

STATE OF MINNESOTA

IN SUPREME COURT

CL-99-1909

OFFICE OF APPELLATE COURTS

NOV 8 1999

_____)
CASE TITLE:)
))
In re Minnesota Vitamin Antitrust)
Litigation)
))
_____)

FILED

AFFIDAVIT OF ANDREW S. HANSEN

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

ANDREW S. HANSEN, being first duly sworn upon oath, deposes and states as follows:

1. My name is Andrew S. Hansen. I am an attorney with the firm of Oppenheimer Wolff & Donnelly LLP. I am one of the attorneys representing several of the Defendants in the multiple vitamin related class actions currently pending in Minnesota. I make this affidavit in support of the Motion to Transfer and Consolidate Multi-District Vitamin Antitrust Class Action Litigation.

2. Attached hereto as Exhibit A is a true and correct copy of the Amended Complaint in the action of Denise DeNardi v. F. Hoffmann La Roche, Ltd., et al., No. 99-3123, filed in Hennepin County.

3. Attached hereto as Exhibit B is a true and correct copy of the Amended Class Action Complaint in the action of Thomas Murr v. F. Hoffmann La Roche, Ltd., et al., No. 19-C9-99-9673, filed in Dakota County.

4. Attached hereto as Exhibit C is a true and correct copy of the Class Action Complaint in the action of Custom Nutrition, Inc. and Brinton Veterinary Supply, Inc. v. F. Hoffmann La Roche, Ltd., et al., No. 34-C4-99-01274(DMS), filed in Kandiyohi County.

5. Attached hereto as Exhibit D is a true and correct copy of the Class Action Complaint in the action of Big Valley Milling, Inc. v. F. Hoffmann La Roche, Ltd., et al., No. C1-99-405, filed in Chippewa County.

6. Attached hereto as Exhibit E is a true and correct copy of the Order In re Minnesota Asbestos Litigation, No. C4-87-2406, dated December 14, 1987.

7. Attached hereto as Exhibit F is a true and correct copy of the Order In re Minnesota L-tryptophan Litigation, No. C0-91-706, dated April 24, 1991.

8. Attached hereto as Exhibit G is a true and correct copy of the Transfer Order of the Judicial Panel on Multidistrict Litigation in the Vitamin Antitrust Litigation, dated June 7, 1999.

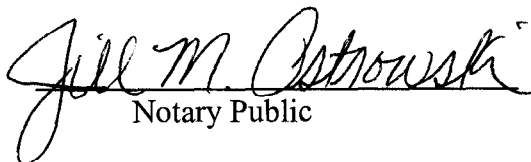
9. Attached hereto as Exhibit H is a true and correct copy of the Order of the New Mexico Supreme Court of September 8, 1999.

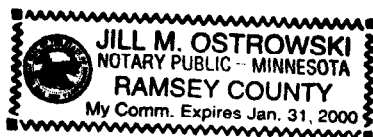
FURTHER AFFIANT SAITH NOT.



Andrew S. Hansen

Subscribed and sworn to before me
this 8 day of November, 1999.


Notary Public



C6-99-1909

A

OFFICE OF
APPELLATE COURTS

NOV 8 1999

FILED

STATE OF MINNESOTA

COUNTY OF HENNEPIN

CASE TYPE: OTHER CIVIL
DISTRICT COURT

FOURTH JUDICIAL DISTRICT

DENISE DENARDI,
On Behalf of Herself and
All Others Similarly Situated,

Plaintiff,

AMENDED COMPLAINT

vs.

Court File No. _____

F. HOFFMAN LAROCHE, LTD.,
HOFFMAN-LAROCHE, INC., ROCHE
VITAMINS, INC., RHONE POULENC
ANIMAL NUTRITION, INC.,
RHONE-POULENC, INC.
RHONE-POULENC, S.A., BASF AG,
BASF CORPORATION, LONZA INC.,
LONZA A.G., CHINOOK GROUP INC.,
CHINOOK GROUP LTD., DUCOA L.P.,
JOHN KENNEDY, ROBERT SAMUELSON,
LINDELL HILLING, J.L. "PETE"
FISHER, AND ANTONIO FELIX, and
DOES 1-50,

Plaintiff Demands A
Trial By Jury

Defendants.

