

1 LAZARE POTTER & GIACOVAS LLP
ROBERT A. GIACOVAS (*Pro Hac Vice* Application Pending)
2 LAINIE E. COHEN (State Bar No. 216726)
950 Third Avenue, 15th Floor
3 New York, New York 10022
Telephone: (212) 758-9300
4 Facsimile: (212) 888-0919

5 NEIL, DYMOTT, FRANK, McFALL & TREXLER PC
MICHAEL I. NEIL (State Bar No. 40057)
6 HUGH A. McCABE (State Bar No. 131828)
DAVID P. HALL (State Bar No. 196891)
7 1010 Second Avenue, Suite 2500
San Diego, California 92101
8 Telephone: (619) 238-1712
Facsimile: (619) 238-1562

9 Attorneys for Plaintiffs, MEDIFAST, INC.,
10 and BRADLEY MacDONALD

11
12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA
14

15 MEDIFAST, INC., a Delaware Corporation,
and BRADLEY MacDONALD, an individual,

16 Plaintiffs,

17 v.

18 BARRY MINKOW, an individual; FRAUD
19 DISCOVERY INSTITUTE, INC., a California
corporation; ROBERT L. FITZPATRICK, an
20 individual; TRACY COENEN, an individual;
SEQUENCE, INC., a Wisconsin service
21 corporation; WILLIAM LOBDELL, an
individual; iBUSINESS REPORTING, a
22 California business organization of unknown
form; and THOMAS ZIEMANN, aka
23 'ZEEYOURSELF', an individual,

24 Defendants.

CASE NO.: 10 CIV 382 (JLS WMc)

17 **FIRST AMENDED COMPLAINT FOR:**

- 18 (1) **DEFAMATION;**
- 19 (2) **CIVIL CONSPIRACY TO DEFAME;**
- 20 (3) **VIOLATIONS OF CALIFORNIA**
CORPORATIONS CODE
SECTIONS 25400, et seq.;
- 21 (4) **UNFAIR BUSINESS PRACTICES**
(CAL. BUS & PROF. CODE
SECTIONS 17200, et seq.)

24 **DEMAND FOR JURY TRIAL**

25 **INTRODUCTION**

26 Plaintiffs, Medifast, Inc., and Bradley MacDonald (hereinafter "Plaintiffs"), for their First
27 Amended Complaint against Defendants Barry Minkow (hereinafter "Minkow"), Fraud Discovery
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1 Institute, Inc. (hereinafter “FDI”), Robert L. FitzPatrick (hereinafter “FitzPatrick”), Tracy Coenen
2 (hereinafter “Coenen”), Sequence, Inc. (hereinafter “Sequence”), William Lobdell (hereinafter
3 “Lobdell”), iBusiness Reporting (hereinafter “iBiz”) and Thomas Ziemann, aka ‘zeeyourself’
4 (hereinafter “Ziemann”) (collectively “Defendants”), alleges as follows:

5 **NATURE OF THE ACTION**

6 1. This action arises out of the defamatory statements made, repeated and perpetuated
7 by Defendants through their respective websites and blog postings – frauddiscovery.net;
8 medifraud.net; sequence-inc.com/fraudfiles; ibizreporting.com; and the Yahoo! Finance message
9 board – that began on February 17, 2009, with the posting by Minkow and FDI of the false and
10 defamatory ‘Expert Report on Take Shape for Life, a Division of Medifast, Inc.,’ (hereinafter the
11 “Report” a copy of which is attached hereto as Exhibit 1, and incorporated by reference as if fully
12 set forth herein) drafted by FitzPatrick, at the direction of Minkow and FDI, as their retained
13 ‘expert.’

14 2. In his Report, which on information and belief was completed on September 15,
15 2008, but first published on February 17, 2009, on the FDI website, FitzPatrick falsely, and without
16 any basis in fact, accused Plaintiffs of running a Ponzi scheme, and a pyramid scheme; has likened
17 Plaintiffs to Bernie Madoff; and accused Plaintiffs of violating California Penal Code, Chapter 9, §
18 327, the “Endless Chain” statute.

19 3. Beginning with the publishing of this false Report, and continuing for more than a
20 year, Defendants launched one attack after another, publishing false and defamatory statements
21 about Plaintiffs, in a concerted effort with one primary goal – to manipulate and drive down the
22 stock price of Medifast. With each attack, Defendants agreed and conspired to issue increasingly
23 invective (and outlandish) falsities to accomplish their goal. Incredibly, and despite the success of
24 their campaign, certain of Defendants, in a spiteful fit that is indicative of the malice held for
25 Plaintiffs, re-launched and republished their false attacks even after being sued, and at a time when
26 they were acutely aware of the falsity of their statements.

27 4. Defendants, and each of them agreed and conspired to perpetuate the false and
28 defamatory statements and opinions of FitzPatrick, and have adopted them as their own, by

1 republishing his alleged findings on their own websites, and through their own postings containing
2 similarly defamatory statements, on various message boards within the internet community, in a
3 conspiratorial scheme to defame Plaintiffs, and drive down the stock price of Medifast, in order that
4 Defendants may bolster their own reputations and careers to the detriment of Plaintiffs, and make
5 huge profits by short-selling Medifast stock in the wake of their defamatory attacks on Plaintiffs’
6 otherwise stellar reputations.

7 5. As a result of these baseless and defamatory attacks, which have continued to grow
8 exponentially over the past year, and still continue relentlessly on a daily basis, Plaintiffs have
9 suffered and will continue to suffer damages to their professional and personal reputations.

10 **THE PARTIES**

11 6. Plaintiff, Medifast, Inc. is a Delaware corporation with its principal place of business
12 at 11445 Cronhill Drive, Owings Mills, Maryland, 21117. Medifast stock trades on the New York
13 Stock Exchange (“NYSE”) under the symbol “MED.”

