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10 FEB 17 PM 3:51

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *MTB*

DEPUTY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

BARRY MINKOW, an individual; FRAUD
DISCOVERY INSTITUTE, INC., a California
corporation; ROBERT L. FITZPATRICK, an
individual; TRACY COENEN, an individual;
SEQUENCE, INC., a Wisconsin service
corporation; WILLIAM LOBDELL, an
individual; iBUSINESS REPORTING, a
California business organization of unknown
form; and 'ZEEYOURSELF', an individual,

Defendants.

CASE NO. 10 CV 0382

JLS WMC

COMPLAINT FOR:

- (1) DEFAMATION;
- (2) VIOLATIONS OF CALIFORNIA
CORPORATIONS CODE
SECTIONS 25400, et seq.;
- (3) UNFAIR BUSINESS PRACTICES
(CAL. BUS & PROF. CODE
SECTIONS 17200, et seq.)

DEMAND FOR JURY TRIAL

INTRODUCTION

Plaintiffs, Medifast, Inc., and Bradley MacDonald (hereinafter "Plaintiffs"), for their
Complaint against Defendants Barry Minkow (hereinafter "Minkow"), Fraud Discovery Institute,
Inc. (hereinafter "FDI"), Robert L. FitzPatrick (hereinafter "FitzPatrick"), Tracy Coenen

CR

(hereinafter "Coenen"), Sequence, Inc. (hereinafter "Sequence"), William Lobdell (hereinafter "Lobdell"), iBusiness Reporting (hereinafter "iBiz") and 'zeeyourself' (hereinafter "Zee") (collectively "Defendants"), alleges as follows:

NATURE OF THE ACTION

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

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

3. Defendants, and each of them have perpetuated the false and defamatory statements and opinions of FitzPatrick, and adopted them as their own, by republishing his alleged findings on their own websites, and through their own postings containing similarly defamatory statements, on various message boards within the internet community, in a scheme to drive down the stock price of Medifast, in order that Defendants may make huge profits by short-selling Medifast stock in the wake of their defamatory attacks on Plaintiffs' otherwise stellar reputations.

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

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THE PARTIES

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

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

7. Defendant, Barry Minkow is an individual domiciled in the state of California, and on information and belief, residing at 181 Calla Avenue, Imperial Beach, California, 91932.

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

9. Defendant, Robert L. FitzPatrick is an individual domiciled in the state of North Carolina, and on information and belief, residing at 2808 Park Road, Charlotte, North Carolina, 28209. FitzPatrick was directly retained by Minkow and FDI to prepare the Report and was paid for his services.

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

11. Defendant, Sequence, Inc. is a Wisconsin service corporation with its principal place of business at 111 E. Wisconsin Avenue, #1230, Milwaukee, Wisconsin, 53202. On information and belief, Coenen and her company, Sequence, Inc. have been retained by Minkow and FDI on several occasions to aid in the targeted investigations of publicly-traded companies for alleged fraud, thus directly targeting their services to a California domiciliary for their own profit.

12. Defendant, William Lobdell is an individual domiciled in the state of California, and on information and belief, residing at 476 Broadway, Costa Mesa, California.

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

14. Defendant, 'zeeyourself' is, on information and belief, an individual domiciled in the state of California, in Pasadena. Zee's current address is unknown to Plaintiffs at this time.

JURISDICTION AND VENUE

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

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

FACTUAL ALLEGATIONS

Medifast and Take Shape For Life:

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

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

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

20. TSFL is a wholly-owned subsidiary of Medifast. The TSFL program is a weight-loss program designed by Dr. Wayne Andersen. It is an integrated support system that helps people make the necessary changes in their lifestyles to create optimal health. By combining the Medifast

1 product line with the support of health coaches and certified health advisors, TSFL is a simple,
2 convenient means for people to lose weight and maintain a healthy lifestyle.

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

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

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

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

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

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

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

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

26. As stated in Medifast's Form 10-Qs filed with the Securities and Exchange
Commission ("SEC") and on the TSFL website, becoming a health coach is a business opportunity

1 that has a low cost of start-up and requires no holding of inventory, as all orders are shipped to the
2 end consumer directly from the company. No TSFL health coach is ever required to purchase
3 Medifast product up front with his or her own funds.

4 27. Health coaches receive training in how to counsel and support their clients, and must
5 pass a test in order to begin coaching clients. Training and support are continually available
6 throughout a health coach's career with TSFL.

