOES 51 through 76 and, therefore, are in the their possession and control.

14 220. At the time of these express warranties, the MPA Defendants and DOES 51  
15 through 76 had knowledge of the purpose for which hormone therapy was to be used and  
16 warranted it to be in all aspects safe, effective, and proper for such purpose.

17 221. The MPA Defendants and DOES 51 through 76's drugs do not conform to  
18 these express representations in that it is neither safe nor effective and its use produces  
19 serious adverse side effects.

20 222. As such, the MPA Defendants and DOES 51 through 76's products were  
21 neither in conformity to the promises, descriptions, or affirmations of fact made about these  
22 drugs nor adequately contained, packaged, labeled, or fit for the ordinary purposes for  
23 which such goods are used.

24 223. The MPA Defendants and DOES 51 through 76 thereafter breached their  
25 express warranties to Plaintiff in violation of California law by: (i) manufacturing, marketing,  
26 packaging, labeling, and selling hormone therapy to Plaintiff in such a way that misstated  
27 the risks of injury, without warning or disclosure thereof by package and label of such risks  
28 to the Plaintiff or the prescribing physician, or pharmacist, or without so modifying or

1 excluding such express warranties; (ii) manufacturing, marketing, packaging, labeling, and  
2 selling hormone therapy to Plaintiff, which failed to counteract the negative health effects  
3 of menopause in a safe and permanent manner and without injury; and (iii) manufacturing,  
4 marketing, packaging, labeling, and selling hormone therapy to Plaintiff, thereby causing  
5 the Plaintiff serious physical injury and pain and suffering.

6 224. Plaintiff is entitled to punitive damages because the MPA Defendants and  
7 DOES 51 through 76's failure to warn was reckless and without regard for the public's  
8 safety and welfare. The MPA Defendants and DOES 51 through 76 misled both the  
9 medical community and the public at large, including Plaintiff, by making false  
10 representations about the safety of their product. The MPA Defendants and DOES 51  
11 through 76 downplayed, understated, and disregarded their knowledge of the serious and  
12 permanent side effects associated with the use of hormone therapy, despite available  
13 information demonstrating that it was likely to cause serious and sometimes fatal side  
14 effects to users.

15 225. The MPA Defendants and DOES 51 through 76 were or should have been  
16 in possession of evidence demonstrating that their products caused serious side effects.  
17 Nevertheless, they continued to market their products by providing false and misleading  
18 information with regard to its safety and efficacy.

19 226. The MPA Defendants and DOES 51 through 76's actions, as described  
20 above, were performed willfully, intentionally, and with reckless disregard for the rights of  
21 the Plaintiff and the public.

22 227. As a result of the MPA Defendants and DOES 51 through 76's conduct,  
23 Plaintiff suffered the injuries and damages specified herein.

24 228. Accordingly, Plaintiff seeks and is entitled to compensatory and punitive  
25 damages in an amount to be determined at trial.

26 V.

27 **DEMAND FOR JURY TRIAL**

28 229. The Plaintiff hereby demands a jury trial on all claims so triable in this action.

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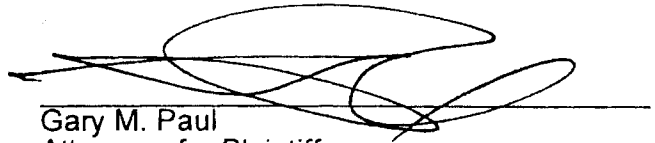
PRAYER

WHEREFORE the Plaintiff prays for judgment against the Defendants, and each of them, as follows:

1. For compensatory or general damages in an amount according to proof;
2. For special damages in an amount according to proof at trial, and beyond the jurisdictional minimum of this Court;
3. For all allowable and recoverable interest upon any judgment entered as provided by law;
4. For exemplary or punitive damages, according to proof;
5. For all reasonable attorneys' fees and costs of suit incurred herein according to proof;
6. For such other and further relief as a Court may deem just and proper in the premises.

Dated: May 4, 2005

PAUL & JANOFSKY



Gary M. Paul  
Attorneys for Plaintiff  
Suzanne Franklin

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**EXHIBIT B**



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Attorneys for Defendants  
PFIZER INC., PHARMACIA & UPJOHN LLC  
and GREENSTONE LTD.

ENDORSED  
FILED  
San Francisco County Superior Court

JUN 09 2005

GORDON PATRICK, Clerk  
Deputy Clerk

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

FAXED

SUZANNE FRANKLIN,  
Plaintiff,

vs.

WYETH PHARMACEUTICALS, INC.; WYETH-  
AYERST PHARMACEUTICALS, INC.; WYETH-  
AYERST INTERNATIONAL, INC.; WYETH  
LABORATORIES, INC.; WYETH  
PHARMACEUTICALS; WYETH, INC.;  
PHARMACIA & UPJOHN, INC.; PFIZER, INC.;  
BARR LABORATORIES, INC.; GREENSTONE  
LTD.; MICHELLE LUNA; and DOES 1 through  
100, inclusive,  
Defendants.

