**No. 03-724**

IN THE

# Supreme Court of the United States

F. HOFFMANN-LA ROCHE LTD, HOFFMANN-LA ROCHE INC., ROCHE VITAMINS INC., BASF AG, BASF CORP., RHÔNE-POULENC ANIMAL NUTRITION INC., RHÔNE-POULENC INC., *et al.*,

*Petitioners,*

v.

EMPAGRAN, S.A., *et al.*,

*Respondents.*

**On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit**

## JOINT APPENDIX

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**PETITION FOR CERTIORARI FILED NOVEMBER 13, 2003**
**PETITION FOR CERTIORARI GRANTED DECEMBER 15, 2003**

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CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

| DATE | PROCEEDINGS |
|---|---|
| July 14, 2000 | Complaint of Plaintiffs Empagran, S.A., et al., filed in the United States District Court for the District of Columbia. |
| July 14, 2000 | Notice of Designation of Related Civil Cases Pending In This Or In Any Other United States Court filed in the United States District Court for the District of Columbia. |
| Nov. 14, 2000 | Amended Complaint filed in the United States District Court for the District of Columbia. |
| June 7, 2001 | Order and Memorandum Opinion of the United States District Court for the District of Columbia filed granting Joint Motion to Dismiss Amended Complaint and further ordering, among other things, that domestic plaintiffs either supplement their federal antitrust allegations or file written stipulations of dismissal. |
| July 5, 2001 | Plaintiffs' Notice of Interlocutory Appeal filed in the United States District Court for the District of Columbia. |
| July 25, 2001 | Plaintiffs' Notice of Appeal filed in the United States Court of Appeals for the District of Columbia Circuit. |
| Sept. 10, 2001 | Order of the United States District Court for the District of Columbia filed granting Motion for an Order Directing Entry of Final Judgment. |

| DATE | PROCEEDINGS |
|---|---|
| April 26, 2002 | Final Judgment of the United States District Court for the District of Columbia filed granting Motion to Dismiss. |
| Jan. 17, 2003 | Opinion and Judgment of the United States Court of Appeals for the District of Columbia Circuit filed. |
| Feb. 19, 2003 | Petition for Rehearing and Petition for Rehearing En Banc filed in the United States Court of Appeals for the District of Columbia Circuit |
| March 7, 2003 | Order of the United States Court of Appeals for the District of Columbia Circuit filed inviting Solicitor General to file a Response to the Petition for Rehearing En Banc. |
| March 24, 2003 | Brief for the United States and the Federal Trade Commission as *Amici Curiae* in Support of Petition for Rehearing En Banc filed in the United States Court of Appeals for the District of Columbia Circuit. |
| Sept. 11, 2003 | Order of the United States Court of Appeals for the District of Columbia Circuit filed Denying Petition for Rehearing. |
| Sept. 11, 2003 | Order of the United States Court of Appeals for the District of Columbia Circuit filed Denying Petition for Rehearing En Banc. |
| Oct. 24, 2003 | Order of the United States Court of Appeals for the District of Columbia Circuit filed Denying Motion to Stay Mandate. |

CLERK'S OFFICE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NOTICE OF DESIGNATION OF RELATED
CIVIL CASES PENDING IN THIS OR
IN ANY OTHER UNITED STATES COURT

Civil Action No. 00 1686
(To be supplied by the Clerk)

NOTICE TO PLAINTIFF:

Pursuant to Rule 405(b)(2), you are required to prepare and submit this form at the time of filing any civil action which is related to any pending cases or which involves the same parties and relates to the same subject matter of any dismissed related cases. This form must be prepared in sufficient quantity to provide one copy for the Clerk's records, one copy for the Judge to whom the case is assigned and one copy for each defendant, so that you must prepare 3 copies for a one defendant case, 4 copies for a two defendant case, etc.

NOTICE TO DEFENDANT:

Rule 405(b)(2) of this Court requires that you serve upon the plaintiff and file with your first responsive pleading or motion any objection you have to the related case designation.

NOTICE TO ALL COUNSEL:

Rule 405(b)(3) of this Court requires that as soon as an attorney for a party becomes aware of the existence of a related case or cases, such attorney shall immediately notify, in writing, the Judges on whose calendars the cases appear and shall serve such notice on counsel for all other parties.

_____

*The plaintiff or counsel for plaintiff will please complete the following*:

1. RELATIONSHIP OF NEW CASE TO PENDING RELATED CASE(S).

   A new case is deemed related to a case pending in this or another U.S. Court if the new case: [Check appropriate box(es) below.]

   [ ] (a) relates to common property

   [X] (b) involves common issues of fact

   [X] (c) grows out of the same event or transaction

   [ ] (d) involves the validity or infringement of the same patent

   [ ] (e) is filed by the same pro se litigant

2. RELATIONSHIP OF NEW CASE TO DISMISSED RELATED CASE(S).

   A new case is deemed related to a case dismissed, with or without prejudice, in this or any other U.S. Court, if the new case involves the same parties and relates to the same subject matter.

   Check box if new case is related to a dismissed case: [ ]

3. NAME THE UNITED STATES COURT IN WHICH THE RELATED CASE IS FILED (IF OTHER THAN THIS COURT): *District of Columbia*

4. CAPTION AND CASE NUMBER OF RELATED CASE(S). IF MORE ROOM IS NEEDED PLEASE USE OTHER SIDE.

In re Bulk Vitamins Antitrust Litigation 99MS197, MDL NO. 99MS1285

7/14/00 /s/

DATE Signature of Plaintiff (or Counsel)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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AMENDED CLASS ACTION COMPLAINT
Case No. 1:00 CV01686 (TFH)
JURY TRIAL DEMANDED

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EMPAGRAN, S.A.
KN 19 Via a La Costa Guayaquil
Province of Guayas
Republic of Ecuador,

NUTRICION ANIMAL, S.A.
El Hato Del Volcan
Primavera Street
Chiriqui, Panama,

WINDDRIDGE PIG FARM
Moppity Road
Yonge, NSW, Australia,

BRISBANE EXPORT
CORPORATION PTY, LTD.
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Caroll Park, Goodna, Australia,

PROCTER & GAMBLE MANUFACTURA,
S de R.L de C.V.
Loma Florida #32
Col. Lomas de Vistahermosa, Deleg.
Cuajimalpu, Mexico,

PROCTER & GAMBLE EUROPEAN SUPPLY COMPANY BVBA
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Temselaan, 100 Belgium,

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Newcastle upon Tyne, NE99 1 EE
United Kingdom,

PROCTER & GAMBLE MANUFACTURING COMPANY
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Cincinnati, OH 45202,

PROCTER & GAMBLE TECHNICAL CENTERS, LTD.
The Heights
Brooklands, Weybridge
Surrey, United Kingdom,

P.T. PROCTER & GAMBLE HOME PRODUCTS INDONESIA AND
P.T. PROCTER & GAMBLE INDONESIA,
Menara Rajawaii, 15th Floor
J.I. Mega Kunigan Lot #5.1
Kawasan Mega Kunigan, Jakarta 12950,

THE PROCTER & GAMBLE COMPANY
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Cincinnati, OH 45202,

and

CONCERN STIROL
10, Gorlovskaya Diviza Street
338010 Gorlovka
Donetsk Region, Ukraine,

On behalf of themselves and all others similarly situated,
*Plaintiffs*,

F. HOFFMAN LAROCHE, LTD.,
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Basel, Switzerland,

HOFFMAN-LAROCHE, INC.,
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BASF A.G.
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BASF CORPORATION
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Eisai U.S.A., Inc.,
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Teaneck, NJ 07666-6741,

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Takeda U.S.A., Inc.
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Sumitomo Chemical America, Inc.
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Chuo-Ku, Osaka, Japan,

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E. Merck
Frankfurter Straße 250
64293 Darmstadt, Germany,

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Hawthorne, NY 10532,

Degussa-Hüls AG,
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60287 Frankfurt, Germany,

Degussa Hüls Corporation
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Ridgefield Park, NJ 07660,

Nepera, Inc.
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Harriman, NY 10925,

Reilly Chemicals, S.A.
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1170 Brussels, Belgium,

Reilly Industries, Inc.
300 N. Meridan Street, Suite 1500
Indianapolis, IN 46204,

UCB SA
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1050 Brussels, Belgium,

UCB Chemicals Inc.
2000 Lake Park Drive SE
Smyrna, GA 30080,

Mitsui & Co. Ltd.
2-1 Ohetemachi 1 chrome
Chujola-ku
Tokyo, Japan,

Mitsui & Co. U.S.A. Inc.
200 Park Avenue
New York, NY 10166,

and

Bioproducts, Inc.
320 Springside Drive
Fairlawn, OH 44333.

*Defendants*.

_____

Plaintiffs, by and through their undersigned attorneys, bring this action on behalf of themselves and all others similarly situated for damages and injunctive relief under the antitrust laws of the United States, the antitrust laws of relevant foreign nations, and international law, against the above-named defendants, demanding a trial by jury. For their Class Action Complaint against defendants, Plaintiffs allege the following:

## NATURE OF THIS ACTION

1. This case arises out of a massive and long-running conspiracy, beginning as early as January 1988 and continuing until at least February 1999, among all defendants and their co-conspirators with the purpose and effect of fixing prices, allocating market share, and committing other unlawful practices designed to inflate the prices of various vitamins, identified more specifically below ("Class Vitamins"), sold to the Plaintiffs and other purchasers both within and outside the United States.