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

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

16 30. A detailed description of the TSFL business model and explanation of the basis for
17 its continuing success is incorporated into Medifast's Form 10-Q reports filed with the SEC, and are
18 publicly available.

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

24 32. In other words, all commissions earned are based on actual sales of actual Medifast
25 products to actual consumers.

26 33. Only approximately 1% of TSFL's total revenue is derived from sales of the health
27 coach application packages. The remainder is derived from product sales. In other words,
28

1 Medifast's revenue as reported to the SEC reflects actual sales of actual products to actual
2 customers.

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

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

9 36. According the the Center for Disease Control ("CDC"), over one-third of American
10 adults – more than 72 million people – are obese; sixteen percent of American children are obese.

11 37. According to the CDC, as of 2007 (the most recent year for which data is available),
12 23.6 million Americans suffer from diabetes; 1.6 million new cases of diabetes are diagnosed each
13 year; in 2007, 57 million Americans were considered to have "pre-diabetes."

14 38. Medifast and TSFL are specifically targeted to combat these negative trends in
15 American society and help America get healthy and stay healthy.

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

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

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

24 41. FDI targets a publicly traded company and alleges to conduct a private investigation
25 of that company, seeking evidence of alleged fraud. While investigating, Minkow and his
26 associates take a short position in the target company's stock.

27 42. A short position is defined as when a person "borrows" stock from a third party, and
28 warrants to the stock lender that the loan will be covered at a later date. A person "borrows" stock

1 from a lender when the price is high, sells the "borrowed" stock high, and then gambles that the
2 price will drop before the loan is due, in order to re-purchase the "borrowed" shares at a lower
3 price, thus making a profit in the deal.

4 43. By taking a short position, and then releasing the negative results of his investigation
5 on the FDI website, posting video clips on YouTube, creating websites dedicated to bashing a target
6 company (such as www.medifraud.net), getting his associates such as Coenen and Lobdell (among
7 others) to repeat his false allegations of fraud on their websites, Minkow, FDI and their associates
8 are able to reap huge profits when the target company's stock plummets as a direct result of their
9 false and defamatory, and very public attacks.

10 **The First Attack:**

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

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

25 46. The Report purports to be the expert opinion of FitzPatrick, a self-claimed expert in
26 pyramid schemes, thus giving a false legitimacy to the blatantly false and defamatory allegations
27 contained therein.

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1 47. By way of example only, the Report falsely declares:

- 2 A. that TSFL operates as an endless chain or pyramid scheme;
- 3 B. that TSFL's business model violates California Penal Code Chapter 9 § 327;
- 4 C. that like Bernie Madoff's Ponzi scheme, TSFL's unprecedented and
- 5 inexplicable growth should be looked upon with suspicion;
- 6 D. that TSFL's growth is unsustainable and therefore Medifast's reporting to its
- 7 shareholders is false and misleading;
- 8 E. that TSFL's income promise is based on success at endless chain recruiting,
- 9 not retail selling;
- 10 F. that Medifast doesn't offer a viable income opportunity, but the illusion of
- 11 one;
- 12 G. that it is the bogus income opportunity of Medifast, not its weight loss
- 13 products, that account for its singular revenue growth and stock rise; and
- 14 H. TSFL's marketing lure is not legitimate.

15 48. By way of example only, the press release dated February 17, 2009, (Exhibit 3)

16 falsely declares:

- 17 A. that the income lure – that requires paying fees and buying TSFL products –
- 18 is an endless chain scheme;
- 19 B. that Medifast is similar to Bernie Madoff's massive Ponzi scheme;
- 20 C. that Medifast utilizes a similar money transfer game as Madoff by delegating
- 21 the recruitment aspect of the scheme to its "coaches" through the promise of
- 22 outrageous returns;
- 23 D. that Madoff and Medifast both rely upon the transfer of money between
- 24 investors within the scheme as opposed to money from retail sales generated
- 25 outside the scheme;
- 26 E. that the lab reports and analysis by Christopher Grell (Exhibit 5) establish
- 27 that the tested products were in clear violation of California's Proposition
- 28 65, without revealing that California's Proposition 65 does not apply to the

1 products tested; and without revealing that the levels of lead found in the
2 food are levels potentially harmful to a fetus *in utero*, not an adult; and that
3 there is already a warning on all Medifast products that pregnant women
4 should not use the products;

5 F. that Medifast's disclosures to new recruits and Wall Street are hopelessly
6 inadequate, implying that these alleged inadequacies are somehow in
7 violation of the law.