14 7. Plaintiff, Colonel Bradley T. MacDonald (Ret.) is an individual domiciled in the
15 state of Florida, and residing at 3800 N. Ocean Drive, #1250, Singer Island, Florida 33404.
16 MacDonald is the the Executive Chairman of the Board of Medifast, a Medifast shareholder, and
17 was the co-founder of Take Shape For Life, Inc. (“TSFL”), Medifast’s direct sales division, and the
18 subject of the defamatory statements made by Defendants. His name and professional reputation
19 are intricately linked with Medifast and TSFL.

20 8. Defendant, Barry Minkow is an individual domiciled in the state of California, and
21 residing at 983 Hickory Street, Poway, California, 92064.

22 9. Defendant, Fraud Discovery Institute, Inc. is a California corporation with its
23 principal place of business at 9747 Business Park Avenue, #218, San Diego, California, 92131.

24 10. Defendant, Robert L. FitzPatrick is an individual domiciled in the state of North
25 Carolina, residing at 2808 Park Road, Charlotte, North Carolina, 28209. FitzPatrick was directly
26 recruited and retained by Minkow and FDI to join the conspiracy and to prepare the Report.
27 FitzPatrick was paid by Minkow and FDI for his services.

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1 11. Defendant, Tracy Coenen is an individual domiciled in the state of Wisconsin, and
2 on information and belief, residing at 316 Milwaukee Street, # 416, Milwaukee, Wisconsin, 53202.

3 12. Defendant, Sequence, Inc. is a Wisconsin service corporation with its principal place
4 of business at 111 E. Wisconsin Avenue, #1230, Milwaukee, Wisconsin, 53202. Coenen and her
5 company, Sequence, Inc. have been co-conspirators working directly with Minkow and FDI for the
6 past three years, aiding in the targeted investigations of publicly-traded companies for alleged fraud,
7 thus directly targeting their services to a California domiciliary for their own profit.

8 13. Defendant, William Lobdell is an individual domiciled in the state of California, and
9 residing at 476 Broadway, Costa Mesa, California, 92627.

10 14. Defendant, iBusiness Reporting is, on information and belief, a California business
11 organization of unknown form, with its principal place of business at 485 E. 17th Street, Suite 280,
12 Costa Mesa, California, 92627.

13 15. Defendant, Thomas Ziemann, aka 'zeeyourself' is, on information and belief, an
14 individual domiciled in the state of Oregon, and currently residing at 2020 SE Waldron Road,
15 Milwaukie, Oregon, 97222.

16 **JURISDICTION AND VENUE**

17 16. Jurisdiction is proper under 28 U.S.C. § 1332 because all parties are citizens of
18 different states, and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

19 17. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events
20 or omissions giving rise to the claim have occurred or will occur in this judicial district.

21 **FACTUAL ALLEGATIONS**

22 **Medifast and Take Shape For Life:**

23 18. Since 1980, Medifast has been engaged in the production, distribution and sale of
24 weight management and health management consumable products marketed under brand names
25 including Medifast, Take Shape for Life, Hi-Energy Weight Control Centers, and Woman's
26 Wellbeing. Medifast's clinically proven approach to weight loss focuses on meal replacements
27 coordinated with medical practitioners and health advisors throughout the United States.

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1 19. The Medifast program has been clinically tested and prescribed or recommended by
2 over 20,000 physicians nationwide.

3 20.. Medifast sells its products through multiple business lines, including direct
4 purchasing through the Medifast website, in 'brick and mortar' weight loss centers, through a
5 network of approved physicians who prescribe or recommend Medifast to their patients, and
6 through direct sales by trained health coaches in the TSFL program. Medifast directly employs
7 approximately 369 people, currently.

8 21. TSFL is a wholly-owned subsidiary of Medifast. The TSFL program is a weight-
9 loss program designed by Dr. Wayne Andersen. It is an integrated support system that helps people
10 make the necessary changes in their lifestyles to create optimal health. By combining the Medifast
11 product line with the support of health coaches and certified health advisors, TSFL is a simple,
12 convenient means for people to lose weight and maintain a healthy lifestyle.

13 22. TSFL works on a philosophy called the Trilogy of Optimal Health. As stated on the
14 TSFL website, Optimal Health can be broken down into three critical areas of life:

15 Healthy Body - physical health is the foundation of a happy and fulfilling life. Achieving a
16 healthy body requires two things: 1) reaching a healthy weight using Medifast Meals, and 2)
17 adopting the BeSlim philosophy which incorporates six core behaviors to help attain and
maintain Optimal Health.

18 Healthy Mind - how we feel about ourselves also affects long term Optimal Health. Through
19 personal development, learning ways to release stress, and creating time for ourselves, we
take control of our lives. That sense of freedom breeds happiness - another key to Optimal
Health.

20 Healthy Finances - debt causes stress - and stress can take a severe toll on both your
21 physical and mental health. By managing and eliminating debt, learning ways to budget, and
or seizing financial opportunities, you further yourself on the road to Optimal Health.

22 23. Anyone can purchase Medifast products without the use of a health coach, by going
23 to the Medifast website and placing an order.

24 24. If a Medifast customer is interested in obtaining the additional benefits of having a
25 personal health coach to provide counseling, mentoring and support, he/she can do so by contacting
26 a health coach through the Medifast website, at which point he/she will become a TSFL client, and
27 be entitled to all of the benefits of the program, inclusive of the same access to Medifast's products.

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1 25. However, many TSFL clients began with the TSFL program upon the
2 recommendation of a friend or loved-one – someone who had tried TSFL and found success with
3 the program, and decided to help others obtain similar success by either becoming a health coach,
4 or by simply recommending the TSFL program.