CASE NO. CGC-05-441166

DEFENDANTS PFIZER INC.,  
PHARMACIA & UPJOHN LLC AND  
GREENSTONE LTD.'S ANSWER TO  
COMPLAINT FOR DAMAGES

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1 Defendants PFIZER INC., PHARMACIA & UPJOHN LLC and GREENSTONE LTD.  
 2 (hereinafter collectively referred to as the "Answering Defendants"), by and through their attorneys,  
 3 for themselves and for no other party, hereby answer the Complaint of Plaintiff Suzanne Franklin  
 4 ("Plaintiff") as follows:

**GENERAL DENIAL**

5  
 6 Defendants deny each and every allegation of the Plaintiff's Complaint, pursuant to  
 7 California Code of Civil Procedure Section 431.30(d).

**DEFENSES**

8  
 9 By alleging the matters set forth below, the Answering Defendants do not allege or admit that  
 10 they have the burden of proof and/or the burden of persuasion with respect to any of these matters.  
 11 The Answering Defendants allege as follows:

**AS AND FOR A FIRST SEPARATE DEFENSE**

12  
 13 The Complaint, and each Claim for Relief therein, fails to state a claim or cause of action  
 14 upon which relief may be granted.

**AS AND FOR A SECOND SEPARATE DEFENSE**

15  
 16 Plaintiff's alleged injuries, damages and/or losses were proximately caused by the negligence  
 17 and/or fault of Plaintiff and/or entities other than the Answering Defendants, and this comparatively  
 18 reduces or bars the negligence and/or fault, if any, attributable to the Answering Defendants.

**AS AND FOR A THIRD SEPARATE DEFENSE**

19  
 20 Plaintiff had full knowledge of, accepted, and/or assumed all risks and possible adverse  
 21 effects related to the use of Provera® and medroxyprogesterone acetate (MPA). Plaintiff's recovery,  
 22 therefore, is barred, diminished, reduced, or offset under the principles of assumption of the risk  
 23 and/or informed consent.

**AS AND FOR A FOURTH SEPARATE DEFENSE**

24  
 25 Plaintiff cannot recover from the Answering Defendants because the injuries and damages, if  
 26 any, were caused by misuse of Provera and medroxyprogesterone acetate (MPA).

**AS AND FOR A FIFTH SEPARATE DEFENSE**

27  
 28 Plaintiff's claims are barred by the Learned Intermediary doctrine.

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**AS AND FOR A SIXTH SEPARATE DEFENSE**

To the extent that Plaintiff is alleging fraud or similar conduct, Plaintiff has failed to plead fraud with sufficient particularity.

**AS AND FOR A SEVENTH SEPARATE DEFENSE**

Plaintiff used Provera or medroxyprogesterone acetate (MPA) after learning of its alleged defect(s).

**AS AND FOR AN EIGHTH SEPARATE DEFENSE**

The causes of action and claims alleged in the Complaint are preempted by the federal statutes and regulations that exclusively regulate Provera and medroxyprogesterone acetate (MPA). Granting the relief requested in the Complaint would impermissibly infringe upon and/or conflict with federal laws, regulations, and policies in violation of the Supremacy Clause of the United States Constitution.

**AS AND FOR A NINTH SEPARATE DEFENSE**

Plaintiff's claims are barred because the methods, standards and techniques used in formulating Provera and medroxyprogesterone acetate (MPA) and in issuing warnings and instructions about their use conformed to the generally recognized, reasonably available, and reliable state of knowledge in the field at the time the Provera and medroxyprogesterone acetate (MPA) were manufactured.

**AS AND FOR A TENTH SEPARATE DEFENSE**

The Answering Defendants' liability, if any, for non-economic damages is several rather than joint, and should be prorated according to *California Civil Code* § 1431.2 or otherwise.

**AS AND FOR AN ELEVENTH SEPARATE DEFENSE**

The Answering Defendants are entitled to contribution from any person and/or entity whose negligence or other fault contributed to Plaintiff's alleged injuries and damages if Plaintiff receives a verdict against the Answering Defendants.

**AS AND FOR A TWELFTH SEPARATE DEFENSE**

The benefits of the design of Provera and medroxyprogesterone acetate (MPA) outweighed the risk of danger, if any, inherent in the design, in light of all relevant factors.

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**AS AND FOR A THIRTEENTH SEPARATE DEFENSE**

1 Plaintiff is barred from recovering from the Answering Defendants because independent,  
2 intervening, and/or superseding forces and/or actions of third parties, unrelated to any conduct of the  
3 Answering Defendants, caused or contributed to Plaintiff's alleged losses and/or damages.  
4

**AS AND FOR A FOURTEENTH SEPARATE DEFENSE**

5 Plaintiff failed to mitigate the damages, if any, despite full knowledge of them.  
6

**AS AND FOR A FIFTEENTH SEPARATE DEFENSE**

7 The Answering Defendants' liability, if any, will not result from their own conduct, but  
8 instead, will derive solely from an obligation imposed by law. As such, the Answering Defendants  
9 are entitled to complete and total express and/or implied indemnity from other the Answering  
10 Defendants and/or third parties that are not yet party to this action.  
11