2. The conspiracy involved an astonishing array of illegal conduct by an international cartel that has deliberately targeted, and severely burdened, consumers both in the United States and foreign nations. The conspiracy has existed at least during the period from January 1, 1988 through February 1999 (the "Class Period"), and has affected billions of dollars of commerce worldwide. The conspiracy has included communications and meetings in which defendants agreed expressly and repeatedly to eliminate competition, injure and destroy businesses that would have reduced defendants' illegal market control, and to fix the prices and allocate markets worldwide for various vitamins and vitamin premixes.

3. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among defendants and their co-conspirators, the substantial terms of which were:

(a) to fix and maintain prices and to coordinate price increases for the sale of various vitamins throughout the United States and foreign countries;

(b) to allocate among defendants and their co-conspirators volumes of sales of various vitamins throughout the United States and foreign nations;

(c) to allocate among defendants and their co-conspirators all or part of certain contracts to supply various vitamins to various customers located throughout the United States and foreign nations;

(d) to refrain from submitting bids, or to submit collusive, non-competitive, and rigged bids to supply various vitamins to various customers located throughout the United States and foreign nations; and

(e) to supply various vitamins to various customers located throughout the United States and foreign nations at non-competitive prices and receive compensation therefrom.

4. The acts in furtherance of the conspiracy by defendants have included the following wrongful conduct and horizontal agreements:

(a) representatives of defendants participating in meetings and conversations in the United States and foreign nations, in which defendants and their co-conspirators discussed and agreed concerning the prices, volume of sales, and markets for vitamins and vitamin premixes;

(b) agreeing, during those meetings and conversations, to charge prices at specified levels and otherwise increase and maintain prices of various vitamins sold throughout the United States and foreign nations;

(c) agreeing, during those meeting and conversations, to allocate among the defendants and their corporate co-conspirators the approximate volume of various vitamins to be sold by each corporate conspirator throughout the United States and foreign nations;

(d) agreeing, during those meetings and conversations, to allocate among defendants and their co-conspirators customers of various vitamins throughout the United States and foreign nations;

(e) agreeing, during those meetings and conversations, to restrict producing capacity of various vitamins among defendants and co-conspirators;

(f) exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the above-described agreement;

(g) issuing price announcements and price quotations in accordance with the agreements reached;

(h) discussing among co-conspirators the submission of prospective bids to supply various vitamins to customers located throughout the United States and foreign nations;

(i) determining and designating which defendant would be the designated low bidder for contracts to supply various vitamins to customers located throughout the United States and foreign nations;

(j) discussing and agreeing upon prices to be contained within the bids for contracts to supply various vitamins to customers throughout the United States and foreign nations;

(k) refraining from bidding or submitting intentionally high, complementary bids for contracts to supply various vitamins to customers throughout the United States and foreign nations; and

(l) supplying various vitamins to various customers throughout the United States and foreign nations at non-competitive prices and receiving compensation therefrom.

5. Whenever in this Amended Complaint reference is made to any act, deed or transaction of any corporation or organization, the allegation means that the corporation or organization engaged in the act, deed or transaction by or through its officers, directors, agents, employees, servants or representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

6. "Class Vitamins" include Vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin and vitamin premixes.

## JURISDICTION AND VENUE

7. Plaintiffs bring this action under Section 1 of the Sherman Act, 15 U.S.C. § 1, Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26; the antitrust laws of relevant foreign nations; and international law, to obtain injunctive relief and to recover damages and the costs of suit, including reasonable attorneys' fees, against defendants for the injuries sustained by plaintiffs by reason of defendants' and their co-conspirators' violations of the Sherman Act, the antitrust laws of relevant foreign nations, and international law.

8. This Court has jurisdiction over plaintiffs' claims pursuant to 28 U.S.C. § 1337 and 15 U.S.C. §§ 1, 15, 22 and 26; 28 U.S.C. § 1350 ("Alien Tort Claims Act"); and 28 U.S.C. § 1367.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § l391(b), (d) and 15 U.S.C. §§ 15, 22 and 26.

10. Jurisdiction over all defendants comports with the United States Constitution, 15 U.S.C. §§ 15, 22 and 26, and the District of Columbia long-arm statute.

11. Each defendant has transacted business in the United States, done an act in the United States, or caused an anticompetitive effect in the United States by an act done elsewhere.

## PARTIES

### Plaintiffs

12. Plaintiff Empagran, S.A. ("Empagran"), is a foreign corporation domiciled at KN 19 Via a La Cost, Guayaquil, province of Guayas, of the Republic of Ecuador. Empagran purchased certain Class Vitamins directly from certain defendants or their co-conspirators for several years during the Class Period, including 1997, 1998 and 1999.

13. Plaintiff Nutricion Animal, S.A. ("Nutricion"), is a foreign corporation domiciled at El Hato Del Volcan, Primavera Street, Chiriqui, Panama. Nutricion purchased certain Class Vitamins directly from certain defendants or their co-conspirators for several years during the Class Period, including 1998.

14. Plaintiff Windridge Pig Farm ("Windridge") is an Australian entity located on Moppity Road, Yonge, NSW, Australia. During the Class Period, Windridge purchased vitamin premix directly from the certain defendants or their co-conspirators.

15. Plaintiff Brisbane Export Corporation Ply, Ltd. ("Brisbane") is an Australian corporation located at 50 Antimony Street, Caroll Park, Goodna, Australia. During the Class Period, Brisbane purchased vitamins A, D and E from the certain defendants or their co-conspirators.

16. Plaintiff Procter & Gamble Manufactura, S. de R.L. de C.V. (formerly known as Richardson-Vicks, S.A., de C.V. and Procter & Gamble de Mexico, S. de R.L. de C.V.) ("P&G Manufactura") is a foreign corporation domiciled at Loma Florida #32, Col. Lomas de Vistahermosa, Deleg. Cuajimalpu in Mexico. P&G Manufactura purchased certain Class Vitamins including vitamin C directly from certain defendants or their co-conspirators for several years during the Class Period, including 1988-91.

17. Plaintiff Procter & Gamble European Supply Company BVBA ("P&G European Supply") is a foreign corporation domiciled at 1853 Strombeek-Bever, Temselaan, 100 in Belgium. P&G European Supply purchased certain Class Vitamins directly from certain defendants or their co-conspirators for several years during the Class Period.

18. Plaintiff Procter & Gamble, Ltd. ("P&G Ltd.") is a foreign corporation domiciled at Hedley House, St. Nicholas Avenue, Gosforth, Newcastle upon Tyne, NE 99 1 EE in the United Kingdom. P&G Ltd. purchased Vitamins B, C and E from certain defendants or their co-conspirators for several years during the Class Period, including 1997-98.

19. Plaintiff The Procter & Gamble Manufacturing Company ("P&G Manufacturing") is an Ohio corporation with its principal place of business at One Procter & Gamble Plaza, Cincinnati, Ohio 45202. P&G Manufacturing purchased vitamin B5, and precursors and intermediates thereto, from certain defendants or their co-conspirators for use in foreign countries during the Class Period, including 1994-97.

20. Procter & Gamble Technical Centers, Ltd. ("P&G Technical Centers") is a foreign corporation domiciled at The Heights, Brooklands, Weybridge, Surrey in the United Kingdom. P&G Technical Centers purchased vitamin B5,

and precursors and intermediates thereto, from certain defendants or their co-conspirators during the Class Period, including 1997.

21. Plaintiffs P.T. Procter & Gamble Home Products Indonesia and P.T. Procter & Gamble Indonesia (collectively, "P&G Indonesia") are foreign corporations domiciled at Menara Rajawaii, 15th Floor, J.I. Mega Kunigan Lot #5.1, Kawasan Mega Kunigan, Jakarta 12950 in Indonesia. P&G Indonesia purchased vitamins B5 and C, including precursors and intermediates thereto, from certain defendants or their co-conspirators during the Class Period, including 1993-1999.

22. Plaintiff The Procter and Gamble Company ("P&G") is an Ohio corporation with its principal place of business at One Procter and Gamble Plaza, Cincinnati, Ohio 45202. P&G suffered injury in the United States during the Class Period as a result of Defendants' anticompetitive conduct outside the United States.

23. Plaintiff Concern Stirol ("Stirol") is a Ukrainian company with its principal place of business at 10, Gorlovskaya Diviza Street, 338010 Gorlovka, Donetsk Region, Ukraine. During the Class Period, Stirol purchased bulk vitamins, including vitamin C, and vitamin premixes from certain defendants or their co-conspirators.

Defendants

24. Defendant F. Hoffman LaRoche, Ltd. ("Roche Ltd.") is a Swiss corporation with operations in the United States. Roche Ltd. is a subsidiary of Roche Holding Ltd., a Swiss pharmaceutical company based in Basel, Switzerland. Roche, Ltd., through its affiliates, is engaged in the business of the distribution and sale of vitamins, vitamin premixes and bulk vitamin products, including one or more of the Class Vitamins in the United States and throughout the world. Roche, Ltd., directly and through affiliates that it

controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

25. Defendant Hoffman-LaRoche, Inc. ("Roche Inc.") is a New Jersey corporation with operations in the United States, and its principal place of business in Nutley, New Jersey. It conducts regular business in this District and maintains offices at 1300 I Street, N.W., No. 520, Washington, D.C. 20005. It is an affiliate of Roche Ltd. Roche Inc. is wholly-controlled by Roche Ltd., both with respect to the conduct of its business within the United States generally and specifically with respect to its challenged horizontal conduct within the United States. It was engaged in the business of the distribution and sale of vitamins, vitamin premixes and bulk vitamin products, including one or more of the Class Vitamins, in the United States and throughout the world until at least 1997.