8 49. Following the first attack, Medifast issued a press release refuting all of Minkow,
9 FDI and FitzPatrick's false allegations. In response, FDI issued a second press release on February
10 18, 2009 (Exhibit 6 attached hereto and incorporated by reference as if fully set forth herein), in
11 which Minkow, FDI and FitzPatrick completely ignored the truth, and continued to perpetuate the
12 same lies and falsehoods regarding the TSFL business model in order to force the stock price to fall
13 further and allow them to reap higher profits in their short-selling scheme.

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

17 51. Following this first attack, Medifast's stock price fell almost thirty percent.

18 **The Second Attack:**

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

1 53. Again, these documents contain the same false and defamatory allegations, and
2 continue to perpetuate the already refuted falsity that Medifast is a Ponzi scheme and a pyramid
3 scheme and is in violation of the laws of California *and* New York, as well as Federal securities
4 laws.

5 54. The same day, Coenen posted the FDI press release (Exhibit 12, attached hereto and
6 incorporated by reference as if fully set forth herein) and the "5 Points of Similarity Between
7 Medifast and YTB" (Exhibit 13, attached hereto and incorporated by reference as if fully set forth
8 herein) on her website, Sequence Inc. Fraud Files, with her own by-line, thus adopting all of the
9 contents of those two statements as her own.

10 55. None of these statements were true when made, nor are they true now, and Minkow,
11 FDI, FitzPatrick and Coenen knew the statements were not true when they posted them. But
12 Medifast's stock had bounced back following the release of its Q'1 2009 earnings and that result
13 was not profitable for Minkow and his associates. As such, it was necessary to ramp-up the attack.

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

20 57. As of this filing, FDI has yet to post a single video of this kind.

21 **The Third Attack:**

22 58. When the second attack failed to have the same drastic effect on the price of
23 Medifast stock as the first, Minkow, FDI, FitzPatrick and Coenen tried again, beginning on June 9,
24 2009 with the posting of another press release from Minkow and FDI (Exhibit 15, attached hereto
25 and incorporated by reference as if fully set forth herein), along with a document entitled
26 "Summary Explanation of BJL Oddities" (Exhibit 16, attached hereto and incorporated by reference
27 as if fully set forth herein). This time, Minkow directly attacked the independence of Medifast's
28 outside auditors, Bagell, Josephs, Levine & Company, LLC, falsely asserting that Minkow and FDI

1 had conducted an undercover investigation of the firm that revealed that Medifast's auditor was
2 "moonlighting as the company's stock promoter to investor clients."

3 59. No such conclusion could be reached, as the allegations are absolutely false.

4 60. On June 9, 2009, Medifast's stock price dropped over four and a half percent.

5 61. On June 24, 2009, Coenen posted an entry on her Sequence Inc. Fraud Files blog
6 entitled "Conflict of interest for Medifast auditors?" (Exhibit 17, attached hereto and incorporated
7 by reference as if fully set forth herein) once again falsely asserting that B JL Wealth Management,
8 an investment firm with the same address as the audit firm, recommended the purchase of Medifast
9 stock to an FDI operative, and further asserting that this would certainly be a conflict of interest for
10 Medifast and its auditor, Bagell, Josephs, Levine & Company.

11 62. Coenen and Sequence continued the attack on September 14, 2009, by posting an
12 entry on the Fraud Files blog entitled "Medifast and Take Shape For Life: Weight loss pyramid
13 scheme?" (Exhibit 18, attached hereto and incorporated by reference as if fully set forth herein).
14 Again, this entry makes false statements that health coaches are required to put up their own money;
15 that TSFL is a pyramid scheme; and Medifast is not complying with some unknown and
16 undisclosed legally mandated reporting requirements, among others.

17 **The Fourth Attack:**

18 63. On January 8, 2010, with Medifast stock prices at an all-time high over the past
19 several weeks, Minkow and FitzPatrick ramped up their attacks yet again. FitzPatrick released yet
20 another updated "expert report" this time falsely likening Medifast and TSFL to the housing bubble
21 and sub-prime mortgage crisis (Exhibit 19, attached hereto and incorporated by reference as if fully
22 set forth herein), along with another press release touting their investigation and false and
23 defamatory results (Exhibit 20, attached hereto and incorporated by reference as if fully set forth
24 herein).