**AS AND FOR A SIXTEENTH SEPARATE DEFENSE**

12 The Plaintiff's claims are subject to the limitations on the doctrine of strict product liability  
13 for a purported design defect and breach of warranty as set forth in the Restatement (Second) of  
14 Torts, Section 402A and comments thereto, and decisions in *Brown v. Superior Court*, 44 Cal.3d  
15 1049 (1988); *Huff v. Horowitz*, 4 Cal.App.4th 8 (1992); *Plenger v. Alza Corp.*, 11 Cal.App.4th 349  
16 (1992); and related statutes or otherwise.  
17

**AS AND FOR A SEVENTEENTH SEPARATE DEFENSE**

18 The Complaint, and Plaintiff's claims and causes of action, are barred by the applicable  
19 statutes of limitations including, without limitation, *California Code of Civil Procedure* § 340 and  
20 *California Business and Professions Code* § 17208.  
21

**AS AND FOR AN EIGHTEENTH SEPARATE DEFENSE**

22 Plaintiff's injuries and damages, if any, were due to Plaintiff's idiosyncratic reaction to  
23 Provera and medroxyprogesterone acetate (MPA), for which the Answering Defendants cannot be  
24 held responsible.  
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**AS AND FOR A NINETEENTH SEPARATE DEFENSE**

The design, manufacture, and distribution of Provera and medroxyprogesterone acetate (MPA) complied with all applicable industry and governmental standards and regulations, and reflected the current state of the art at the time it was designed, manufactured, sold and distributed. Consequently, there can be no liability imposed against the Answering Defendants.

**AS AND FOR A TWENTIETH SEPARATE DEFENSE**

The Answering Defendants did not make to Plaintiff, nor did the Answering Defendants breach, any express or implied warranties and did not breach any warranties created by law. To the extent that Plaintiff relied upon any theory of breach of warranty, such claims are barred for lack of privity with the Answering Defendants and/or failure of Plaintiff, or its representatives, to give timely notice to the Answering Defendants of any alleged breach of warranty.

**AS AND FOR A TWENTY-FIRST SEPARATE DEFENSE**

Plaintiff's claims are barred by the doctrines of laches, waiver, and/or estoppel.

**AS AND FOR A TWENTY-SECOND SEPARATE DEFENSE**

Plaintiff's claims are equitably barred because Plaintiff's failure to join all indispensable parties precludes the Court from granting complete relief to those who are parties to the action and will result in prejudice to the Answering Defendants.

**AS AND FOR A TWENTY-THIRD SEPARATE DEFENSE**

Notwithstanding the claims and contentions of Plaintiff, Plaintiff received all or substantially all of the benefit from Provera and medroxyprogesterone acetate (MPA) that was hoped and intended to receive, and to that extent any damages and/or restitution that Plaintiff might be entitled to recover from the Answering Defendants must be correspondingly reduced.

**AS AND FOR A TWENTY-FOURTH SEPARATE DEFENSE**

Any alleged injuries were caused by a pre-existing or unrelated medical condition, disease or illness of Plaintiff.

**AS AND FOR A TWENTY-FIFTH SEPARATE DEFENSE**

Plaintiff's claims are barred under Section 4, *et seq.* of the Restatement (Third) of Torts: Product Liability because Provera and medroxyprogesterone acetate (MPA) complied with

1 applicable product safety statutes and administrative regulations.

2 **AS AND FOR A TWENTY-SIXTH SEPARATE DEFENSE**

3 In the event of a finding of any liability in favor of Plaintiff, or settlement, or judgment  
4 against any defendant, then the Answering Defendants should be held liable, if at all, only for the  
5 proportion of damages sustained by Plaintiff, if any, as is determined by the jury to be the result of  
6 the allocable percentage of fault or negligence on the part of the Answering Defendants. The  
7 Answering Defendants further state that they should not and cannot be held jointly liable to Plaintiff  
8 for the negligence or fault of others since such joint liability would violate certain constitutional  
9 principles, statutes and common law rules.

10 **AS AND FOR A TWENTY-SEVENTH SEPARATE DEFENSE**

11 Should the Answering Defendants, or any of them, be held liable to Plaintiff, which liability  
12 is specifically denied, the Answering Defendants would be entitled to a set-off for all sums of money  
13 received or available from or on behalf of any tortfeasor(s) for the same injuries alleged in Plaintiff's  
14 Complaint.

15 **AS AND FOR A TWENTY-EIGHTH SEPARATE DEFENSE**

16 Plaintiff's claims are barred by Sections 6(c) and (d) of the Restatement (Third) of Torts:  
17 Product Liability. Reasonable physicians knowing of the reasonably foreseeable risks and  
18 therapeutic benefits associated with Provera and medroxyprogesterone acetate (MPA) would have  
19 prescribed and did prescribe Provera and medroxyprogesterone acetate (MPA) for classes of patients.

20 **AS AND FOR A TWENTY-NINTH SEPARATE DEFENSE**

21 The Complaint fails to state facts sufficient to sustain a claim for, or recovery of, punitive  
22 damages. The Answering Defendants further state that any award of punitive damages in this case  
23 would violate the due process clause of the Fourteenth Amendment to the United States Constitution  
24 and similar provisions of the Constitution, law and public policy of this State.