26. Roche Vitamins, Inc. ("Roche Vitamins") is a Delaware corporation with its principal place of business in New Jersey. Roche Vitamins is wholly-controlled and dominated by Roche Ltd., both with respect to the conduct of its business within the United States generally and specifically with respect to its challenged horizontal conduct within the United States. Roche Vitamins is directly engaged in the business of the distribution and sale of vitamins, vitamin premixes and bulk vitamin products, including one or more of the Class Vitamins (A, C, E, B1, B2, B5, B6, B9, H, beta carotene, astaxanthin, canthaxanthin) throughout the United States and elsewhere.

27. Defendant BASF A.G. is a German corporation with operations in the United States. BASF A.G., through its affiliates, is engaged in the business of the distribution and sale of vitamins, vitamin premixes and bulk vitamin prod-

ucts, including one or more of the Class Vitamins, throughout the world. BASF A.G., directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and these horizontal practices were designed to and have had a substantial and adverse impact within the United States. BASF A.G., through its affiliates, is engaged in the business of the distribution and sale of vitamins, vitamin premixes and bulk vitamin products, including one or more of the Class Vitamins in the United States, and throughout the world. BASF A.G., directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

28. Defendant BASF Corporation is a Delaware corporation with operations in the United States and its principal place of business in Mount Olive, New Jersey. BASF Corporation is registered to do business in the District of Columbia. Its registered agent for service of process is located at CT Corporation, 1025 Vermont Avenue, N.W., Washington, D.C. 20005. It is engaged in the business of the distribution and sale of vitamins, vitamin premixes and bulk vitamins, including one or more of the Class Vitamins, in the United States and throughout the world. It is a wholly owned affiliate of BASF A.G. BASF Corporation is wholly-controlled by BASF A.G., both with respect to the conduct of its business within the United States generally and specifically with respect to its challenged horizontal conduct within the United States.

29. Defendant Rhone-Poulenc S.A. ("RP S.A.") is a French corporation with operations in the United States. RP S.A., through its affiliates, is engaged in the business of the

distribution and sale of vitamins, vitamin premixes and bulk vitamin products, including one or more of the Class Vitamins in the United States and throughout the world. RP S.A., directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

30. Defendant Rhone-Poulenc Animal Nutrition, Inc. ("RP Animal Nutrition") is a Delaware corporation with its principal place of business in Atlanta, Georgia. It is wholly controlled by RP S.A., both with respect to the conduct of its business within the United States generally and specifically with respect to its challenged horizontal conduct within the United States. RP Animal Nutrition is a successor to Rhone-Poulenc, Inc. ("RP Inc."), a New York corporation, with operations in the United States. Since at least 1998, RP Animal Nutrition has been directly engaged in the business of the distribution and sale of vitamins, vitamin premixes and bulk vitamin products including one or more of the Class Vitamins throughout the United States and elsewhere.

31. Defendant Rhone-Poulenc Inc. ("RP Inc.") is a New York Corporation with its principal place of business in New Jersey. RP Inc. has conducted regular business in this District and is registered to do business at 1401 I Street, N.W., No. 200, Washington, D.C. 20005. RP Inc. was engaged in the business of the distribution and sale of vitamins, vitamin premixes and bulk vitamin products including one or more of the Class Vitamins throughout the United States and elsewhere until at least 1998. RP Inc. is wholly-controlled and dominated by RP S.A., both with respect to the conduct of its business in the United States generally and specifically with respect to its challenged horizontal conduct within the United States.

32. Defendant Hoechst Marion Roussel, S.A. ("Hoechst") is a French corporation with its principal place of business in Romainville, France. Defendant Hoechst is engaged in the business of the distribution and sale of one or more of the Class Vitamins, including B12, in Europe and elsewhere. Hoechst, directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

33. Defendant Aventis, S.A. ("Aventis") was created by the December 1999 merger between Hoechst, A.G. and Rhone-Poulenc, S.A. Defendant Aventis is a French corporation with its principal place of business in Schiltigheim, France. Upon information and belief, Aventis is the successor-in-interest to Hoechst and Rhone-Poulenc.

34. Defendant AKZO Nobel, Inc. ("AKZO Inc.") is a Delaware corporation with its principal place of business at 300 S. Riverside Plaza, Chicago, Illinois 60606. AKZO Inc. is engaged in the business of the manufacturing, distribution and sales of one or more of the Class Vitamins [sic]? in Europe and elsewhere.

35. Defendant AKZO Nobel Chemicals, bv ("AKZO bv") is a Netherlands corporation with its principal place of business in the Netherlands. Defendant AKZO bv is in the business of manufacturing, distribution and sales of one or more of the Class Vitamins, including choline chloride, in Europe and elsewhere. AKZO by directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

36. Defendant LONZA A.G. ("LONZA A.G.") is a Swiss corporation with its principal place of business in Basel, Switzerland. Lonza A.G., through its affiliates, is engaged in the business of the distribution and sale of one or more of the Class Vitamins throughout the United States. Lonza A.G., directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

37. Defendant LONZA, Inc. ("LONZA") is a New York corporation with its principal place of business in Fair Lawn, New Jersey. It is engaged in the business of the distribution and sale of one or more of the Class Vitamins including B3 and H throughout the United States and elsewhere. Lonza is wholly-owned and dominated by Lonza A.G. and AL Group, generally and with respect to its challenged horizontal conduct.

38. Defendant Alusuisse Lonza Group Ltd. ("AL Group") is a Swiss corporation with operations in the United States. AL Group, through its affiliates, is engaged in the business of the distribution and sale of one or more of the Class Vitamins, throughout the world and elsewhere. AL Group, directly and through affiliates that it dominates and controls, and through actions in this country and outside the United States, has set prices and allocated markets for vitamins, pursuant to illegal horizontal agreements, and these horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

39. Defendant Cope Investments Ltd. ("Cope") is the entity holding all of the shares of stock of defendant Chinook Group, Ltd. and is wholly owned by Peter Copeland and Patrick Stayner, who also served as Cope's principal agents.

Cope benefited and was intended to benefit from the illegal and oppressive activities described herein through its wholly owned subsidiaries and entities and Copeland and Stayner as its principals and agents.

40. Defendant Chinook Group, Ltd. is a Canadian limited partnership headquartered in Sombra, Canada and organized and existing under the law of Ontario, Canada. Chinook Group, Ltd., through its affiliates, is engaged in the business of the distribution and sale of vitamins, vitamin premixes and bulk vitamin products, including one or more of the Class Vitamins, throughout the United States and the world. Chinook Group, Ltd., directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

41. Defendant Chinook Group, Inc. is a Minnesota corporation whose principal place of business is North Branch, Minnesota. It is engaged in the business of the distribution and sale of one or more of the Class Vitamins throughout the United States.

42. Defendant DCV, Inc. is a Delaware corporation whose principal place of business is Wilmington, Delaware. It is engaged in the business of the distribution and sale of one or more of the Class Vitamins throughout the United States. DCV, Inc., directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

43. Defendant DuCoa L.P., a wholly-owned subsidiary of defendant DCV, Inc., has its principal place of business in

Highland, Illinois. It is engaged in the business of the distribution and sale of one or more of the Class Vitamins throughout the United States. DuCoa, L.P., through its affiliates, is engaged in the business of the distribution and sale of vitamins, vitamin premixes and bulk vitamin products, including one or more of the Class Vitamins in the United States and throughout the world.

44. Defendant Eisai Co., Ltd. ("Eisai Ltd.") is a Japanese limited partnership having its principal place of business in Tokyo, Japan. It is engaged in the manufacture and sale of one or more of the Class Vitamins in the United States and elsewhere. Eisai Ltd., directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

45. Defendant Eisai U.S.A., Inc. ("Eisai U.S.A.") is a Texas corporation having its principal location of business in Houston, Texas. It is engaged in the business of the distribution and sale of one or more of the Class Vitamins throughout the United States.

46. Defendant Eisai Inc. is a Delaware corporation with operations in the United States and its principal place of business in Teaneck, New Jersey. Eisai Inc. is engaged in the business of the distribution and sale of one or more of the Class Vitamins, including vitamin E, throughout the United States and elsewhere. Eisai Inc. is a wholly-owned affiliate of defendant Eisai Ltd., and wholly owns defendant Eisai U.S.A. Eisai Inc. is wholly-controlled and dominated by Eisai Ltd., both with respect to the conduct of its business within the United States generally and specifically with respect to its challenged horizontal conduct within the United States.

47. Defendant Daiichi Pharmaceutical Co., Ltd. ("Daiichi") is a corporation organized and existing under the law of Japan, with its principal place of business in Tokyo, Japan. It is engaged in the manufacture and sale of one or more of the Class Vitamins in the United States and elsewhere. Daiichi, directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

48. Daiichi Fine Chemical, Inc. ("Daiichi Inc.") is a Delaware corporation with operations in the United States and its principal place of business in Lincolnshire, Illinois. Daiichi Inc. is engaged in the business of the distribution and sale of one or more of the Class Vitamins, including vitamin B5 (calpan) and vitamin B6, throughout the United States and elsewhere. Daiichi Inc. is wholly-controlled and dominated by Daiichi Ltd., both with respect to the conduct of its business within the United States generally and specifically with respect to its challenged horizontal conduct within the United States.

49. Daiichi Pharmaceuticals Corporation ("Daiichi Corp.") is a Delaware corporation with operations in the United States and its principal place of business in Montvale, New Jersey. Daiichi Corp. is engaged in the business of the distribution and sale of one or more of the Class Vitamins, including vitamin B5 (calpan) and vitamin B6, throughout the United States and elsewhere. Daiichi Corp. is wholly-controlled and dominated by Daiichi Ltd., both with respect to the conduct of its business within the United States generally and specifically with respect to its challenged horizontal conduct within the United States.