25 64. This updated report contains even more false and defamatory statements, which
26 again, Defendants cloak in the alleged legitimacy of "expert opinion" in order to avoid culpability.

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1 65. By way of example only, this updated report falsely states:

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

19 66. Medifast immediately issued a press release refuting these false and defamatory
20 allegations, and informing the public that an independent investigation and review confirmed that
21 the TSFL model and Medifast's disclosures were in no way violative of any law.

22 67. Minkow immediately fired back the same day, with another defamatory press release
23 (Exhibit 21, attached hereto and incorporated by reference as if fully set forth herein), and on
24 January 12, 2010, with an “Open Letter” to MacDonald directly (Exhibit 22, attached hereto and
25 incorporated by reference as if fully set forth herein), ignoring the truth and once again attacking
26 Plaintiffs with false and defamatory allegations.

27 68. Once again, Coenen joined the attack with her postings on January 12, 2010 (Exhibit
28

23, attached hereto and incorporated by reference as if fully set forth herein) and two postings on January 13, 2010 (Exhibit 24 and 25 respectively, attached hereto and incorporated by reference as if fully set forth herein), further adopting and disseminating the same false and defamatory allegations that Medifast is misleading its shareholders, adding fuel to the fire and further driving down the price of Medifast's stock.

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

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

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

72. On February 3, 2010, Minkow and FDI announced a new business venture and new avenue for dissemination of their false and defamatory attacks on publicly-traded companies for the sole purpose of make large profits by short-selling stock. Minkow and FDI joined forces with ex-Los Angeles Times reporter, Lobdell and posted a new website – ibizreporting.com. It would be the business of Lobdell and iBiz to further disseminate the false allegations of fraud in order to make a profit in the stock market, as iBiz was admittedly funded directly by FDI's profits in short-selling the stock of targeted companies. Their first attack was on Medifast (Exhibit 27, attached hereto and incorporated by reference as if fully set forth herein).

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

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

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

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

(Exhibit 29, attached hereto and incorporated by reference as if fully set forth herein). (Exhibits 1 through 29 will hereinafter be referred to as the "Defamatory Postings.")

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

77. Central to FitzPatrick's 'expert opinion' is his false assertion that health coaches are required to spend money out of their own pockets to purchase Medifast products, at retail prices, and to re-sell those products to their clients, at retail prices; pay other illusory monthly fees to the company; and incur the illusory cost and expense of marketing and selling the Medifast products. This false assertion was adopted and repeated by Minkow, FDI, Coenen, Sequence, Inc., Lobdell iBiz and Zee, and re-published by each of them in the Defamatory Postings.

78. Also central to this 'expert opinion' and to all of the assertions made by Defendants

1 in the Defamatory Postings is their collective false assertion that the only way health coaches make
2 money is by recruiting more health coaches, not by generating product sales.

3 79. This 'expert opinion' and all of the collective false assertions made by Defendants in
4 the Defamatory Postings rest on the false premise that TSFL does not sell a product, but sells a
5 business opportunity, an assertion that is directly contradicted by the TSFL website; Medifast's
6 website; and Medifast's SEC filings among other public sources.

7 80. This 'expert opinion' and all of the collective false assertions made by Defendants in
8 the Defamatory Postings rest on the false assertion that Medifast promises success to all of its
9 potential coaches and that Medifast promises a continuing and never-ending growth in profits to its
10 shareholders. But Medifast's SEC filings and the TSFL website clearly make no such assertions.

11 81. These are only an exemplary recitation of the false and defamatory statements
12 contained in the Defamatory Postings and the reasons for their falsity.

13 82. As of February 16, 2010, after the damage has been done, Minkow, FDI, Lobdell
14 and iBiz have taken down access to their Defamatory Postings and issued a statement indicating
15 that the investigation of Medifast has ended. The statement makes absolutely no mention of any
16 results, one way or the other. Coenen's postings on her Sequence, Inc. Fraud Files blog remain
17 available to readers. Thus, Defendants' allegations against Plaintiffs remain unretracted.

18 83. The use by Defendants of terms such as "Bernie Madoff" "Ponzi scheme" and
19 comparisons to the very recent sub-prime mortgage melt-down, the use of terms and concepts
20 bantered about in the media and used by politicians such as Main Street vs. Wall Street and "the
21 Great Recession" among others are very strategically chosen by Defendants and are specifically
22 intended to inflame the fears of investors and cause the depression of Medifast's stock.