5 26. As the Optimal Health philosophy indicates, beyond a weight-loss program, TSFL
6 also offers its clients an opportunity to increase their income if they choose to become a TSFL
7 health coach. A TSFL client can become a health coach by executing a Health Advisor Application
8 and Agreement, and by purchasing either the Application Pak or Career Builder Pak for a one-time
9 cost of \$199.

10 27. As stated in Medifast’s Form 10-Qs filed with the Securities and Exchange
11 Commission (“SEC”) and on the TSFL website, (the very sources cited by FitzPatrick) becoming a
12 health coach is a business opportunity that has a low cost of start-up and requires no holding of
13 inventory, as all orders are shipped to the end consumer directly from the company. No TSFL
14 health coach is ever required to purchase Medifast product up front with his or her own funds.

15 28. Health coaches receive training in how to counsel and support their clients, and must
16 pass a test in order to begin coaching clients. Training and support are continually available
17 throughout a health coach’s career with TSFL.

18 29. Once certified, health coaches can sell Medifast products to others, and can also, if
19 they choose to, recruit other health coaches to join their team. Health coaches are not only sales
20 people, but provide all of their clients with personal counseling, mentoring and support as long as
21 they are on the Medifast program, a vital component of TSFL’s success as a weight-loss program,
22 and what differentiates TSFL from other weight-loss programs.

23 30. The average 28-day supply of Medifast dietary supplements, sold in bundled paks,
24 currently retails for \$299.50. Each pak contains approximately 143 meals, for a total cost of \$2.09
25 per meal. At five meals a day on the Medifast system, that totals \$10.35 per day in cost to the
26 consumer. The counseling, mentoring and support of the TSFL health coach are included free.

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1 31. A detailed description of the TSFL business model and explanation of the basis for
2 its continuing success is incorporated into Medifast’s Form 10-Q reports filed with the SEC (the
3 very sources cited by FitzPatrick), and are publicly available.

4 32. Health coaches receive commissions based upon the amount of Medifast food
5 products they sell to either non-health-coach clients, or to other health coaches. They do not
6 receive compensation as a result of their recruitment of other new health coaches. The only benefit
7 that health coaches receive from recruiting additional health coaches is a residual commission on
8 sales of Medifast products by the recruited health coaches.

9 33. In other words, all commissions earned are based on actual sales of actual Medifast
10 products to actual consumers.

11 34. Only approximately 1% of TSFL’s total revenue is derived from sales of the health
12 coach application packages. The remainder is derived from product sales. In other words,
13 Medifast’s revenue as reported to the SEC reflects actual sales of actual products to actual
14 customers.

15 35. As reported in Medifast’s 10-Qs to the SEC, at the end of the second quarter 2009,
16 there were approximately 4,650 active health coaches; by the end of the third quarter 2009, that
17 number had increased to approximately 5,800.

18 36. As the 10-Qs state, growth in TSFL revenues was driven by increased customer
19 product sales as a result of an increase in more experienced, active health coaches – bigger sales
20 force = higher sales.

21 37. According to the the Center for Disease Control (“CDC”), over one-third of American
22 adults – more than 72 million people – are obese; sixteen percent of American children are obese.

23 38. According to the CDC, as of 2007 (the most recent year for which data is available),
24 23.6 million Americans suffer from diabetes; 1.6 million new cases of diabetes are diagnosed each
25 year; in 2007, 57 million Americans were considered to have “pre-diabetes.”

26 39. Medifast and TSFL are specifically targeted to combat these negative trends in
27 American society and help America get healthy and stay healthy.

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1 **Minkow's Get-Rich Scheme:**

2 40. Defendant, Barry Minkow is an ex-felon who was convicted on 57 counts of
3 securities fraud, and sentenced to 25 years in federal prison, of which he served seven. On
4 information and belief, Minkow is still paying off a restitutionary judgment of more than \$9 million
5 to the victims of his crimes.

6 41. Minkow founded FDI approximately five years ago. FDI purports to be a fraud
7 investigation company, but as the FDI website and Minkow's public statements make clear, the
8 prominent purpose of FDI is to make money by taking short positions in target companies' stocks.

9 42. FDI targets a publicly traded company and alleges to conduct a private investigation
10 of that company, seeking evidence of alleged fraud. In order to facilitate FDI's scheme to defame a
11 target company such as Medifast, Minkow retains the services of his co-conspirators – FitzPatrick,
12 Coenen, Lobdell and others to aid in the so-called investigation and dissemination of their alleged
13 findings. While investigating, Minkow and his co-conspirators then take a short position in the
14 target company's stock.

15 43. A short position is defined as when a person "borrows" stock from a third party, and
16 warrants to the stock lender that the loan will be covered at a later date. A person "borrows" stock
17 from a lender when the price is high, sells the "borrowed" stock high, and then gambles that the
18 price will drop before the loan is due, in order to re-purchase the "borrowed" shares at a lower
19 price, thus making a profit in the deal.

20 44. By taking a short position, and then releasing the fabricated negative results of his
21 investigation on the FDI website, posting video clips on YouTube, creating websites dedicated to
22 bashing a target company (such as www.medifraud.net), getting his co-conspirators such as Coenen
23 and Lobdell (among others) to repeat his false allegations of fraud on their websites, Minkow, FDI
24 and their co-conspirators are able to reap huge profits when the target company's stock plummets as
25 a direct result of their false and defamatory, and very public attacks.

26 45. On information and belief, Minkow and his co-conspirators did agree to this scheme
27 of attack on Plaintiffs prior to initiating this so-called investigation; each of them did agree to
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1 further the scheme through their own actions; and in fact did further such a scheme by participating
2 in the relentless campaign to defame Plaintiffs, as outlined below.