50. Defendant Takeda Chemical Industries, Ltd. ("Takeda Ltd.") is a limited partnership in Japan having its principal location of business in Osaka, Japan. Takeda Ltd., through its affiliates, is engaged in the business of the distribution and

sale of one or more of the Class Vitamins, including vitamins C, B1, B2, B6, and folic acid, throughout the world and elsewhere. Takeda Ltd., directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

51. Takeda Vitamin & Food U.S.A. ("Takeda Vitamin") is a North Carolina corporation with operations in the United States and its principal place of business in Wilmington, North Carolina. Takeda Vitamin is wholly-controlled and dominated by Takeda Ltd., both with respect to the conduct of its business within the United States generally and specifically with respect to its challenged horizontal conduct within the United States. Takeda Vitamin is a successor to defendant Takeda U.S.A., Inc. ("Takeda U.S.A."), which prior to 1998 was engaged in the business of the distribution and sale of one or more of the Class Vitamins, including vitamins C, B1, B2, B6, and folic acid, throughout the world and elsewhere. During that period, Takeda U.S.A. was wholly-controlled and dominated by Takeda Ltd., both with respect to the conduct of its business in the United States generally and with respect to its challenged horizontal conduct within the United States. Since at least 1998, Takeda Vitamin has been directly engaged in the business of the distribution and sale of one or more of the Class Vitamins, including vitamins C, B1, B2, B6, and folic acid, throughout the United States and elsewhere.

52. Defendant Sumitomo Chemical Co., Ltd. ("Sumitomo Ltd.") is a Japanese corporation with operations in the United States. Sumitomo Ltd., through its affiliates, is engaged in the business of the distribution and sale of one or more of the Class Vitamins, including vitamin B9 (folic acid) and vitamin H (biotin), throughout the world and elsewhere.

Sumitomo Ltd., directly and through affiliates that it dominates and controls, and through actions in this country and outside the United States, has set prices and allocated markets for vitamins, pursuant to illegal horizontal agreements, and these horizontal practices were designed to have and did have a substantial and adverse impact within the United States.

53. Defendant Sumitomo Chemical America, Inc. ("Sumitomo Chemical") is a New York corporation with operations in the United States and its principal place of business in New York, New York. Sumitomo Chemical is a wholly-owned subsidiary of defendant Sumitomo Ltd. Sumitomo Chemical is engaged in the business of the distribution and sale of one or more of the Class Vitamins, including vitamin B9 (folic acid) and vitamin H (biotin), throughout the United States and elsewhere. Sumitomo Chemical is wholly-controlled and dominated by Sumitomo Ltd., both with respect to the conduct of its business within the United States generally and specifically with respect to its challenged horizontal conduct within the United States.

54. Defendant Tanabe Seiyaku Company, Ltd. ("Tanabe Ltd.") is a Japanese corporation with operations in the United States. Tanabe Ltd., through its affiliates, is engaged in the business of the distribution and sale of one or more of the Class Vitamins, including vitamin H (biotin), throughout the world and elsewhere. Tanabe Ltd., directly and through affiliates that it dominates and controls, and through actions in this country and outside the United States, has set prices and allocated markets for vitamins, pursuant to illegal horizontal agreements, and these horizontal practices were designed to have and did have a substantial and adverse impact within the United States.

55. Defendant Tanabe U.S.A., Inc. ("Tanabe USA") is a Delaware corporation with operations in the United States and its principal place of business in San Diego, California.

Tanabe USA is a wholly-owned subsidiary of defendant Tanabe Ltd. Tanabe USA is engaged in the business of the distribution and sale of one or more of the Class Vitamins, including vitamin H (biotin), throughout the United States and elsewhere. Tanabe USA is wholly-controlled and dominated by Tanabe Ltd., both with respect to the conduct of its business within the United States generally and specifically with respect to its challenged horizontal conduct within the United States.

56. Defendant Merck KgaA is a German corporation having its principal location of business in Darmstadt, Germany. It engaged in the manufacture and sale of one or more of the Class Vitamins in the United States and elsewhere. Merck KgaA, directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

57. Defendant E. Merck is a German corporation having its principal location of business in Darmstadt, [sic] Germany. It engaged in the manufacture and sale of one or more of the Class Vitamins in the United States and elsewhere. E. Merck, directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

58. Defendant EM Industries, Inc. ("EM Industries") is a New York corporation with operations in the United States and its principal place of business in Hawthorne, New York. EM Industries is a wholly-owned subsidiary of defendant Merck KGaA. EM Industries is engaged in the business of the distribution and sale of one or more of the Class Vitamins,

including vitamin C, throughout the United States and elsewhere. EM Industries is wholly-controlled and dominated by Merck KGaA and E. Merck, both with respect to the conduct of its business within the United States generally and specifically with respect to its challenged horizontal conduct within the United States.

59. Defendant Degussa-Hüls AG is a German corporation having its principal location of business in Frankfurt, Germany. It engaged in the manufacture and sale of one or more of the Class Vitamins in the United States and elsewhere. Degussa-Hüls AG, directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

60. Defendant Degussa-Hüls Corporation, a wholly-owned subsidiary of defendant Degussa-Hüls AG and the successor-in-interest to Degussa Corporation, is an Alabama corporation with executive offices in Ridgefield Park, New Jersey. It is engaged in the business of the distribution and sale of one or more of the Class Vitamins throughout the United States.

61. Defendant Nepera Inc. is a New York corporation with its principal location of business in Harriman, New York. Defendant Nepera Inc. is engaged in the manufacture and sale of one or more of the Class Vitamins in the United States and elsewhere. Nepera Inc., directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

62. Defendant Reilly Chemicals, S.A. ("Reilly Chemicals") is a corporation organized and existing under the laws of Belgium. Reilly Chemicals is engaged in the sale of one or more of the Class Vitamins, including vitamin B3, in the United States and elsewhere. Defendant Reilly Industries, directly and through affiliates that it dominates and controls and through actions in this country and outside it, has set prices and allocated markets for vitamins, pursuant to illegal horizontal agreements, and these horizontal practices were designed to have and in fact did have a substantial and adverse impact within the United States.

63. Defendant Reilly Industries, Inc. is an Indiana corporation that was one-half of a joint venture known as Vitachem. Vitachem dissolved on January 1, 1999. Reilly Industries, Inc. has its principal location of business in Indianapolis, Indiana. Reilly Industries, Inc. is engaged in the business of the distribution and sale of one or more of the Class Vitamins, including vitamin B3, throughout the United States and elsewhere. Reilly Industries, Inc. directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

64. Defendant UCB SA ("UCB SA") is a Belgian corporation with its principal place of business in Brussels, Belgium. UCB SA is in the business of the manufacturing, distribution and sale of one or more of the Class Vitamins, including choline chloride, in Europe and elsewhere.

65. Defendant UCB Chemicals Inc. is a Delaware corporation with is principal place of business in Smyrna, Georgia. UCB Chemicals Inc. is engaged in the business of the distribution and sale of one or more of the Class Vitamins, including choline chloride.

66. Defendant Mitsui & Co., Ltd. is a Japanese corporation with its principal place of business in Tokyo, Japan, and is engaged in the business of manufacturing, distribution, and sale of one or more of the Class Vitamins, including choline chloride, in Europe and elsewhere. Mitsui & Co., Ltd., is the parent company of Mitsui & Co., U.S.A., Inc.

67. Defendant Mitsui & Co. U.S.A., Inc. is a New York corporation, with its principal place of business in New York, New York, and is engaged in the business of the distribution and sale of one or more of the Class Vitamins, including choline chloride, in Europe and elsewhere. Mitsui & Co. U.S.A., Inc. is wholly owned by Mitsui & Co., Ltd.

68. Defendant Bioproducts, Inc., is an Ohio corporation with its principal location of business in Fairlawn, Ohio. It is engaged in the manufacture and sale of one or more of the Class Vitamins in the United States and elsewhere. Bioproducts, Inc., directly and through affiliates that it controls, and through actions in this country and internationally, has set prices and allocated markets pursuant to illegal horizontal agreements, and those horizontal practices were designed to have, and in fact did have, a substantial and adverse impact within the United States.

69. Various other persons, companies and corporations, some of the identities of which are presently unknown, and which are not named as defendants herein, have participated as co-conspirators with defendants in the violations alleged, and have performed acts and made statements in the United States and foreign nations, in furtherance thereof.

## BACKGROUND FACTS

70. Vitamins are organic compounds required in the diet of humans and animals for normal growth and maintenance of life. Vitamins are essential sources of certain coenzymes

necessary for metabolism, the biochemical processes that support life. All known vitamins have been synthesized chemically, and various such synthesized vitamins are manufactured and sold by defendants and their corporate co-conspirators.

71. The manufacture of vitamins, vitamin premixes and other bulk vitamin products is a multibillion dollar-a-year industry worldwide. For example, in 1995, global sales for vitamins A, B2 and E were approximately $574 million, $139 million, and $1 billion, respectively.

72. During the Class Period, the world market for vitamins, vitamin premixes, intermediates, precursors and other bulk vitamin products, including the Class Vitamins, was dominated by three companies: Roche, Rhone-Poulenc and BASF. For example, these defendants control between 70 to 95 percent of the world vitamin market for Vitamins A, B2 and E. Roche, BASF, and Rhone-Poulenc together control over 95 percent of the worldwide markets for vitamins A and E.

73. During the Class Period, the conduct of defendants and their co-conspirators has taken place in and affected the interstate commerce of the United States, the internal commerce of foreign nations, and international trade.

74. The conduct of defendants and their co-conspirators has directly, substantially and foreseeably restrained such trade and commerce.