23 84. These highly inflammatory, negatively-charged terms were carefully chosen by
24 Defendants to intentionally and maliciously defame Plaintiffs and to cause a panic among investors,
25 and did in fact have such an effect.

26 85. At all times, true and accurate information refuting Defendants' false assertions and
27 'expert opinions' was publicly available to them, but Defendants chose to ignore those sources and
28

1 instead intentionally mislead their audience by asserting that no such true and accurate information
2 existed, and to continue their attacks for their own pecuniary gain.

3 **FIRST CAUSE OF ACTION**

4 **Libel *Per Se***

5 **(Against all Defendants)**

6 86. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1
7 through 85, above, as if fully set forth herein.

8 87. A cause of action for libel under California law accrued in California because
9 Defendants' libelous statements were published in California.

10 88. Plaintiffs have for many years enjoyed good reputations generally and in their
11 occupations and business. Plaintiffs have further enjoyed good relations with the public and
12 Medifast's shareholders to whom Defendants directed their false and defamatory statements.

13 89. By publishing the Defamatory Postings, Defendants intended to communicate to
14 others the false statements contained therein, which include but are not limited to those statements
15 outlined in the paragraphs above.

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

22 91. By publishing the Defamatory Postings, Defendants intended to injure Medifast's
23 business reputation and to disparage its business. Defendants further intended to injure
24 MacDonald's personal and professional reputation.

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

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

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

17 **SECOND CAUSE OF ACTION**
18 **(California Corporations Code §§ 25400 et seq.)**
 (Against all Defendants)

19 95. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1
20 through 94, above, as if fully set forth herein.

21 96. By virtue of the allegations set forth above, Defendants violated California
22 Corporations Code Sections 25400 et seq. Defendants violations were committed either directly or
23 indirectly within California.

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

1 98. Defendants' market manipulation was directly intended to depress the price of
2 Medifast stock.

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

6 100. Pursuant to the provisions of California Corporations Code Section 25500, Plaintiffs
7 are entitled to, and should be awarded, damages against Defendants for unlawful manipulation of
8 the price of Medifast stock.

9 **THIRD CAUSE OF ACTION**
10 **(California Business & Professions Code §§ 17200 *et seq.*)**
 (By Plaintiff, Medifast Only Against all Defendants)

11 101. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1
12 through 100, above, as if fully set forth herein.

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

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

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

24 105. Defendants unfair business practices have caused substantial harm to Medifast,
25 through (but not limited to) decreased market capitalization and the diminished value to its common
26 shares; through loss in recruitment of new health coaches and correlating sales of Medifast product,
27 loss of other growth opportunities and loss of potential revenue as a result of the defamatory
28 statements directly asserted against Medifast's products; and the costs incurred in attempting to

1 deflect and overcome the damage inflicted by Defendants' Defamatory Postings, for which
2 Medifast is entitled to restitution in an amount to be proven at trial.

3 106. Medifast is further entitled to preliminary and permanent injunctive relief restraining
4 the Defendants, individually and collectively, each and all of them from committing further unfair
5 trade practices.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs hereby pray for judgment against Defendants in their favor on
8 each claim for relief set forth above and award them relief including, but not limited to:

9 1. For general damages in an amount according to proof at trial, but of approximately
10 \$270,000,000.00, well in excess of the jurisdictional minimum of this Court;

11 2. For special damages in an amount according to proof at trial, in an amount in excess
12 of the jurisdictional minimum of this Court;

13 3. For restitutionary damages according to proof at trial;

14 4. For disgorgement of Defendants' profits;

15 5. For punitive damages;

16 6. For prejudgment interest;

17 7. For costs;

18 8. For other applicable remedies as provided in the Civil Code, Corporations Code and
19 Business and Professions Code;

20 9. For injunctive relief; and

21 10. For such and further relief as the Court may deem appropriate.

22 Dated: February 16, 2010

LAZARE POTTER & GIACOVAS LLP

23
24 By: 

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

///

JURY DEMAND

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

Dated: February 16, 2010

LAZARE POTTER & GIACOVAS LLP

By: 

Robert A. Giacovas

Lainie E. Cohen

Attorneys for Plaintiffs

MEDIFAST, INC., and BRADLEY

MacDONALD