3 **The First Attack:**

4 46. On February 17, 2009, allegedly following their investigation into Medifast, co-
5 conspirators Minkow, FDI and FitzPatrick first published FitzPatrick's Report on the FDI website –
6 www.frauddiscovery.net – and launched their new website – www.medifraud.net (Exhibit 2
7 attached hereto and incorporated by reference as if fully set forth herein). Posted on the medifraud
8 website, were four other defamatory documents including a memo entitled "Points of Similarity
9 Between Madoff and Medifast" (Exhibit 3 attached hereto and incorporated by reference as if fully
10 set forth herein); an FDI Press Release (Exhibit 4 attached hereto and incorporated by reference as
11 if fully set forth herein); Lab reports from Bodycote Testing Group, purporting to find lead in
12 certain of Medifast's products and a letter from attorney Christopher E. Grell regarding the alleged
13 lead content (Exhibit 5 attached hereto and incorporated by reference as if fully set forth herein).

14 47. Minkow also posted a video of himself on YouTube, making all of the same false
15 and defamatory statements that are asserted in the above-listed exhibits, and provided the link to the
16 video on the FDI and medifraud websites. That video is still available to viewers at
17 <http://www.youtube.com/watch?v=iGOpzCvUcxg>.

18 48. The Report purports to be the expert opinion of co-conspirator FitzPatrick, a self-
19 claimed expert in pyramid schemes, thus giving a false legitimacy to the blatantly false and
20 defamatory allegations contained therein.

21 49. By way of example only, the Report falsely declares:

- 22 A. that TSFL operates as an endless chain or pyramid scheme;
- 23 B. that TSFL's business model violates California Penal Code Chapter 9 § 327;
- 24 C. that like Bernie Madoff's Ponzi scheme, TSFL's unprecedented and
25 inexplicable growth should be looked upon with suspicion;
- 26 D. that TSFL's growth is unsustainable and therefore Medifast's reporting to its
27 shareholders is false and misleading;

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- 1 E. that TSFL's income promise is based on success at endless chain recruiting,
2 not retail selling;
- 3 F. that Medifast doesn't offer a viable income opportunity, but the illusion of
4 one;
- 5 G. that it is the bogus income opportunity of Medifast, not its weight loss
6 products, that account for its singular revenue growth and stock rise; and
- 7 H. TSFL's marketing lure is not legitimate.

8 50. By way of example only, the press release dated February 17, 2009, (Exhibit 3)
9 falsely declares:

- 10 A. that the income lure – that requires paying fees and buying TSFL products –
11 is an endless chain scheme;
- 12 B. that Medifast is similar to Bernie Madoff's massive Ponzi scheme;
- 13 C. that Medifast utilizes a similar money transfer game as Madoff by delegating
14 the recruitment aspect of the scheme to its "coaches" through the promise of
15 outrageous returns;
- 16 D. that Madoff and Medifast both rely upon the transfer of money between
17 investors within the scheme as opposed to money from retail sales generated
18 outside the scheme;
- 19 E. that the lab reports and analysis by Christopher Grell (Exhibit 5) establish
20 that the tested products were in clear violation of California's Proposition
21 65, without revealing that California's Proposition 65 does not apply to the
22 products tested; and without revealing that the levels of lead found in the
23 food are levels potentially harmful to a fetus *in utero*, not an adult; and that
24 there is already a warning on all Medifast products that pregnant women
25 should not use the products;
- 26 F. that Medifast's disclosures to new recruits and Wall Street are hopelessly
27 inadequate, implying that these alleged inadequacies are somehow in
28 violation of the law.

1 51. Following the first attack, Medifast issued a press release refuting all of Minkow,
2 FDI and FitzPatrick's false allegations. In response, FDI issued a second press release on February
3 18, 2009 (Exhibit 6 attached hereto and incorporated by reference as if fully set forth herein), in
4 which Minkow, FDI and FitzPatrick completely ignored the truth, and continued to perpetuate the
5 same lies and falsehoods regarding the TSFL business model in order to force the stock price to fall
6 further and allow them to reap higher profits in their short-selling scheme.

7 52. In that press release, Minkow, who admitted holding a short position in Medifast
8 stock, further makes false accusations regarding Medifast's choice of auditing firms, comparing this
9 choice to Madoff and his Ponzi scheme, without any basis in fact.

10 53. Following this first attack, Medifast's stock price fell almost thirty percent.

11 **The Second Attack:**

12 54. On May 21, 2009, Minkow and FDI launched a second attack on Plaintiffs by
13 posting on FDI's website and on the medifraud website, the following: a press release (Exhibit 7,
14 attached hereto and incorporated by reference as if fully set forth herein); a letter to the Federal
15 Trade Commission Chairman and California Attorney General (Exhibit 8, hereto and incorporated
16 by reference as if fully set forth herein); a document entitled "Eleven Key Distinctions Between
17 Medifast and Avon" (Exhibit 9, hereto and incorporated by reference as if fully set forth herein); a
18 document entitled "5 Points of Similarity Between Medifast and YTB (YourTravelBiz.com)"
19 (Exhibit 10, hereto and incorporated by reference as if fully set forth herein); and a second Q-1'09
20 Updated "Expert Report" from FitzPatrick (Exhibit 11, hereto and incorporated by reference as if
21 fully set forth herein).

22 55. Again, these documents contain the same false and defamatory statements, and
23 continue to perpetuate the already refuted falsity that Medifast is a Ponzi scheme and a pyramid
24 scheme and is in violation of the laws of California *and* New York, as well as Federal securities
25 laws.