75. The Class Vitamins of Defendants are sold in interstate commerce in the United States. For example, Roche sells in interstate commerce vitamins such as vitamin A (acetate and palmatate), vitamin B2 (riboflavin), B5 (pantothenic acid), B9 (folic acid), vitamin C, vitamin E (D-Alpha and DL-Alpha), beta carotene, and vitamin H (biotin). BASF sells in interstate commerce vitamins such as vitamin A (acetate and palmatate), vitamin C, vitamin E (D-Alpha

and DL-Alpha), vitamin B2 (riboflavin), vitamin B9 (folic acid) and beta carotene. Rhone-Poulenc sells vitamin A (acetate and palmatate), vitamin B12 (cyanocobalamin), and vitamin E (D-Alpha and DL-Alpha). LONZA sells in interstate commerce vitamin B3 (niacin and niacinamide). DuCoa sells vitamin B4 in interstate commerce.

76. The bulk vitamin industry in the United States and foreign nations is characterized by economic conditions that are consistent with the conspiracy alleged herein. The Class Vitamins are considered to be commodities; there is a relatively small number of producers of these vitamins; and there are high barriers of entry due to the costly and sophisticated nature of vitamin manufacturing.

CRIMINAL PLEAS/INFORMATIONS

77. On May 20, 1999, F. Hoffmann-La Roche Ltd. ("Roche Ltd.") entered a Plea Agreement in the United States District Court for the Northern District of Texas with respect to which Roche Ltd. was required to pay a fine of $500,000,000 and admitted:

> (a) During the period of January, 1990 through at least February, 1999, (the "relevant period"), Roche Ltd., through several of its executives, officers, and employees, participated in a conspiracy with other vitamin manufacturers, the primary purpose of which was to fix, increase, and maintain the price and allocate the volume of, certain vitamins sold in the United States and elsewhere, and to allocate the volume of, certain vitamins sold in the United States. In furtherance of the conspiracy, Roche Ltd., through a number of its executives, officers and employees, engaged in conversations and attended meetings with representatives of other vitamin manufacturers. During such meetings and conversations, agreements were reached as to the prices at which the conspirators would sell certain

> vitamins and the timing of price increases, and the volumes of certain vitamins they would sell in the United States and elsewhere. Further, agreements were reached as to the submission of rigged bids for award and performance of contracts to supply certain vitamin premixes to customers located throughout the United States.
>
> (b) During the relevant period, vitamins that were the subject of this conspiracy and sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution thereof, as well as payments thereof, traveled in interstate and foreign commerce. The business activities of Roche Ltd. and its co-conspirators, in connection with the production and sale of the vitamins affected by this conspiracy, were within the flow of, and substantially affected, interstate and foreign trade and commerce.

78. Dr. Kuno Sommer, a high-ranking Roche Ltd. official, who was required to pay a $100,000 fine and served time in a U.S. federal prison, entered a Plea Agreement on May 20, 1999 in the United States District Court for the Northern District of Texas, in which Dr. Sommer admitted:

> (a) During the relevant time period, Dr. Kuno Sommer was first the North American Regional Manager for vitamins and subsequently, the Director of Worldwide Marketing of vitamins for Roche Ltd., a corporation organized and existing under the laws of Switzerland. During the relevant period, Roche Ltd. was a manufacturer of various vitamins used to enrich human food, pharmaceutical products, and animal feed in the United States and elsewhere. During the relevant period, Roche Ltd. and Dr. Kuno Sommer were engaged in the sale of these vitamins in the United States and elsewhere.

(b) During the relevant period, the defendant participated in a conspiracy with other vitamin manufacturers, and their officers and employees, the primary purpose of which was to fix, increase, and maintain the price and allocate the volume of, certain vitamins sold in the United States and elsewhere and to allocate customers in the United States. In furtherance of the conspiracy, the defendant engaged in conversations and attended meetings with representatives of other vitamin manufacturers. During such meetings and conversations, agreements were reached as to the volumes of certain vitamins the conspirators would sell, and the prices at which they would sell certain vitamins in the United States and elsewhere. Further, agreements were reached resulting in the submission of rigged and non-competitive bids for the award and performance of contracts to supply certain vitamin premixes to customers located throughout the United States.

(c) During the relevant period, vitamins that were the subject of this conspiracy and sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution thereof, as well as payments therefor, traveled in interstate and foreign commerce. The business activities of Roche Ltd., Dr. Kuno Sommer, and co-conspirators, in connection with the production and sale of the vitamins affected by this conspiracy, were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(d) Dr. Sommer admitted to perjury in relation to false statements made during an interview with law enforcement officials of the United States Department of Justice, Antitrust Division, on March 12, 1997, where he stated that there was no conspiracy among the world's leading vitamins manufacturers.

79. On May 20, 1999, BASF A.G. entered a Plea Agreement in the United States District Court for the Northern District of Texas in which BASF A.G. was required to pay a fine of $225,000,000 and admitted:

> (a) During the relevant period, BASF A.G., through several of its executives, officers, and employees, participated in a conspiracy with other vitamin manufacturers, the primary purpose of which was to fix, increase, and maintain the price and allocate the volume of, certain vitamins sold in the United States and elsewhere, and to allocate the volume of, certain vitamins sold in the United States. In furtherance of the conspiracy, BASF A.G., through a number of its executives, officers and employees, engaged in conversations and attended meetings with representatives of other vitamin manufacturers. During such meetings and conversations, agreements were reached as to the prices at which the conspirators would sell certain vitamins and the timing of price increases, and the volumes of certain vitamins they would sell in the United States and elsewhere. Further, agreements were reached as to the submission of rigged bids for award and performance of contracts to supply certain vitamin premixes to customers located throughout the United States.
>
> (b) During the relevant period, vitamins that were the subject of this conspiracy and sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution thereof, as well as payments thereof, traveled in interstate and foreign commerce. The business activities of BASF A.G. and its co-conspirators, in connection with the production and sale of the vitamins affected by this conspiracy, were within the flow of, and substantially affected, interstate and foreign trade and commerce.

80. An information was filed on August 19, 1999, by the United States of America against Dr. Roland Brönnimann, President of the Fine Chemical and Vitamin Division of Roche, Ltd., alleging that:

> (a) Beginning in part at least as early as January 1990 and continuing in part until February 1999, the exact dates being unknown to the United States, the defendant's corporate employer, F. Hoffmann-La Roche Ltd. ("Roche"), and co-conspirators entered into and participated in a combination and conspiracy to suppress and eliminate competition by fixing the price and allocating the volume of certain vitamins manufactured by the defendant and its co-conspirators and sold by them in the United States and elsewhere, and to allocate customers for vitamin premixes sold in the United States. The combination and conspiracy engaged in by the defendant and co-conspirators was an unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). The defendant joined and participated in the charged conspiracy from at least as early as Spring, 1991 until at least February 1999.
>
> (b) The charged combination and conspiracy:
>
> i. consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators regarding certain vitamins manufactured by corporate conspirators and sold by them in the United States and elsewhere, the substantial terms of which were to:
>
> (1) fix, increase, and maintain prices and to coordinate price increases for the sale of such vitamins in the United States and elsewhere;

(2) allocate among the corporate conspirators the volume of sales and market shares of such vitamins in the United States and elsewhere; and,

(3) allocate among corporate conspirators all or part of certain contracts to supply vitamin premixes to various customers located throughout the United States and to refrain from submitting bids, or to submit collusive, noncompetitive and rigged bids, therefor;

ii. involved a changing group of conspirators and affected a changing group of vitamins at various points in time during the period covered by this Information, its scope adjusting over time to the manufacturers producing certain vitamins and participating in the combination and conspiracy; and,

iii. affected at least the following vitamins for the indicated time periods during the combination and conspiracy charged in this Information:

(1) vitamins A and E sold in the United States and elsewhere, from January 1990 into February 1999;

(2) vitamin B2 (Riboflavin) sold in the United States and elsewhere, from January 1991 into at least Fall 1995;

(3) vitamin B5 (CalPan and/or pantothenic acid) sold in the United States and elsewhere, from January 1991 into at least December 1998;

(4) vitamin C sold in the United States and elsewhere, from January 1991 into at least the late Fall 1995;

(5) beta carotene sold in the United States and elsewhere, from January 1991 into at least December 1998; and,

(6) vitamin premixes, precursors and intermediates sold to customers located throughout the United States, from January 1991 into at least December 1997.

(c) For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do including, among other things:

VITAMINS

i. participating in meetings and conversations in the United States and elsewhere to discuss the prices and volumes of vitamins A and E, vitamin B2, vitamin B5, vitamin C, and beta carotene sold in the United States and elsewhere;

ii. agreeing, during such meetings and conversations regarding such vitamins, to fix, increase, and maintain prices at certain levels in the United States and elsewhere;

iii. agreeing, during such meetings and conversations regarding such vitamins, to allocate among the corporate conspirators the approximate volume of such vitamins to be sold by them in the United States and elsewhere;

iv. exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the above-described agreements;

v. issuing price announcements and price quotations in accordance with the above-described agreements;

vi. selling such vitamins at the agreed-upon prices and in accordance with the agreed-upon sales volume allocations in the United States and elsewhere;

VITAMIN PREMIXES

vii. participating in meetings and conversations in the United States and elsewhere to discuss the submission of prospective bids for contracts to supply vitamin premixes to various customers located throughout the United States;

viii. agreeing, during such meetings and conversations, which corporate conspirator would be designated the low bidder for particular contracts to supply vitamin premixes to various customers located throughout the United States;

ix. agreeing, during such meetings and conversations, on the prices to be submitted by the designated low bidders for particular contracts to supply vitamin premixes to various customers throughout the United States;

x. refraining from bidding, or submitting intentionally high, complementary and non-competitive bids, for particular contracts to supply vitamin premixes to various customers throughout the United States; and

xi. selling vitamin premixes to various customers throughout the United States at rigged and non-competitive prices.