25 **AS AND FOR A THIRTIETH SEPARATE DEFENSE**

26 While the Answering Defendants deny that they, or any of them, are liable for any punitive  
27 damages in this case, the Answering Defendants further state that any award of punitive damages  
28 cannot be sustained because an award of punitive damages by a jury that: (1) is not provided

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1 constitutionally adequate standards of sufficient clarity for determining the appropriate imposition of,  
2 and the appropriate size of, a punitive damages award; (2) is not adequately instructed on the limits  
3 of punitive damages imposed by the applicable principles of deterrence and punishment; (3) is not  
4 expressly prohibited from awarding punitive damages, or determining the amount of an award of  
5 punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics,  
6 including without limitation the residence, wealth, and corporate status of the Answering  
7 Defendants; (4) is permitted to award punitive damages under a standard for determining liability for  
8 punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or  
9 mental state that makes punitive damages permissible; (5) is not properly instructed regarding  
10 Plaintiffs' burden of proof with respect to each and every element of a claim for punitive damages;  
11 and/or (6) is not subject to trial court and appellate judicial review for reasonableness and  
12 furtherance of legitimate purposes on the basis of constitutionally adequate and objective standards,  
13 would violate the Answering Defendants' due process and equal protection rights guaranteed by the  
14 Fifth and the Fourteenth Amendments to the United States Constitution and similar provisions of the  
15 California Constitution, and would be improper under the common law and public policies of the  
16 State of California.

**AS AND FOR A THIRTY-FIRST SEPARATE DEFENSE**

17  
18 While the Answering Defendants deny that they, or any of them, are liable for any punitive  
19 damages in this case, the Answering Defendants state that no punitive damages can be awarded in  
20 this case under the due process clause of the Fourteenth Amendment to the United States  
21 Constitution and the Constitution, law and public policy of this State that (1) exceed what is  
22 reasonably required to vindicate this State's legitimate interests in punishment and deterrence, or  
23 seek to punish or deter conduct occurring outside this State, or seek to punish or deter conduct  
24 causing harm outside this State; or (b) would result in multiple punitive damages awards for the  
25 same course of conduct.

**AS AND FOR A THIRTY-SECOND SEPARATE DEFENSE**

26  
27 While the Answering Defendants, and each of them, deny that they are liable for any punitive  
28 damages in this case, the Answering Defendants state that no punitive damages can be awarded in

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1 this case under the due process clause of the Fourteenth Amendment to the United States  
 2 Constitution and the Constitution, law and public policy of this State that are not subject to a  
 3 predetermined limit on the amount that can be imposed, such as a maximum multiple of  
 4 compensatory damages or a maximum amount, and/or limits to ensure against multiple awards for  
 5 the same course of conduct.

6 **AS AND FOR A THIRTY-THIRD SEPARATE DEFENSE**

7 While the Answering Defendants, and each of them, deny that they are liable for any  
 8 punitive damages in this case, the Answering Defendants state that no punitive damages can be  
 9 awarded in this case under the due process clause of the Fourteenth Amendment to the United States  
 10 Constitution and the Constitution, law and public policy of this State because laws regarding the  
 11 standards for determining liability for punitive damages fail to give the Answering Defendants prior  
 12 notice of the conduct for which punitive damages may be imposed, and therefore are void for  
 13 vagueness.

14 **AS AND FOR A THIRTY-FOURTH SEPARATE DEFENSE**

15 While the Answering Defendants, and each of them, deny that they are liable for any punitive  
 16 damages in this case, the Answering Defendants state that no punitive damages can be awarded in  
 17 this case under the due process clause of the Fourteenth Amendment to the United States  
 18 Constitution and the Constitution, law and public policy of this State, insofar because any award of  
 19 punitive damages is penal in nature without according to the Answering Defendants the same  
 20 protections that are accorded to criminal defendants.

21 **AS AND FOR A THIRTY-FIFTH SEPARATE DEFENSE**

22 While the Answering Defendants, and each of them, deny that they are liable for any punitive  
 23 damages in this case, the Answering Defendants state that no punitive damages can be awarded in  
 24 this case under the due process clause of the Fourteenth Amendment to the United States  
 25 Constitution and the Constitution, law and public policy of this State, insofar as such award results in  
 26 whole or in part from improper or unfair argument by Plaintiffs including without limitation as to the  
 27 Answering Defendants' wealth, corporate status or out of state citizenship, or from otherwise unfair  
 28 or improper proceedings.



AS AND FOR A THIRTY-SIXTH SEPARATE DEFENSE

To the extent that Plaintiff makes a claim for injunctive relief, it does not meet the requirements of such an action.

AS AND FOR A THIRTY-SEVENTH SEPARATE DEFENSE

Plaintiff's alleged injuries and damages were not caused by any failure to warn on the part of the Answering Defendants.

AS AND FOR A THIRTY-EIGHTH SEPARATE DEFENSE

Plaintiff's alleged injuries and damages were not proximately caused by an act or omission of the Answering Defendants.

