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*Attorneys for Plaintiff Regina Bozic, the Proposed Classes,
and the Appeals Class (See FRAP 3(c)(3))*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

REGINA BOZIC, on behalf of
herself, all others similarly situated,
and the general public.,

Plaintiff,

v.

HENNY DEN UIJL, *et al.*

Defendants.

Case No. 16-cv-733-BAS (MDD)

CLASS ACTION

NOTICE OF APPEAL TO THE NINTH
CIRCUIT COURT OF APPEALS
FROM THE FINAL JUDGMENT AND
ORDER ISSUED ON JANUARY 31,
2017 ENTITLED "ORDER GRANTING
DEFENDANTS' MOTION TO
TRANSFER VENUE" [ECF No. 42]

[Eastern District of California
Case Number Opened as 17-cv-00222]

PRELIMINARY INJUNCTION
APPEAL

1
2 **PLEASE TAKE NOTICE:** That Plaintiff Regina Bozic, on behalf of
3 herself, all others similarly situated, and the general public, hereby takes an appeal
4 to the United States Court of Appeals for the Ninth Circuit from this District Court's
5 Order dated January 31, 2017 entitled "Order Granting Defendants' Motion to
6 Transfer Venue." *See* ECF No. 42.¹ Plaintiff Bozic takes this appeal as a
7 representative of the classes that are defined in her pending Motion for Class
8 Certification (the "Appeals Class"). *See* ECF No. 28. Pursuant to Federal Rule of
9 Appellate Procedure 3(c)(3), "In a class action, whether or not the class has been
10 certified, the notice of appeal is sufficient if it names one person qualified to bring
11 the appeal as representative of the class." FRAP 3(c)(3); *see also Massie v. U.S.*
12 *Dep't of Hous. & Urban Dev.*, 620 F.3d 340, 348 (3d Cir. 2010) ("Rule 3(c)(3)
13 requires the notice of appeal to specify that the class representative is appealing in a
14 representative capacity."); *Murphy v. Keystone Steel & Wire Co., a Div. of*
15 *Keystone Consol. Indus.*, 61 F.3d 560, 570 (7th Cir. 1995).

16 Plaintiff intends to take this appeal as a matter of right for the non-exhaustive
17 reasons outlined below that may include, but are not limited to, the following:

- 18 • The District Court's Grant of Defendants' Motion to Transfer Venue in
19 the presence of an ongoing state court proceeding was a clear abuse of
20 discretion to exercise the Court's "virtually unflagging obligation ... to

21
22 ¹ "Plaintiff Regina Bozic commenced this class action against numerous
23 defendants, including Obesity Research Institute ("ORI"), Henny Den Uijl, and
24 Bryan Corlett, arising from allegations of misrepresentation and fraud related to a
25 weight-loss product known as Lipozene. Defendants now mov[ed] to stay this
26 action under the *Colorado River* doctrine, or alternatively, transfer this action to the
27 Eastern District of California for consolidation with an earlier-filed action under the
28 'first-to-file' rule." *REGINA BOZIC, on behalf of herself, all others similarly*
situated, & the general public, Plaintiff, v. HENNY DEN UIJL, et al., Defendants.,
No. 16-CV-733-BAS(MDD), 2017 WL 432878, at *1 (S.D. Cal. Jan. 31, 2017).

1 exercise the jurisdiction given [to it].” See *R.R. St. & Co. Inc. v. Transp.*
2 *Ins. Co.*, 656 F.3d 966, 977 (9th Cir. 2011) (quoting *Colorado River*
3 *Water Conservation Dist. v. United States*, 424 U.S. 800, 814 (1976)).