81. An Information was filed on September 30, 1998, by the United States of America against Lonza, A.G., alleging that:

(a) Beginning at least as early as January 1992 and continuing until at least March 1998, the exact dates being unknown to the United States, the defendant and co-conspirators entered into and participated in a

combination and conspiracy to suppress and eliminate competition by fixing the price and allocating the volume of niacin and niacinamide sold in the United States and elsewhere. The combination and conspiracy engaged in by the defendant and co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

(b) The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were:

i. to agree to fix and maintain prices and to coordinate price increases for the sale of niacin and niacinamide in the United States and elsewhere;

ii. to agree to allocate among the corporate conspirators the volume of sales of niacin and niacinamide in the United States and elsewhere; and

iii. to agree to allocate among the corporate conspirators customers of niacin and niacinamide in the United States and elsewhere.

(c) For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do, including, among other things:

i. participating in meetings and conversations in the United States and Europe to discuss the prices and volume of niacin and niacinamide sold in the United States and elsewhere;

ii. agreeing, during those meetings and conversations, to charge prices at certain levels and otherwise to increase and maintain prices of niacin and niacinamide sold in the United States and elsewhere;

iii. agreeing, during those meetings and conversations, to allocate among the corporate conspirators the approximate volume of niacin and niacinamide to be sold by each corporate conspirator in the United States and elsewhere;

iv. agreeing, during those meetings and conversations, to allocate among the corporate conspirators customers of niacin and niacinamide in the United States and elsewhere;

v. exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the above-described agreement; and

vi. issuing price announcements and price quotations in accordance with the agreements reached.

82. An Information was filed on September 9, 1999, by the United States of America against Eisai Co., Ltd. ("Eisai Ltd."), alleging that:

(a) Beginning at least as early as January 1991 and continuing into at least February 1999, the exact dates being unknown to the United States, the defendant and co-conspirators entered into and participated in a combination and conspiracy to suppress and eliminate competition by fixing the price and allocating the volume of vitamin E manufactured by the defendant and its co-conspirators and sold by them in the United States and elsewhere. The combination and conspiracy engaged in by the defendant and its co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

(b) The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-

conspirators regarding vitamin E manufactured by the corporate conspirators and sold by them in the United States and elsewhere, the substantial terms of which were to:

i. fix, increase, and maintain prices and to coordinate price increases for the sale of vitamin E in the United States and elsewhere; and,

ii. allocate among the corporate conspirators the volume of sales and market shares of vitamin E in the United States and elsewhere.

(c) For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do including, among other things:

i. participating in meetings and conversations to discuss the prices and volumes of vitamin E sold in the United States and elsewhere;

ii. agreeing, during such meetings and conversations regarding vitamin E, to increase and maintain prices in the United States and elsewhere;

iii. agreeing, during such meetings and conversations regarding vitamin E, to allocate among the corporate conspirators the approximate volume of vitamin E to be sold by them in the United States and elsewhere;

iv. exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the above-described agreements;

v. issuing price announcements and price quotations in accordance with the above-described agreements; and

vi. selling vitamin E at increased prices and in accordance with the agreed-upon sales volume allocations in the United States and elsewhere.

83. An Information was filed on September 9, 1999, by the United States of America against Daiichi Pharmaceutical Co., Ltd., alleging that:

(a) Beginning at least as early as January 1991 and continuing into at least February 1999, the exact dates being unknown to the United States, the defendant and co-conspirators entered into and participated in a combination and conspiracy to suppress and eliminate competition by fixing the price and allocating the volume of vitamin $B_5$ (CalPan) manufactured by the defendant and its co-conspirators and sold by them in the United States and elsewhere. The combination and conspiracy engaged in by the defendant and its co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

(b) The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators regarding vitamin $B_5$ (CalPan) manufactured by the corporate conspirators and sold by them in the United States and elsewhere, the substantial terms of which were to:

i. fix, increase, and maintain prices and to coordinate price increases for the sale of vitamin B5 (CalPan) in the United States and elsewhere; and,

ii. allocate among the corporate conspirators the volume of sales and market shares of vitamin Bs (CalPan) in the United States and elsewhere.

(c) For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do including, among other things:

i. participating in meetings and conversations to discuss the prices and volumes of vitamin B5 (CalPan) sold in the United States and elsewhere;

ii. agreeing, during such meetings and conversations regarding vitamin $B_5$ (CalPan) to fix, increase, and maintain prices at certain levels in the United States and elsewhere;

iii. agreeing, during such meetings and conversations regarding vitamin $B_5$ (CalPan) to allocate among the corporate conspirators the approximate volume of vitamin $B_5$ (CalPan) to be sold by them in the United States and elsewhere;

iv. exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the above-described agreements;

v. issuing price announcements and price quotations in accordance with the above-described agreements; and

vi. selling vitamin $B_5$ (CalPan) at the agreed-upon prices and in accordance with the agreed-upon sales volume allocations in the United States and elsewhere.

84. An Information was filed on September 9, 1999, by the United States of America against Takeda Chemical Industries, Ltd., alleging that:

(a) Beginning at least in early 1991 and continuing into at least Fall 1995, the exact dates being unknown to the United States, the defendant and co-conspirators entered into and participated in a combination and conspiracy to suppress and eliminate competition by

fixing the price and allocating the volume of vitamins B2 and C manufactured by the defendant and its co-conspirators and sold by them in the United States and elsewhere. The combination and conspiracy engaged in by the defendant and its co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

(b) The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators regarding vitamins B2 and C manufactured by the corporate conspirators and sold by them in the United States and elsewhere, the substantial terms of which were to:

i. fix, increase, and maintain prices and to coordinate price increases for the sale of vitamins B2 and C in the United States and elsewhere; and

ii. allocate among the corporate conspirators the volume of sales and market shares of vitamins B2 and C in the United States and elsewhere.

(c) For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do including, among other things:

i. participating in meetings and conversations to discuss the prices and volumes of vitamins B2 and C sold in the United States and elsewhere;

ii. agreeing, during such meetings and conversations regarding vitamins B2 and C, to fix, increase, and maintain prices at certain levels in the United States and elsewhere;

iii. agreeing, during such meetings and conversations regarding vitamins B2 and C, to allocate among the corporate conspirators the approximate volume of vitamins B2 and C to be sold by them in the United States and elsewhere;

iv. exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the above-described agreements;

v. issuing price announcements and price quotations in accordance with the above-described agreements; and

vi. selling vitamins B2 and C at the agreed-upon prices and in accordance with the agreed-upon sales volume allocations in the United States and elsewhere.

85. An Information was filed by the United States on May 5, 2000 against Degussa-Hüls AG alleging, among other things, that:

(a) Beginning at least as early as January 1992 and continuing until at least March 1998, the exact dates being unknown to the United States, the defendant and co-conspirators entered into and participated in a combination and conspiracy to suppress and eliminate competition by fixing the price and allocating the volume of niacin and niacinamide sold in the United States and elsewhere. The combination and conspiracy engaged in by the defendant and co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. §1).

(b) The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were:

i. to agree to fix and maintain prices and to coordinate price increases for the sale of niacin and niacinamide in the United States and elsewhere;

ii. to agree to allocate among the corporate conspirators the volume of sales of niacin and niacinamide in the United States and elsewhere; and

iii. to agree to allocate among the corporate conspirators customers of niacin and niacinamide in the United States and elsewhere.

(c) For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do, including, among other things:

i. participating in meetings and conversations in the United States and Europe to discuss the prices and volume of niacin and niacinamide sold in the United States and elsewhere;

ii. agreeing, during those meetings and conversations, to charge prices at certain levels and otherwise to increase and maintain prices of niacin and niacinamide sold in the United States and elsewhere;

iii. agreeing, during those meetings and conversations, to allocate among the corporate conspirators the approximate volume of niacin and niacinamide to be sold by each corporate conspirator in the United States and elsewhere;

iv. agreeing, during those meetings and conversations, to allocate among the corporate conspirators customers of niacin and niacinamide in the United States and elsewhere;

v. exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the above-described agreement; and

vi. issuing price announcements and price quotations in accordance with the agreements reached.

86. An Information was filed by the United States on May 5, 2000 against Nepera, Inc, alleging, among other things that:

(a) Beginning at least as early as January 1992 and continuing until at least March 1998, the exact dates being unknown to the United States, the defendant and co-conspirators entered into and participated in a combination and conspiracy to suppress and eliminate competition by fixing the price and allocating the volume of niacin and niacinamide sold in the United States and elsewhere. The combination and conspiracy engaged in by the defendant and co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. §§ 1). The defendant joined and participated in the charged conspiracy from at least as early as January 1992 until at least July 1995.

(b) The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were:

i. to agree to fix and maintain prices and to coordinate price increases for the sale of niacin and niacinamide in the United States and elsewhere;

ii. to agree to allocate among the corporatc conspirators the volume of sales of niacin and niacinamide in the United States and elsewhere; and

iii. to agree to allocate among the corporate conspirators customers of niacin and niacinamide in the United States and elsewhere.