26 56. The same day, in furtherance of the conspiracy to defame Plaintiffs, co-conspirator
27 Coenen posted the FDI press release (Exhibit 12, attached hereto and incorporated by reference as if
28 fully set forth herein) and the "5 Points of Similarity Between Medifast and YTB" (Exhibit 13,

1 attached hereto and incorporated by reference as if fully set forth herein) on her website, Sequence
2 Inc. Fraud Files, with her own by-line, thus adopting all of the contents of those two statements as
3 her own.

4 57. None of these statements were true when made, nor are they true now, and Minkow,
5 FDI, FitzPatrick and Coenen knew the statements were not true when they posted them. But
6 Medifast's stock had bounced back following the release of its Q'1 2009 earnings and that result
7 was not profitable for Minkow and his co-conspirators. As such, it was necessary to ramp-up the
8 attack.

9 58. The following day, on May 22, 2009, Minkow and FDI issued another press release,
10 (Exhibit 14, attached hereto and incorporated by reference as if fully set forth herein) which
11 perpetuated the same false and defamatory statements made previously, and falsely and maliciously
12 asserted that FDI would soon be rolling out YouTube videos of past Medifast "coaches" who
13 enrolled in TSFL only to conclude it was an endless chain, in order to "level the playing field for
14 the potential Medifast recruit."

15 59. As of the filing of this First Amended Complaint, FDI has yet to post a single video
16 of this kind.

17 **The Third Attack:**

18 60. When the second attack failed to have the same drastic effect on the price of
19 Medifast stock as the first, co-conspirators Minkow, FDI, FitzPatrick and Coenen tried again,
20 beginning on June 9, 2009 with the posting of another press release from Minkow and FDI (Exhibit
21 15, attached hereto and incorporated by reference as if fully set forth herein), along with a
22 document entitled "Summary Explanation of BJI Oddities" (Exhibit 16, attached hereto and
23 incorporated by reference as if fully set forth herein). This time, Minkow directly attacked the
24 independence of Medifast's outside auditors, Bagell, Josephs, Levine & Company, LLC, falsely and
25 maliciously asserting that Minkow and FDI had conducted an undercover investigation of the firm
26 that revealed that Medifast's auditor was "moonlighting as the company's stock promoter to
27 investor clients."

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1 61. This defamatory conclusion was reached based upon the maliciously false statement
2 that BJL Wealth Management, LLC, an investment firm with the same address as the audit firm,
3 recommended the purchase of Medifast stock to an unidentified “operative of [FDI].”

4 62. As Minkow and FDI well know, no such recommendation was ever made to FDI’s
5 undisclosed “operative,” and no such conclusion could possibly be reached. The allegations are
6 absolutely, knowingly false.

7 63. On June 9, 2009, Medifast’s stock price dropped over four and a half percent.

8 64. On June 24, 2009, co-conspirator Coenen posted an entry on her Sequence Inc.
9 Fraud Files blog entitled “Conflict of interest for Medifast auditors?” (Exhibit 17, attached hereto
10 and incorporated by reference as if fully set forth herein) once again falsely asserting that BJL
11 Wealth Management, LLC recommended the purchase of Medifast stock to an undisclosed FDI
12 “operative,” and further concluding that this would certainly be a conflict of interest for Medifast
13 and its auditor, Bagell, Josephs, Levine & Company.

14 65. But Coenen knew, as a member of the conspiracy, that no such recommendation was
15 ever made to the alleged FDI operative, and as such, no such conclusion could be drawn.
16 Regardless, Coenen maliciously published her false statement and once again furthered the
17 conspiracy.

18 66. Coenen and Sequence, Inc. continued the attack on September 14, 2009, by posting
19 an entry on the Fraud Files blog entitled “Medifast and Take Shape For Life: Weight loss pyramid
20 scheme?” (Exhibit 18, attached hereto and incorporated by reference as if fully set forth herein).
21 Again, this entry makes false statements that health coaches are required to put up their own money;
22 that TSFL is a pyramid scheme; and by maliciously leading readers to believe that Medifast is not
23 complying with some unknown and undisclosed legally mandated reporting requirements, without
24 disclosing to readers that no such reporting requirements actually exist (a fact that should be well
25 within the knowledge of a forensic accountant like Coenen), among other falsehoods.

26 **The Fourth Attack:**

27 67. On January 8, 2010, with Medifast stock prices at an all-time high over the past
28 several weeks, Minkow and co-conspirator FitzPatrick ramped up their attacks yet again.

1 FitzPatrick released yet another updated “expert report” this time falsely and maliciously likening
2 Medifast and TSFL to the disasterous housing bubble and sub-prime mortgage crisis, in order to
3 further vilify Plaintiffs in the eyes of the public (Exhibit 19, attached hereto and incorporated by
4 reference as if fully set forth herein), along with another press release touting their investigation and
5 false and defamatory results (Exhibit 20, attached hereto and incorporated by reference as if fully set
6 forth herein).

7 68. This updated report contains even more false and defamatory statements, which
8 again, Defendants cloak in the alleged legitimacy of “expert opinion” in order to avoid culpability.

9 69. By way of example only, this updated report falsely states:

- 10 A. that Medifast’s true competitors are Amway and Pre-Paid Legal Services, among
11 other such pyramid schemes;
- 12 B. that the evolution of a Medifast consumer pyramid scheme on Main Street to an
13 inflated stock scheme on Wall Street has an obvious and unavoidable analogy –
14 the sub-prime mortgage crisis;
- 15 C. that getting a position on the TSFL pyramid pay plan requires a payment of
16 between \$100 and \$300 and each coach would also be required to purchase
17 inventory and marketing materials;
- 18 D. that Medifast is merely a pump-and-dump scheme, creating a deception on Wall
19 Street and misleading shareholders;
- 20 E. that more than \$6 million worth of shares were dumped by insiders in the two
21 months prior to the report – a statement that is directly contradicted by publicly
22 available SEC filings;
- 23 F. that the stock price is inflated out of all proportion to revenue because the future
24 expansion is presented as “unlimited”, just like the coaches’ mythical prospects
25 for earnings;
- 26 G. and again falsely comparing Medifast to Bernie Madoff.