- 4 • The District Court's Grant of Defendants' Motion to Transfer Venue in
5 the presence of an ongoing state court proceeding was a clear abuse of
6 discretion under the *Wilton/Brillhart* doctrine because Plaintiff and the
7 class members' "outlier" action for a declaratory-judgment does not
8 “present an opportunity for ventilation of the same state law issues.” *R.R.*
9 *St. & Co.*, 656 F.3d 966, 975 (9th Cir. 2011).
- 10 • The District Court's Grant of Defendants' Motion to Transfer Venue in
11 the presence of an ongoing state court proceeding was a clear abuse of
12 discretion under the "First-to-File Rule" because the Eastern District of
13 California lacks federal subject matter jurisdiction to hear the purported
14 "first-filed" action under the *Rooker–Feldman* doctrine that “prevents ...
15 lower federal courts from exercising jurisdiction over cases brought by
16 ‘state-court losers’ challenging ‘state-court judgments rendered before
17 the district court proceedings commenced.’” *Brown v. R.J. Reynolds*
18 *Tobacco Co.*, 611 F.3d 1324, 1330 (11th Cir. 2010).
- 19 • The District Court's Grant of Defendants' Motion to Transfer Venue in
20 the presence of an ongoing state court proceeding was a clear abuse of
21 discretion under 28 U.S.C. § 1404(a) because this action could not "have
22 been brought" in the Eastern District of California in accordance with 28
23 U.S.C. § 1391.
- 24 • The District Court's Grant of Defendants' Motion to Transfer Venue in
25 the presence of an ongoing state court proceeding was an "Interlocutory
26 Decision" within the meaning of 28 U.S.C. § 1292 because it is
27 effectively an Order "refusing or dissolving" an injunction.
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- The District Court's Grant of Defendants' Motion to Transfer Venue in the presence of an ongoing state court proceeding was a clear abuse of discretion because "a district court retains jurisdiction to enforce its judgments, including consent decrees." *Hook v. State of Ariz., Dep't of Corr.*, 972 F.2d 1012, 1014 (9th Cir. 1992). Plaintiff and the Class members "allege a violation of the consent decree, the district court had jurisdiction." *Id.*

DATED: February 3, 2017

Respectfully Submitted,

/s/ Michael T. Houchin
Michael T. Houchin

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*Counsel for Plaintiff Regina Bozic,
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Appeals Class*

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REPRESENTATION STATEMENT

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11 UNITED STATES DISTRICT COURT
 12 SOUTHERN DISTRICT OF CALIFORNIA

13
 14
 15 REGINA BOZIC, on behalf of herself, all
 16 others similarly situated, and the general
 17 public.,

Case No.: 16-cv-733-BAS (MDD)

PROOF OF SERVICE

18
 19 Plaintiff,

20 v.

21
 22 HENNY DEN UIJL, *et al.*

23 Defendants.
 24

1 I am employed in the County of San Diego, State of California. I am over the age
 2 of eighteen years and not a party to this action. My business address is 651 Arroyo Drive,
 3 San Diego, California 92103. On February 3, 2017, I served the following document(s):

- 4 **1. NOTICE OF APPEAL TO THE NINTH CIRCUIT COURT OF APPEALS**
 5 **2. REPRESENTATION STATEMENT**

6 on the following parties:

<p>8 Patrick J Mulkern 9 Gordon & Rees LLP 10 101 W. Broadway, Suite 2000 11 San Diego, CA 92101 12 619-696-6700 13 619-696-7124 (fax) pmulkern@gordonrees.com</p>	<p>Richard P Sybert Gordon and Rees 101 West Broadway Suite 2000 San Diego, CA 92101 (619) 696-6700 (619) 696-7124 (fax) rsybert@gordonrees.com</p>
<p>15 Hazel Mae Pangan 16 Gordon and Rees LLP 17 101 West Broadway 18 Suite 2000 19 San Diego, CA 92101 (619)696-6700 (619)696-7124 (fax) hpangan@gordonrees.com</p>	<p>Ronald Marron Law Office of Ronald Marron 651 Arroyo Drive San Diego, CA 92103 (619)696-9006 (619)564-6665 (fax) ron@consumersadvocates.com</p>
<p>22 Refugio Jose Gonzalez 23 Jampol Zimet LLP 24 800 Wilshire Blvd. 25 Ste. 1400 26 Los Angeles, CA 90017 27 213-689-8500 x106 28 213-689-8501 (fax) jgonzalez@cmlawfirm.com</p>	<p>Michael Houchin Law Offices of Ronald A. Marron 651 Arroyo Drive San Diego, CA 92103 619-696-9006 619-564-6665 (fax) mike@consumersadvocates.com</p>

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by the following means:

By E-service: I served the above-entitled document(s) by filing them on the Court's public docket, which then caused the above-entitled recipients to receive an ECF Notification of the documents.

I declare under penalty of perjury under the laws of the United States of America that I am a member of the bar of this Court, at whose direction the service was made, and that the foregoing is true and correct.

Executed on February 3, 2017 at San Diego, California.

/s/ Michael T. Houchin

Michael T. Houchin