AS AND FOR A THIRTY-NINTH SEPARATE DEFENSE

The Answering Defendants' actions related to Provera and medroxyprogesterone acetate (MPA) never constituted unfair advertising and/or deceptive advertising and/or misleading advertising and/or any act prohibited by California *Business and Professions Code* §§ 17500-17577.5.

AS AND FOR A FORTIETH SEPARATE DEFENSE

The Answering Defendants did not act with scienter, and thus did not violate California *Business and Professions Code* § 17500, *et seq.*

AS AND FOR A FORTY-FIRST SEPARATE DEFENSE

Any alleged acts or omissions by the Answering Defendants related to Provera and medroxyprogesterone acetate (MPA) were not fraudulent and did not actually, and were not likely to, mislead or deceive reasonable persons based on the context of the information disseminated by the Answering Defendants.

AS AND FOR A FORTY-SECOND SEPARATE DEFENSE

Any alleged acts or omissions by the Answering Defendants related to Provera and medroxyprogesterone acetate (MPA) were at all times unintentional and the Answering Defendants acted in good faith concerning Provera and medroxyprogesterone acetate (MPA).

KAYE SCHOLER ll

AS AND FOR A FORTY-THIRD SEPARATE DEFENSE

The Answering Defendants' actions related to Provera and medroxyprogesterone acetate (MPA) were never unlawful.

AS AND FOR A FORTY-FOURTH SEPARATE DEFENSE

The Answering Defendants' actions related to Provera and medroxyprogesterone acetate (MPA) were never unfair within the meaning of Business and Professions Code § 17200. The utility of the practice outweighed any potential harm.

AS AND FOR A FORTY-FIFTH SEPARATE DEFENSE

Plaintiff's claims for false advertising are barred by the prior substantiation doctrine.

AS AND FOR A FORTY-SIXTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, because the advertisements and labeling with respect to hormone replacement medications were not false or misleading, and therefore constitute protected commercial speech under the applicable provisions of the United States Constitution.

AS AND FOR A FORTY-SEVENTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Section 17200, *et seq.* violates Article III, Section 3 and/or other appropriate sections of the Constitution of California.

AS AND FOR A FORTY-EIGHTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of abstention in that the common law gives deference to discretionary actions by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act.

AS AND FOR A FORTY-NINTH SEPARATE DEFENSE

Plaintiff's claims should be dismissed due to improper venue or on the ground of *forum non conveniens*.

AS AND FOR A FIFTIETH SEPARATE DEFENSE

Necessary and indispensable parties may not have been joined.

AS AND FOR A FIFTY-FIRST SEPARATE DEFENSE

Plaintiff has improperly joined claims in this action.

KAYE SCHOLER LLP

AS AND FOR A FIFTY-SECOND SEPARATE DEFENSE

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The Answering Defendants give notice that they intend to rely upon other defenses that may become apparent during the course of the litigation.

WHEREFORE, PFIZER INC., PHARMACIA & UPJOHN LLC and GREENSTONE LTD. pray as follows:

1. That the Complaint be dismissed;
2. That Defendants be awarded the costs of suit incurred in defense of this action;
3. That Defendants be awarded its reasonable attorney's fees as the Court may deem appropriate; and
4. For such other and further relief as this Court deems just and proper.

Dated: June 9, 2005

Respectfully submitted,  
KAYE SCHOLER LLP

By: Betsy L. Katz  
Betsy L. Katz  
Attorneys for Defendants  
PFIZER INC., PHARMACIA & UPJOHN LLC and  
GREENSTONE LTD.

KAYE SCHOLER LLP

**PROOF OF SERVICE**

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STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Kaye Scholer LLP, 1999 Avenue of the Stars, Suite 1700, Los Angeles, California 90067-6048.

On June 9, 2005, I served the foregoing document described as **DEFENDANTS PFIZER INC., PHARMACIA & UPJOHN LLC AND GREENSTONE LTD.'S ANSWER TO COMPLAINT FOR DAMAGES** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**Counsel for Plaintiffs**  
Gary M. Paul, Esq.  
PAUL & JANOFSKY  
A Professional Corporation  
1401 Ocean Avenue, Suite 300  
Santa Monica, CA 90401-2103

**Local Counsel for Barr  
Pharmaceuticals, Inc.**  
Donald F. Zimmer, Jr., Esq.  
Michael P. Pulliam, Esq.  
DRINKER BIDDLE & REATH LLP  
50 Fremont Street, 20th Floor  
San Francisco, CA 94105-2235

**Local Counsel for Wyeth**  
Stuart Gordon, Esq.  
Fletcher Alford, Esq.  
GORDON & REES, LLP  
Embarcadero Center West  
275 Battery Street, 20th Floor  
San Francisco, CA 94111

X (BY MAIL) In accordance with the regular mail collection and processing practices of this business office, with which I am familiar, by means of which mail is deposited with the United States Postal Service at Los Angeles, California that same day in the ordinary course of business, I deposited such sealed envelope for collection and mailing on this same date following ordinary business practices.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 9, 2005, at Los Angeles, California.