27 70. Medifast immediately issued a press release refuting these false and defamatory
28

1 allegations, and informing the public that an independent investigation and review confirmed that
2 the TSFL model and Medifast's disclosures were in no way violative of any law.

3 71. Minkow immediately fired back the same day, with another defamatory press release
4 (Exhibit 21, attached hereto and incorporated by reference as if fully set forth herein), and on
5 January 12, 2010, with an "Open Letter" to MacDonald directly (Exhibit 22, attached hereto and
6 incorporated by reference as if fully set forth herein), ignoring the truth and once again attacking
7 Plaintiffs with false and defamatory allegations.

8 72. Once again, Coenen joined the attack with her postings on January 12, 2010 (Exhibit
9 23, attached hereto and incorporated by reference as if fully set forth herein) and two postings on
10 January 13, 2010 (Exhibit 24 and 25 respectively, attached hereto and incorporated by reference as
11 if fully set forth herein), furthering the conspiracy by adopting and disseminating the same false and
12 defamatory allegations on behalf of her co-conspirators, that Medifast is misleading its
13 shareholders, adding fuel to the fire and further driving down the price of Medifast's stock.

14 73. By the close of the market on January 13, 2010, Medifast stock had dropped from
15 \$31.77 per share at the open on January 8, before this round of attacks, to \$27.00 per share.

16 74. On January 13, 2010, at 6:41 p.m., the plaintiff-side securities class action law firm
17 of Barrack Rodos & Bacine issued a press release further disseminating the false and defamatory
18 allegations of Defendants by announcing it was investigating Medifast for securities violations and
19 urging any potential plaintiffs to contact the firm immediately. The press release confirms that the
20 latest Minkow/FDI/FitzPatrick/Coenen attack successfully drove down Medifast's stock price by 14
21 percent (Exhibit 26, attached hereto and incorporated by reference as if fully set forth herein).

22 75. By the open of the market on January 14, 2010, Medifast stock had dropped to
23 \$24.86 per share.

24 76. On February 3, 2010, Minkow and FDI announced a new business venture and new
25 avenue for dissemination of their false and defamatory attacks on publicly-traded companies for the
26 sole purpose of making large profits by short-selling stock. Minkow and FDI joined forces with
27 their newly added co-conspirator, ex-Los Angeles Times reporter, Lobdell and posted a new
28 website – ibizreporting.com. It would be the business of Lobdell and iBiz to further disseminate the

1 false allegations of fraud in order to make a profit in the stock market, as iBiz was admittedly
2 funded directly by FDI's profits in short-selling the stock of targeted companies. Their first attack
3 was on Medifast (Exhibit 27, attached hereto and incorporated by reference as if fully set forth
4 herein).

5 77. Lobdell's "report" on Medifast includes the same false statements against Medifast,
6 including the very specific and false statement that more than \$6 million worth of shares were
7 dumped by Medifast insiders in the two months prior to his report – a statement that is directly
8 contradicted by publicly available SEC filings, sources that should have been checked by an ex-
9 reporter such as Lobdell.

10 78. As a direct result of the Defendants' attacks on Medifast, anonymous posters on the
11 Yahoo! Finance message board devoted to Medifast have further perpetuated these attacks, and
12 have specifically targeted MacDonald personally. These attacks have become so far out of control,
13 that one anonymous poster, 'medisdead' has defamed MacDonald by referring to him as "Pimp-
14 Daddy Brad." Medisdead has shamefully attacked MacDonald's honorable military service to this
15 country and implied that MacDonald is a pedophile. (Examples of just some of these attacks on
16 MacDonald personally are attached hereto as Exhibit 28 and incorporated by reference as if fully set
17 forth herein).

18 79. Defendant, Ziemann is another one of these anonymous posters. Ziemann's postings
19 contain numerous false and defamatory statements, and perpetuate those contained in Minkow, FDI,
20 and Coenen's postings as well as those posted by medisdead. Some of Ziemann's defamatory
21 statements include:

- 22 A. Medifast is in violation of Federal Trade Commission regulations;
- 23 B. Medifast falsely advertises on its website;
- 24 C. Medifast executives are guilty of insider trading;
- 25 D. Medifast engages in deceptive sales and marketing practices;
- 26 E. Medifast management are hypocrites and unethical;

27 (Exhibit 29, attached hereto and incorporated by reference as if fully set forth herein).

28 ///

1 80. On information and belief, Ziemann was in such a position that he knew that his
2 statements were false, or he recklessly disregarded the falsity of his statements, before posting
3 them.

4 81. Medifast stock closed the week of February 12, 2010 at a low of \$19.04 per share, a
5 drop of over 45 percent from its high of \$35.79 per share, prior to this latest round of attacks.

6 82. On or about February 16, 2010, just before the Complaint in this action was
7 originally filed, after the damage had been done, and the co-conspirators had sufficiently profited
8 from their year-long assault, Minkow, FDI, Lobdell and iBiz voluntarily took down access to their
9 Defamatory Postings and issued a statement indicating that their “investigation” of Medifast had
10 ended. The statement made absolutely no mention of the reasons why the so-called “investigation”
11 was suddenly ended, or of any results of the so-called “investigation.” Nor did these Defendants
12 issue a retraction of any kind. Coenen and Sequence, Inc.’s postings were still accessible to the
13 public.