(c) For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do, including, among other things:

i. participating in meetings and conversations in the United States and Europe to discuss the prices and volume of niacin and niacinamide sold in the United States and elsewhere;

ii. agreeing, during those meetings and conversations, to charge prices at certain levels and otherwise to increase and maintain prices of niacin and niacinamide sold in the United States and elsewhere;

iii. agreeing, during those meetings and conversations, to allocate among the corporate conspirators the approximate volume of niacin and niacinamide to be sold by each corporate conspirator in the United States and elsewhere;

iv. agreeing, during those meetings and conversations, to allocate among the corporate conspirators customers of niacin and niacinamide in the United States and elsewhere;

v. exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the above-described agreement; and

vi. issuing price announcements and price quotations in accordance with the agreements reached.

87. An Information was filed by the United States on May 5, 2000 against Merck KGaA alleging, among other things, that:

> (a) Beginning at least in early 1991 and continuing into at least Fall 1995, the exact dates being unknown to the United States, the defendant and co-conspirators entered into and participated in a combination and conspiracy to suppress and eliminate competition by fixing the price and allocating the volume of vitamin C manufactured by the defendant and its co-conspirators and sold by them in the United States and elsewhere. The combination and conspiracy engaged in by the defendant and its co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. §§ 1).
>
> (b) The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators regarding vitamin C manufactured by the corporate conspirators and sold by them in the United States and elsewhere, the substantial terms of which were to:
>
> i. fix, increase, and maintain prices and to coordinate price increases for the sale of vitamin C in the United States and elsewhere; and
>
> ii. allocate among the corporate conspirators the volume of sales and market shares of vitamin C in the United States and elsewhere.
>
> (c) For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and

co-conspirators did those things that they combined and conspired to do including, among other things:

i. participating in meetings and conversations to discuss the prices and volumes of vitamin C sold in the United States and elsewhere;

ii. agreeing, during such meetings and conversations regarding vitamin C, to fix, increase, and maintain prices at certain levels in the United States and elsewhere;

iii. agreeing, during such meetings and conversations regarding vitamin C, to allocate among the corporate conspirators the approximate volume of vitamin C to be sold by them in the United States and elsewhere;

iv. exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the above-described agreements;

v. issuing price announcements and price quotations in accordance with the above-described agreements; and

vi. selling vitamin C at the agreed-upon prices and in accordance with the agreed-upon sales volume allocations in the United States and elsewhere.

88. In Canada on September 22, 1999, F. Hoffman-LaRoche Ltd. pleaded guilty to price-fixing in violation of Canadian competition laws and was fined $48 million. Executives Dr. Roland Brönnimann and Andreas Hari also pleaded guilty and were both fined $250,000 respectively. BASF A.G. pleaded guilty to price fixing and was fined $19 million. Rhone-Poulenc SA pleaded guilty to price-fixing and was fined $14 million. Daiichi Pharmaceutical Co. Ltd. pleaded guilty to price-fixing and was fined $2.5 million. Eisai Co. Ltd. pleaded guilty to price-fixing and was fined

$2.5 million. Chinook Group. Ltd. pleaded guilty to price-fixing and was fined $2.25 million; Canadian pharmaceutical company Roussel Canada, Inc., a subsidiary of Hoechst Marion Roussel, S.A., pleaded guilty and was fined $370,000 under Canada's Competition Act for international price-fixing and market-sharing involving vitamin B-12 between 1990 and 1997.

## THE CONSPIRACY

89. Defendants' activities comprised an over-arching, worldwide conspiracy to raise, stabilize and maintain the price of vitamins. This over-arching conspiracy was comprised, in turn, of a series of narrower sub-conspiracies, each focused on one vitamin, or a small group of vitamins. Each sub-conspiracy involved the global market for each vitamin or series of vitamins. All of the conspiracies were typified by certain common characteristics and activities, as set forth below.

90. The conspiracies generally were carried out with the knowledge and consent of some of the highest officials within defendants. These officials not only participated in the conspiratorial meetings, but also received oral and written reports regarding the conspiracies' activities and effects.

91. The conspiratorial meetings among defendants generally were held at hotels.

92. The conspiracies for each vitamin generally were initiated through an "ice-breaking meeting" at which defendants met to discuss the viability of a price-fixing conspiracy for a particular vitamin, each participant's share, allocation of consumers and markets, and the mechanisms of the conspiracy. The parties subsequently communicated with regard to the conspiracies through follow-up meetings throughout the world, as well as through regular telephone contact.

93. The locations of the face-to-face meetings to initiate and monitor the conspiracies included Toronto, Canada; Wilmington, Delaware (USA); Mexico City, Mexico; Ludwigshaven, Germany; Atlanta, Georgia (USA); Amsterdam; Bruge, Belgium; Jahor Bahru, Malaysia; St. Louis, Missouri (USA); Detroit, Michigan (USA); Chicago, Illinois (USA); and Paris, France.

94. The conspiracies were characterized by the following type of agreements and activities:

(a) agreements to allocate portions of the relevant market;

(b) agreements to increase prices of the products, often to specific target levels, which generally were not cost-based;

(c) agreements to establish specific pricing tiers based on volume of product purchased per year;

(d) agreements to price contracts on a quarterly, not annual, basis to increase defendants' ability to raise prices;

(e) agreements as to which defendant would announce a price increase first, and which publication's price increase announcement would constitute the "official" signal to raise prices;

(f) agreements to allocate customers and geographic regions among defendants, which included maintaining the status quo with respect to existing customers (if clients got switched from one conspirator to another, the balance was adjusted by taking a client from that company without competition or through negotiations between the two companies);

(g) sales personnel of the defendants would pursue viable business opportunities, only to be told by more senior management to drop the projects because other

defendants would not let that company participate in the targeted market;

(h) within the conspiracy, certain customers of a defendant were considered its "house" accounts and a competitor's accounts were "pass" accounts, meaning they were to be passed over and not bid on;

(i) many of the conspiracies began as United States or North American conspiracies and grew into international conspiracies, which followed the same patterns and displayed the same characteristics as those established in the United States/North American conspiracies;

(j) the international conspiracies generally lead to an agreement between the North American and European defendants for "peaceful co-existence" in which the North American companies agreed to leave the European vitamin markets and the European companies agreed to leave the North American vitamin markets;

(k) agreements to meet periodically after the initiation of a conspiracy to discuss, monitor, and correct the allocations and revenues being obtained through the conspiracy;

(l) agreements to exchange information regarding price quotes to customers and to confirm transaction prices with customers;

(m) destruction of documents reflecting the price-fixing, market-allocation and bid-rigging conspiracies when defendants feared that the conspiracies had been discovered by antitrust officials in North America and elsewhere;

(n) bribes to officials who threatened to expose the conspiracies;

(o) termination and other retaliation against officials or employees who would not participate in the

conspiracies or who threatened to expose the conspiracies; and

(q) lying to governmental investigators about the conspiracies and their scope.

95. Defendants exercised an extraordinary level of control not only over the entirety of the worldwide vitamins markets, but also over activities within their competitors' companies. For example, in March of 1993, a senior Roche executive called Lonza headquarters in Switzerland to complain that a United States sales representative of Lonza was calling on "Roche customers." The Lonza sales representative was compelled by his superiors to travel to Roche headquarters to personally explain his actions and apologize for his conduct, which conduct had threatened the conspiracy.

## CLASS ACTION ALLEGATIONS

96. Plaintiffs bring this action on behalf of themselves and, under Fed. R. Civ. 23(b)(3), as representatives of the following classes (the "Classes" or "Plaintiff Classes"):

(a) Domestic Purchasers - all persons and entities domiciled in the United States who directly purchased Class Vitamins from any defendant or its co-conspirators from January 1, 1988 through February 1999 ("the Class Period"), for delivery outside the United States, excluding all governmental entities, defendants, their co-conspirators, and their respective subsidiaries and affiliates;

(b) Foreign Purchasers - all persons and entities domiciled outside the United States who directly purchased Class Vitamins from any defendant or its co-conspirators from January 1, 1988 through February 1999 ("the Class Period"), for delivery outside the United States, excluding all governmental entities, defendants, their co-conspirators and their respective subsidiaries and affiliates.

97. Members of each Class are numerous and joinder is impracticable.

98. Plaintiffs' claims are typical of the members of the Classes. Plaintiffs and all members of the Plaintiff Classes were damaged by the same wrongful conduct by defendants and their co-conspirators.

99. Plaintiffs will fairly and adequately protect and represent the interests of the Plaintiff Classes. The interests of plaintiffs are coincident with, and not antagonistic to, those of the Classes.

100. Plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex class action and antitrust litigation.

101. Questions of law and fact common to the members of the Classes predominate over questions, if any, that may affect only individual members because defendants have acted on grounds generally applicable to the entirety of the Classes. Such generally applicable conduct is inherent in defendants' collusion.

102. Questions of law and fact common to the Classes include:

(a) whether defendants and their co-conspirators combined, agreed, and conspired among themselves to fix, maintain, or stabilize prices of, and allocate markets for Class Vitamins;

(b) the existence and duration of horizontal agreements to fix, maintain, or stabilize prices of, and allocate markets for, Class Vitamins;

(c) whether each defendant was a member of, or participant in the contract, combination and/or conspiracy as alleged;

(d) whether defendants and their co-conspirators took steps to conceal their conspiracy from the plaintiffs and the Classes;

(e) whether and to what extent the conduct of defendants and their co-conspirators caused injury to the business or property of plaintiffs and the Plaintiff Classes, and if so, the appropriate measure of damages;

(f) whether the agents, officers or employees of defendants and their co-conspirators participated in telephone calls and meetings in furtherance of the conspiracy as alleged; and

(g) whether plaintiffs and members of the Classes are entitled to declaratory and/or injunctive relief.

103. Class action treatment is the superior (if not the only) method for the fair and efficient adjudication of this controversy, in that, among other things, such treatment will permit a large number of similarly situated persons around the world to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of evidence, effort, and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that it might not be practicable to pursue individually, substantially outweigh the difficulties, if any, that may arise in management of this class action.