Cathy Lance  
Name

*Cathy Lance*  
Signature

KAYE SCHOLER LLP

FILED  
 SAN FRANCISCO COUNTY  
 SUPERIOR COURT  
 2005 JUN -7 PM 3:53  
 GORDON & REES LLP, CLERK  
 BY: \_\_\_\_\_ DEPUTY CLERK

1 STUART M. GORDON (CSB #037477)  
 FLETCHER C. ALFORD (CSB #152314)  
 2 GORDON & REES LLP  
 Embarcadero Center West  
 3 275 Battery Street, Suite 2000  
 San Francisco, CA 94111  
 4 Telephone: (415) 986-5900  
 Facsimile: (415) 986-8054  
 5

6 Attorneys for Defendants WYETH;  
 WYETH PHARMACEUTICALS INC.  
 and WYETH-AYERST INTERNATIONAL INC.  
 7

8  
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 10 FOR THE COUNTY OF SAN FRANCISCO

11 SUZANNE FRANKLIN, 12 13 Plaintiff, 14 15 vs. 16 17 WYETH PHARMACEUTICALS, INC.; 18 WYETH-AYERST PHARMACEUTICALS, INC.; WYETH-AYERST INTERNATIONAL, 19 INC.; WYETH LABORATORIES, INC.; WYETH PHARMACEUTICALS; WYETH, 20 INC.; PHARMACIA & UPJOHN, INC.; PFIZER INC.; BARR LABORATORIES, INC.; 21 GREENSTONE LTD.; MICHELLE LUNA; and DOES 1 through 100, inclusive, 22 23 Defendants.	) CASE NO. CGC05441166 ) ) <b>ANSWER TO COMPLAINT</b> ) <b>FOR DAMAGES</b> ) ) ) Complaint filed on May 10, 2005
---	--

Gordon & Rees LLP  
 Embarcadero Center West  
 275 Battery Street, Suite 2000  
 San Francisco, CA 94111

22 COME NOW defendants WYETH (erroneously named as Wyeth, Inc.”), on behalf of  
 23 itself and its unincorporated division, WYETH PHARMACEUTICALS,<sup>1</sup> WYETH  
 24 PHARMACEUTICALS INC. (incorrectly named as “Wyeth Pharmaceuticals, Inc.”) and  
 25 WYETH-AYERST INTERNATIONAL INC.,<sup>2</sup> (collectively the “answering defendants”) and in  
 26

27 <sup>1</sup> Wyeth appears on behalf of itself and its unincorporated division Wyeth Pharmaceuticals, which is also  
 named as a defendant.  
 28 <sup>2</sup> Wyeth-Ayerst Pharmaceuticals, Inc. and Wyeth Laboratories Inc., also named as defendants in the  
 Complaint, are non-existent entities. Their successor is Wyeth Pharmaceuticals Inc.

1 answer to the plaintiff's Complaint for Damages (hereinafter "Complaint"), and each cause of  
2 action thereof, allege as follows:

3  
4 **GENERAL DENIAL**

5 The answering defendants generally deny each and every allegation of the plaintiff's  
6 Complaint, pursuant to California Code of Civil Procedure section 431.30(d), and specifically  
7 denies that the Complaint states facts sufficient to constitute a cause of action against these  
8 answering defendants. These answering defendants further deny that plaintiff has sustained or  
9 will sustain any injury, damage, or loss in the sum or sums alleged, or in any sum at all, by  
10 reason of any act, omission, or breach on the part of these answering defendants or their agents.  
11 These answering defendants further deny that plaintiff has sustained any injury, damage, or loss,  
12 by reason of any act, or omission to act, on the part of these answering defendants.

13 **AFFIRMATIVE DEFENSES**

14 **First Affirmative Defense**

15 The Complaint fails to state, in whole or in part, a claim upon which relief may be  
16 granted.

17 **Second Affirmative Defense**

18 Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations  
19 and/or repose.

20 **Third Affirmative Defense**

21 Plaintiff knowingly and voluntarily assumed any and all risks associated with the matters  
22 alleged in the Complaint. Pursuant to the doctrines of assumption of the risk or informed  
23 consent, this conduct bars in whole or in part the damages that plaintiff seeks to recover herein.

24 **Fourth Affirmative Defense**

25 Plaintiff's claims are barred because the injuries allegedly sustained by plaintiff was not  
26 proximately caused by any act or omission of these answering defendants.

27 **Fifth Affirmative Defense**

28 Plaintiff's recovery, if any, should be reduced pursuant to the comparative negligence,  
fault, responsibility, or causation of others, including, but not limited to, plaintiff herself.

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**Sixth Affirmative Defense**

If plaintiff was injured by any product manufactured, sold, or distributed by these answering defendants, those injuries occurred because the product was used for a purpose other than that for which it was intended, in a manner other than that in which it was intended to be used, and in disregard of instructions and directions regarding its use. Such misuse was not reasonably foreseeable to these answering defendants.