14 **The Post-Filing Attack:**

15 83. On February 19, 2010, two days after Plaintiffs originally filed this action, Minkow
16 and FDI issued another press release (Exhibit 30, attached hereto and incorporated by reference as
17 if fully set forth herein) and relaunched the attack on Medifast, including re-publishing the
18 medifraud website and all of the previous Defamatory Postings described above. The press release
19 “promises [a] full-blown attack” on Plaintiffs, and accuses Plaintiffs of “using threat and
20 intimidation designed solely to silence anyone from speaking critically about their business model.”

21 84. The press release further promises readers that FDI will immediately and continually
22 release new information regarding its attacks on Medifast and TSFL.

23 85. In the six weeks since Minkow’s re-launch, not a single piece of new information
24 regarding Medifast’s alleged fraud has been posted on either the FDI or iBiz website, as promised.

25 86. On or about February 19, 2010, co-conspirator Lobdell re-published the attacks on
26 Medifast on the iBiz website, and added Medifast back to the site’s watch list. Lobdell’s article on
27 Medifast was re-launched with one significant change. Lobdell crossed out the statement “\$6
28 million worth of stock in the past two months”, a clear admission that this statement was false when

1 he first published it. But rather than remove the offending language altogether and print a
2 retraction, Lobdell left it on the site for all to continue to see, and changed his statement to “\$11.5
3 million worth of stock in 2009 (including \$6.1 million worth of stock in November and December
4 2009)...according to SEC filings.” (Exhibit 31, attached hereto and incorporated by reference as if
5 fully set forth herein; Exhibits 1 through 31 will hereinafter be referred to as the “Defamatory
6 Postings.”)

7 87. In fact, according to SEC filings, this revised figure is also false, a fact that again,
8 Lobdell, an ex-reporter for the LA Times, asserts he checked, and yet maliciously chose to ignore.

9 88. Minkow’s threats, Lobdell’s ‘corrected’ false statement, and this renewed “full-
10 blown attack” are not based on any actual belief on their part that Plaintiffs are guilty of fraud.
11 Minkow and his co-conspirators, upon being faced with the falsity of their statements and the
12 consequences of their deliberate actions, chose to knowingly re-publish (and in Lobdell’s case, also
13 alter) their false and defamatory statements for no other reason than for pure spite.

14 89. Central to co-conspirator FitzPatrick’s ‘expert opinion’ are his false conclusions that
15 health coaches are required to: spend money out of their own pockets to purchase Medifast
16 products, at retail prices, and to re-sell those products to their clients, at retail prices; pay other
17 illusory monthly fees to the company; and incur the illusory cost and expense of marketing and
18 selling the Medifast products. FitzPatrick provides no source for these false conclusions, and no
19 such conclusions could be drawn from the sources to which he does cite. These false conclusions
20 were adopted and repeated by co-conspirators Minkow, FDI, Coenen, Sequence, Inc., Lobdell and
21 iBiz, and also by Ziemann, and re-published by each of them in the Defamatory Postings.

22 90. Also central to this ‘expert opinion’ and to all of the charges made by Defendants
23 in the Defamatory Postings is their collective false statement that the only way health coaches make
24 money is by recruiting more health coaches, not by generating product sales.

25 91. This ‘expert opinion’ and all of the collective false statements made by Defendants
26 in the Defamatory Postings rest on the false premise that TSFL does not sell a product, but sells a
27 business opportunity, an allegation that is directly contradicted by the TSFL website; Medifast’s
28 website; and Medifast’s SEC filings, among other public sources.

1 100. By publishing the Defamatory Postings, Defendants intended to communicate to
2 others the false statements contained therein, which include but are not limited to those statements
3 outlined in the paragraphs above.

4 101. The statements in the Defamatory Postings are false because Plaintiffs did not
5 commit any of the acts alleged – Medifast is not a Ponzi or pyramid scheme; Medifast’s products
6 are not unsafe for human consumption; and there is no conflict of interest between Medifast and its
7 auditor. Defendants knew or should have known that the statements were false when made, or did
8 not exercise reasonable care in verifying the truth or falsity of such statements before transmitting
9 and publishing these statements, or recklessly disregarded the truth or falsity of the statements.

10 102. By publishing the Defamatory Postings, Defendants intended to injure Medifast’s
11 business reputation and to disparage its business. Defendants further intended to injure
12 MacDonald’s personal and professional reputation.

13 103. The statements contained in the Defamatory Postings are libelous *per se* because: (1)
14 the statements are in printed form and are thus libel; (2) the statements ascribe characteristics that
15 have a tendency to injure and have in fact injured Plaintiffs in their business and occupation; and (3)
16 the statements claim Plaintiffs engaged in criminal conduct and other violations of law.

17 104. Plaintiffs have suffered damages proximately caused by Defendants’ libelous action,
18 including but not limited to the loss of market capitalization of Medifast and the diminished value
19 to its common stock; loss in recruitment of new health coaches and correlating sales of Medifast
20 product and other growth opportunities and loss of potential revenue as a result of the defamatory
21 statements directly asserted against Medifast’s products; as well as the incalculable damage to
22 MacDonald’s reputation within his community as a result of Defendants’ malicious attacks, in an
23 amount that is currently unknown, but in excess of \$270 million. By reason of Defendants’ libel,
24 Plaintiffs are entitled to both general damages and all actual and compensatory damages proved at
25 the time of trial.

26 105. Defendants’ actions in knowingly publishing the false statements were intentional
27 and done with express and implied malice on the part of Defendants. Defendants knew or should
28 have known that such statements were false when they published them. Nonetheless, Defendants

1 published such false statements recklessly and in conscious disregard of the truth. Further,
2 Defendants committed such acts maliciously, oppressively, and fraudulently, with ill will and an
3 evil intent to defame and injure Plaintiffs. Plaintiffs, therefore, seek an award of exemplary and
4 punitive damages in an amount to be proven at trial.