Fraudulent Concealment

104. Plaintiffs did not discover and could not discover, through the exercise of reasonable diligence, the existence of the claims sued upon until recently because defendants and their co-conspirators actively, intentionally and fraudulently concealed the existence of the combination and conspiracy

from plaintiffs by one or more of the following affirmative acts, including acts in furtherance of the conspiracy:

(a) covert meetings in the United States and foreign nations in which the prices, sales, volumes of sales and markets for Class Vitamins were discussed and agreed;

(b) allocating secretly among themselves customers and contracts for the sale of Class Vitamins;

(c) intentionally submitting inflated bids to customers to make other bids appear legitimate;

(d) intentionally bidding purportedly on a competitive basis when such bid was the result of collusion;

(e) offering improper payments to witnesses who have knowledge of the existence of the conspiracy to keep them silent;

(f) instructing members of the conspiracy at conspiracy meetings not to divulge the existence of the conspiracy to others not in the conspiracy;

(g) confining the anticompetitive, unlawful plan to a small number of people and officials at each defendant company;

(h) conducting covert telephone calls in the United States and foreign nations;

(i) creating documents in the ordinary course of defendants' businesses without reference to conduct that constitutes an antitrust violation or anticompetitive action; and

(j) participating in meetings and conversations to monitor and enforce adherence to the agreed-on prices and market shares.

INJURY TO PLAINTIFFS AND THE CLASSES

105. This combination and conspiracy has had the following effects, among others:

(a) the price of Class Vitamins has been fixed, raised, maintained and stabilized at artificial and non-competitive levels;

(b) buyers of Class Vitamins, including plaintiffs (and the Plaintiff Classes), have been deprived of free and open competition in the purchase of Class Vitamins; and

(c) competition in the sale of Class Vitamins has been restrained.

106. During the Class Period, plaintiffs have purchased Class Vitamins from defendants and others. By reason of the alleged violations set forth herein, plaintiffs paid more for Class Vitamins products than they would have paid in the absence of the illegal combination and conspiracy and, as a result, they have been injured in their business and property and have suffered damages in an amount presently undetermined.

COUNT I
VIOLATION OF SHERMAN AND CLAYTON ACTS
(ON BEHALF OF DOMESTIC AND FOREIGN PURCHASERS)

107. Plaintiffs incorporate the allegations described in Paragraphs 1 through 105 above as if fully set forth herein.

108. During the Class Period, defendants sold and shipped substantial quantities of Class Vitamins in a continuous and uninterrupted flow of interstate and foreign commerce. Defendants received payment for such products across state and national boundaries. Defendants' activities, and the sale of their products, have both taken place, and have had a substantial anticompetitive effect upon, interstate commerce within the United States and foreign commerce.

109. Defendants' anticompetitive activities and their effects are in violation of both the Sherman and Clayton Acts.

110. Defendants' anticompetitive activities and their effects have caused injury to the Plaintiff Classes both inside the United States and in foreign nations.

111. Plaintiffs and the Plaintiff Classes seek damages for these injuries, injunctive relief, and any such other relief that the Court deems necessary and appropriate.

## COUNT II
## VIOLATION OF FOREIGN ANTITRUST LAWS
## (ON BEHALF OF FOREIGN PURCHASERS)

112. Plaintiffs incorporate the allegations described in Paragraphs 1 through 110 above as if fully set forth herein.

113. During the Class Period, defendants sold and shipped substantial quantities of Class Vitamins in a continuous and uninterrupted flow of foreign commerce. Defendants received payment for such products across national boundaries. Defendants' activities, and the sale of their products, have both taken place, and have had a substantial anticompetitive effect upon, foreign commerce.

114. Defendants' anticompetitive activities and their effects are in violation of the competition laws of the relevant foreign nations.

115. Defendants' anticompetitive activities and their effects have caused injury to the Plaintiff Classes in foreign nations.

116. Plaintiffs and the Plaintiff Classes seek damages for these injuries, injunctive relief, and any such other relief that the Court deems necessary and appropriate.

COUNT III
VIOLATION OF INTERNATIONAL LAW
(ON BEHALF OF FOREIGN PURCHASERS)

117. Plaintiffs incorporate the allegations described in Paragraphs 1 through 115 above as if fully set forth herein.

118. International law is comprised of rules that have been accepted by the international community of states in the form of customary international law, international agreements, or by derivation from general principles common to the major legal systems of the world. Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation. Widely accepted international agreements or common and pervasive legal principles can define and augment what nations view as mutual legal obligations.

119. International treaties are considered to be incorporated into United States federal law. Customary international law is considered to be federal common law. Both of these are capable of being enforced by federal courts. Federal courts can ascertain what activities are proscribed by international law by consulting works of jurists, scholarly writings, by the general usage and practice of nations, and by judicial decisions recognizing and enforcing that law.

120. International prohibitions against anticompetitive commercial activity have become so prevalent that they must be deemed to have risen to the level of the law of nations. Treaties, international agreements, scholarly writings, and the laws of the major legal systems of the world demonstrate the widely-accepted view that participation in anticompetitive commercial activity is universally harmful to basic human rights.

121. In the last five to ten years, the number of countries that have antitrust laws in defense of free markets has increased to over eighty (80) countries, with an additional

twenty-five (25) countries in the process of drafting such laws.

122. For example, the United Nations adopted in 1980 "The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices" ("The Set"), which sets forth what the member nations of the United Nations consider to be internationally-accepted principles prohibiting anti-competitive conduct. The Set reflects the view that multilaterally agreed equitable principles and rules for the control of restrictive business practices can contribute to attaining the objective of establishing a new international economic order by eliminating restrictive business practices adversely affecting international trade, thereby contributing to the development and improvement of international economic relations on a just and equitable basis. To further the goals of "promoting social welfare in general and, in particular, the interests of consumers in both developed and developing countries," The Set calls on commercial entities to refrain from engaging in restrictive commercial practices, including price-fixing agreements, market or customer allocation agreements, predatory behavior, discriminatory pricing, and abuse of dominant market positions.

123. In 1998, the OECD, an organization of 29 industrialized nations, approved a Counsel Recommendation Concerning Effective Action Against Hard Core Cartels. The OECD characterized anticompetitive cartels as "the most egregious violation of competition law," which "injure consumers in many countries by raising prices and restricting supply, thus making goods and services completely unavailable to some purchasers and unnecessarily expensive for others." The OECD in 2000 identified the Vitamins global cartel as one of the most harmful cartels ever formed.

124. On September 30, 1999, Joel Klein, then Assistant Attorney General, Antitrust Division, U.S. Department of Justice, noted "the dawn of a new era in antitrust enforcement

against international cartels." He further noted the recognition by "people all over the world . . . that cartels . . . are a true scourge of the world economy," that "don't just hurt consumers in the U.S. or any single country . . .[but, a]lmost by definition, they hurt consumers world-wide."

125. Defendants have engaged in anticompetitive activities in the United States and world-wide which violate widely-accepted norms of international law, including: fixing the price of vitamins; allocating vitamin customers, and committing other unlawful practices, as specified herein, to inflate the prices of Class Vitamins worldwide.

126. Defendants' anticompetitive activities violate international law.

127. Defendants' illegal activities are the direct cause of harm to those purchasing Class Vitamins for delivery outside the U.S., who have been forced to pay higher and/or unnecessary costs as a result of these anticompetitive activities worldwide. Plaintiffs seek damages for this harm, as well as injunctive relief and any other relief that the Court deems necessary and appropriate.

## PRAYER FOR RELIEF

A. That the Court determine that this action may be maintained as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given members of the Plaintiff Classes;

B. That the unlawful combination and conspiracy alleged herein be adjudged and decreed to be an unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1), the antitrust laws of relevant foreign nations, and international law;

C. That plaintiffs and each member of the Classes recover damages, as provided by law, determined to have been sustained by each of them (using such damage methodology as may be appropriate at trial), and that joint and several judgments in favor of the plaintiff Classes be entered against defendants, and each of them;

D. That defendants be enjoined from continuing the unlawful combination and conspiracy alleged herein and other appropriate injunctive relief;

E. That the plaintiffs and the Classes recover their costs of this suit, including reasonable attorneys' fees as provided by law; and

F. That plaintiffs and the Classes be granted such other, further and different relief as the nature of the case may require or as may be deemed just and proper by this Court.

JURY DEMAND

Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable of right by a jury.

Dated: November 14, 2000

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Civ. No. 00-1686 (TFH)

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EMPAGRAN S.A., *et al.*
*Plaintiffs,*

v.

F. HOFFMAN-LA ROCHE, LTD., *et al.*
*Defendants.*

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ORDER

In accordance with the accompanying Memorandum Opinion, it is hereby

ORDERED that defendants' Joint Motion to Dismiss the federal antitrust claims brought by the foreign plaintiffs is GRANTED. It is further hereby

ORDERED that, within fifteen days of this Order, The Procter & Gamble Manufacturing Co. and The Procter & Gamble Co. either supplement their federal antitrust allegations in the Amended Complaint to provide further detail on the location of the domestic plaintiffs' injuries and the effect of the defendants' conduct, which caused these injuries, on United States commerce or file written stipulations of dismissal. It is further hereby

ORDERED that the Court will reserve ruling on the jurisdictional, standing, and consolidation questions with respect to the domestic plaintiffs' federal antitrust claims pending the filing of these more detailed allegations. And it is further hereby

ORDERED that defendants' Joint Motion to Dismiss Counts Two and Three of the Amended Class Action Complaint is GRANTED.

June 7, 2001

/s/ _____
Thomas F. Hogan
United States District Judge