**Seventh Affirmative Defense**

Plaintiff's alleged injuries and damages, if any, were caused in whole or in part by the acts and omissions of third parties over whom these answering defendants had no authority or control, including without limitation, misuse of Prempro, Premarin, Premphase or Cycrin (the "subject products") by such third parties.

**Eighth Affirmative Defense**

Plaintiff's claims are barred because any injuries and damages allegedly sustained by plaintiff was the result of pre-existing or subsequent conditions that are unrelated to use of the subject products.

**Ninth Affirmative Defense**

Plaintiff's claims are barred because any injuries and damages allegedly sustained by plaintiff was the direct and proximate result of an independent, unforeseeable, superseding, or intervening cause.

**Tenth Affirmative Defense**

Plaintiff's claims are barred because any injuries and damages allegedly sustained by plaintiff as a result of the subject products were caused by an idiosyncratic reaction to those drugs that was not reasonably foreseeable to these answering defendants.

**Eleventh Affirmative Defense**

Plaintiff's claims are barred by reason of plaintiff's failure to mitigate the alleged damages or losses.

**Twelfth Affirmative Defense**

Plaintiff's claims are barred by the equitable doctrines of laches, waiver, and estoppel.









**Thirty-second Affirmative Defense**

1  
2 Any claim for punitive damages is in contravention of these answering defendants' rights  
3 under the Due Process Clause of the Fifth and Fourteenth Amendments of the United States  
4 Constitution; the Excessive Fines Clause of the Eighth Amendment of the United States  
5 Constitution; the Double Jeopardy Clause in the Fifth Amendment to the Constitution of the  
6 United States, similar provisions in the Constitution of California and/or the law and public  
7 policies of California, and/or applicable statutes and court rules, in the circumstances of this  
8 litigation, including, but not limited to:

- 9 (a) imposition of punitive damages by a jury which
- 10 (1) is not provided with standards of sufficient clarity for determining the  
11 appropriateness, and the appropriate size, of a punitive damages award;
- 12 (2) is not adequately and clearly instructed on the limits on punitive damages  
13 imposed by the principles of deterrence and punishment;
- 14 (3) is not expressly prohibited from awarding punitive damages, or determining  
15 the amount of an award thereof, in whole or in part, on the basis of invidiously  
16 discriminatory characteristics, including the corporate status, wealth, or state of  
17 residence of these answering defendants;
- 18 (4) is permitted to award punitive damages under a standard for determining  
19 liability for such damages which is vague and arbitrary and does not define with  
20 sufficient clarity the conduct or mental state which makes punitive damages  
21 permissible; and
- 22 (5) is not subject to trial court and appellate judicial review for reasonableness  
23 and the furtherance of legitimate purposes on the basis of objective standards;
- 24 (b) imposition of such punitive damages, and determination of the amount of an  
25 award thereof, where applicable state law is impermissibly vague, imprecise, or  
26 inconsistent;
- 27 (c) imposition of such punitive damages, and determination of the amount of an  
28 award thereof, without bifurcating the trial and trying all punitive damages issues  
only if and after the liability of defendants has been found on the merits;
- (d) imposition of such punitive damages, and determination of the amount of an  
award thereof, based on anything other than these answering defendants' conduct  
in connection with the sale of the product alleged in this litigation, or in any other  
way subjecting these answering defendants to impermissible multiple punishment  
for the same alleged wrong.

Gordon & Rees LLP  
Embarcadero Center West  
275 Battery Street, Suite 2000  
San Francisco, CA 94111

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**WHEREFORE**, these answering defendants pray for relief and judgment against plaintiff as follows:

A. That plaintiff take nothing by reason of the Complaint;

B. That this action be dismissed with prejudice;

C. That these answering defendants recover their fees, costs and attorneys' fees incurred herein; and

D. Such further and other relief as the Court deems proper.

Dated: June 6, 2005.

Respectfully submitted,

GORDON & REES

By 

Stuart M. Gordon

Attorneys for Defendants WYETH;  
WYETH PHARMACEUTICALS INC.  
and WYETH-AYERST INTERNATIONAL INC.

Gordon & Rees LLP  
Embarcadero Center West  
275 Battery Street, Suite 2000  
San Francisco, CA 94111

1 PROOF OF SERVICE

2 I am a resident of the State of California, over the age of eighteen years, and not a party  
3 to the within action. My business address is: Embarcadero Center West, 275 Battery Street,  
4 Suite 2000, San Francisco, CA 94111. On June ~~4~~, 2005, I served the within documents:

5 ANSWER TO COMPLAINT FOR DAMAGES

- 6  by transmitting via facsimile the document(s) listed above to the fax number(s) set  
7 forth below on this date before 5:00 p.m.
- 8  by placing the document(s) listed above in a sealed envelope with postage thereon  
9 fully prepaid, in United States mail in the State of California at , addressed as set forth  
10 below.
- 11  by personally delivering the document(s) listed above to the person(s) at the  
12 address(es) set forth below.