5 **SECOND CAUSE OF ACTION**
6 **(Civil Conspiracy to Defame)**
7 **(Against All Defendants Except Thomas Ziemann)**

8 106. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1
9 through 105, above, as if fully set forth herein.

10 107. Defendants formed a conspiracy amongst each other, the purpose of which was to
11 defame Plaintiffs and cause Medifast's stock price to plummet in order that the co-conspirators
12 could financially benefit from their scheme.

13 108. Upon formation of their conspiracy, Defendants committed the acts as alleged above
14 in furtherance of that conspiracy so as to put their scheme into motion.

15 109. By putting their scheme into motion, Defendants did defame Plaintiffs as alleged
16 above, causing damage to Plaintiffs' reputations, and by manipulation of the market causing
17 Medifast's stock price to plummet, thereby allowing the co-conspirators to both glean huge profits,
18 and to bolster their own reputations in the public eye at the great expense of Plaintiffs', as a direct
19 result of their conspiracy.

20 110. Plaintiffs have suffered damages proximately caused by Defendants' conspiracy,
21 including but not limited to the loss of market capitalization of Medifast and the diminished value
22 to its common stock; loss in recruitment of new health coaches and correlating sales of Medifast
23 product and other growth opportunities and loss of potential revenue as a result of the defamatory
24 statements directly asserted against Medifast's products; as well as the incalculable damage to
25 MacDonald's reputation within his community as a result of Defendants' malicious attacks, in an
26 amount that is currently unknown, but in excess of \$270 million. By reason of Defendants'
27 conspiracy to defame, Plaintiffs are entitled to both general damages and all actual and
28 compensatory damages proved at the time of trial.

1 111. By conspiring together, and by each participating in the plan to defame Plaintiffs, as
2 alleged above, Defendants are jointly and severally liable for all damages incurred by Plaintiffs,
3 irrespective of whether or not each co-conspirator was a direct actor, and regardless of the degree of
4 each co-conspirator's activity in furtherance of the conspiracy.

5 112. Defendants' actions in knowingly conspiring to defame Plaintiffs by publishing the
6 false statements were intentional and done with express and implied malice on the part of
7 Defendants. Defendants knew or should have known that such statements were false when they
8 published them. Nonetheless, Defendants published such false statements recklessly and in
9 conscious disregard of the truth. Further, Defendants committed such acts maliciously,
10 oppressively, and fraudulently, with ill will and an evil intent to defame and injure Plaintiffs.
11 Plaintiffs, therefore, seek an award of exemplary and punitive damages in an amount to be proven
12 at trial.

13 **THIRD CAUSE OF ACTION**
14 **(California Corporations Code §§ 25400 et seq.)**
15 **(Against all Defendants)**

16 113. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1
17 through 112, above, as if fully set forth herein.

18 114. By virtue of the allegations set forth above, Defendants violated California
19 Corporations Code Sections 25400 et seq. Defendants' violations were committed either directly or
20 indirectly within California.

21 115. Defendants knew that the statements they published to the trading public and to
22 Medifast shareholders were false and intended those false statements to influence the purchase and
23 sale of Medifast stock by Medifast shareholders, enabling Defendants to reap huge profits by short-
24 selling Medifast stock themselves.

25 116. Defendants' market manipulation was directly intended to depress the price of
26 Medifast stock.

27 117. As a proximate result of Defendants' acts and/or omissions occurring in California
28 with regard to Medifast, as alleged, Medifast's stock price was manipulated downward, and
Plaintiffs were injured by such downward manipulation.

1 118. Pursuant to the provisions of California Corporations Code Section 25400 *et seq.*,
2 Plaintiffs are entitled to, and should be awarded, damages against Defendants for unlawful
3 manipulation of the price of Medifast stock.

4 **FOURTH CAUSE OF ACTION**
5 **(California Business & Professions Code §§ 17200 *et seq.*)**
6 **(By Plaintiff, Medifast Only Against all Defendants)**

7 119. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1
8 through 118, above, as if fully set forth herein.

9 120. Defendants' illegal stock market manipulation constituted unlawful, unfair, and/or
10 fraudulent business acts or practices by the Defendants, and each of them, all in violation of
11 California Business & Professions Code §§ 17200, *et seq.*

12 121. By publishing false and defamatory statements about Medifast and short-selling
13 Medifast's stock, Defendants engaged in fraudulent, wrongful and unlawful conduct, the purpose of
14 which was to unfairly damage Medifast's business for Defendants' economic benefit.

15 122. As a result of Defendants' unlawful scheme of attacking Medifast's reputation
16 through the publishing of libelous statements over the internet, thus scaring the investing public into
17 selling Medifast stock, and driving the stock price down in order that Defendants could reap huge
18 profits, Defendants have been unjustly enriched and Defendants should be required to disgorge all
19 profits made by way of their unfair business practices.

20 123. Defendants unfair business practices have caused substantial harm to Medifast,
21 through (but not limited to) decreased market capitalization and the diminished value to its common
22 shares; through loss in recruitment of new health coaches and correlating sales of Medifast product,
23 loss of other growth opportunities and loss of potential revenue as a result of the defamatory
24 statements directly asserted against Medifast's products; and the costs incurred in attempting to
25 deflect and overcome the damage inflicted by Defendants' Defamatory Postings, for which
26 Medifast is entitled to restitution in an amount to be proven at trial.

27 124. Medifast is further entitled to preliminary and permanent injunctive relief restraining
28 the Defendants, individually and collectively, each and all of them from committing further unfair
trade practices.

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JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs hereby request a trial by jury.

Dated: April 12, 2010

LAZARE POTTER & GIACOVAS LLP

By: 

Robert A. Giacovas
Lainie E. Cohen
Attorneys for Plaintiffs
MEDIFAST, INC., and BRADLEY
MacDONALD