13 PLAINTIFF'S COUNSEL

14 Gary M. Paul, Esq.  
15 Mary E. Alexander, Esq.  
16 PAUL & JANOFSKY  
17 1401 Ocean Avenue, Suite 300  
18 Santa Monica, CA 90401  
19 (310)458-7900  
20 Fax (310)458-6823

21 COUNSEL FOR PFIZER, PHARMACIA & UPJOHN  
22 And GREENSTONE

23 Pamela J. Yates, Esq.  
24 Paul Gelb, Esq.  
25 Betsy L. Katz, Esq.  
26 KAYE SCHOLER LLP  
27 1999 Avenue of the Stars, Suite 1700  
28 Los Angeles, CA 90067  
(310)788-1000  
Fax (310)788-1200

29 I am readily familiar with the firm's practice of collection and processing correspondence  
30 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
31 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
32 motion of the party served, service is presumed invalid if postal cancellation date or postage  
33 meter date is more than one day after the date of deposit for mailing in affidavit.

34 I declare under penalty of perjury under the laws of the State of California that the above  
35 is true and correct.

36 Executed on June ~~4~~, 2005, at San Francisco, California.

37   
38 Patience Porter

**EXHIBIT C**

Gordon & Rees LLP  
Embarcadero Center West  
275 Battery Street, Suite 2000  
San Francisco, CA 94111

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FLETCHER C. ALFORD (CSB #152314)  
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6 Attorneys for Defendants WYETH;  
WYETH PHARMACEUTICALS INC.  
and WYETH-AYERST INTERNATIONAL INC.  
7

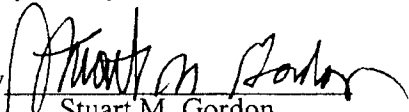
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 SUZANNE FRANKLIN, ) CASE NO. \_\_\_\_\_  
11 )  
Plaintiff, )  
12 )  
vs. ) **CONSENT OF DEFENDANTS**  
13 ) **WYETH, WYETH**  
WYETH PHARMACEUTICALS, INC.; et al, ) **PHARMACEUTICALS INC. AND**  
14 ) **WYETH-AYERST INTERNATIONAL**  
Defendants. ) **INC. TO REMOVAL OF ACTION**  
15 )  
Complaint filed on May 10, 2005

16  
17 COME NOW defendants Wyeth, Wyeth Pharmaceuticals Inc. and Wyeth-Ayerst  
18 International Inc. (collectively "Wyeth")<sup>1</sup>, and hereby consent to the removal of the above-  
19 captioned action from the California Superior Court for San Francisco County to the United  
20 States District Court for the Northern District of California. By consenting to said removal,  
21 Wyeth does not expressly or impliedly waives, and hereby expressly reserves, any and all  
22 defenses and objections available to it under the law.

23 Dated: June 6, 2005.

Respectfully submitted,

24  
25 By   
Stuart M. Gordon  
26 Attorneys for Defendants WYETH;  
WYETH PHARMACEUTICALS INC.  
27 and WYETH-AYERST INTERNATIONAL INC.

28 <sup>1</sup> Wyeth-Ayerst Pharmaceuticals, Inc. and Wyeth Laboratories Inc., also named as defendants in the  
Complaint, are non-existent entities. Their successor is Wyeth Pharmaceuticals Inc.

1 DONALD F. ZIMMER, JR. (State Bar No. 112279)  
 2 MICHAEL P. PULLIAM (State Bar No. 215435)  
 3 DRINKER BIDDLE & REATH LLP  
 4 50 Fremont Street, 20th Floor  
 5 San Francisco, California 94105-2235  
 6 Telephone: (415) 591-7500  
 7 Facsimile: (415) 591-7510

8 Attorneys for Defendant  
 9 BARR LABORATORIES, INC.

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA

12 SUZANNE FRANKLIN,  
 13 Plaintiff,

14 v.

15 WYETH PHARMACEUTICALS, INC.,  
 16 WYETH-AYERST  
 17 PHARMACEUTICALS, INC., WYETH-  
 18 AYERST INTERNATIONAL, INC.;  
 19 WYETH LABORATORIES, INC.,  
 20 WYETH PHARMACEUTICALS;  
 21 WYETH, INC.; PHARMACIA &  
 22 UPJOHN, INC.; PFIZER, INC.; BARR  
 23 LABORATORIES, INC.; GREENSTONE  
 24 LTD.; MICHELLE LUNA; and DOES 1  
 25 THROUGH 100, inclusive,

26 Defendants.

Case No.

**CONSENT TO REMOVAL OF  
 DEFENDANT BARR  
 LABORATORIES, INC.**



1 Defendants Barr Laboratories, Inc. ("Barr") hereby consents to the removal of this  
 2 Case No. CGC5441166 from the Superior Court of the State of California in and for the  
 3 County of San Francisco styled *Suzanne Franklin v. Wyeth, et al.* to the United States  
 4 District Court, Northern District of California. In consenting to removal, Barr expressly  
 5 reserves all legal and equitable defenses and objections, including those related to venue,  
 6 personal jurisdiction, and service of process.

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Dated: June 10, 2005

DRINKER BIDDLE & REATH LLP



\_\_\_\_\_  
MICHAEL P. PULLIAM

Attorneys for Defendant  
BARR LABORATORIES, INC.