Plaintiff Denise DeNardi, by and through her undersigned attorneys, brings this action on behalf of herself and all others similarly situated for treble damages and injunctive relief under the laws of Minnesota against the above-named defendants, demanding a trial by jury. For her Complaint against defendants, plaintiff, upon personal knowledge as to her own acts and status and upon information and belief as to all other matters, alleges the following:

Exhibit A

I. NATURE OF THIS ACTION

1. This case arises out of a massive and long-running international conspiracy beginning no later than 1989, and continuing until at least September 1998, 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 vitamins, vitamin premixes, bulk vitamins, and other vitamin products sold to plaintiff and other purchasers in the United States and elsewhere.

2. Defendants' conspiracy has involved an astonishing array of illegal conduct by an international cartel that has deliberately targeted, and severely burdened, consumers in the United States. The conspiracy has existed at least during the period from 1989 to September 1998, and has affected billions of dollars of commerce in products found in nearly every household in this State. 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 fix the prices and allocate markets for vitamins A, B, D, E, H, vitamin premixes, bulk vitamins, and other vitamin products.

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, stabilize, and maintain prices, and to coordinate price increases, for the sale of vitamins, vitamin premixes, bulk vitamins, and other vitamin products in the United States and elsewhere;
- (b) to allocate among the corporate defendants and their co-conspirators the volume of sales of vitamins, vitamin premixes, bulk vitamins, and other vitamin products in the United States and elsewhere;
- (c) to allocate among the corporate defendants and their co-conspirators all or part of certain contracts to supply vitamins, vitamin premixes, bulk vitamins, and other vitamin products to various customers located throughout the United States;
- (d) to refrain from submitting bids, or to submit collusive, non-competitive, and rigged bids to supply vitamins, vitamin premixes, bulk vitamins, and other vitamin products to various customers located in the United States; and
- (e) to supply vitamins, vitamin premixes, bulk vitamins, and other vitamin products to various customers located throughout the United States 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) participating in meetings ~~and conversations~~ in the United States and elsewhere, in which defendants and their co-conspirators discussed and agreed concerning the prices, volume of sales, and markets for vitamins and vitamin premixes, including for vitamins B-3 (niacin ~~and niacinamide~~) and B-4 (choline chloride). Executives participating in the illegal meetings and discussions concerning vitamins B-3 and B-4 include John Kennedy, Robert Samuelson, Lindell Hilling, J.L. "Pete" Fisher, and Antonio Felix;
- (b) agreeing, during those meetings and conversations, to charge prices at specified levels and otherwise increase and maintain prices of vitamins B-3 (niacin and niacinamide) and B-4 (choline chloride) sold in the United States and elsewhere;
- (c) agreeing, during those meetings and conversations, to allocate among the corporate defendants and their corporate co-conspirators the approximate volume of B-3 (niacin and niacinamide) and B-4 (choline chloride) to be sold by each corporate conspirator in the United States and elsewhere;

- (d) agreeing, during those meetings and conversations, to allocate among the corporate defendants and their corporate co-conspirators customers of B-3 (niacin and niacinamide) and B-4 (choline chloride) in the United States and elsewhere;
- (e) agreeing, during those meetings and conversations, to restrict B-3 (niacin and niacinamide) and B-4 (choline chloride) producing capacity among the corporate defendants and co-conspirators;
- (f) exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the above-described agreements;
- (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 B-3 (niacin and niacinamide) and B-4 (choline chloride) to customers located throughout the United States;
- (i) designating which corporate conspirator would be the designated low bidder for contracts to supply B-3 (niacin and niacinamide) and B-4 (choline chloride) to customers located throughout the United States;
- (j) discussing and agreeing upon prices to be contained within the bids for contracts to supply B-3 (niacin

and niacinamide) and B-4 (choline chloride) to customers in the United States;

(k) refraining from bidding or submitting intentionally high,- complementary bids for the contracts to supply B-3 (niacin and niacinamide) and B-4 (choline chloride) to customers in the United States;

(l) supplying B-3 (niacin and niacinamide) and B-4 (choline chloride) to various customers in the United States at non-competitive prices and receiving compensation therefrom.

5. As a result of their illegal activities, defendants LONZA AG, John Kennedy, Robert Samuelson, Lindell Hilling, J.L. "Pete" Fischer, and Antonio Felix have pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, by participating in a conspiracy to fix prices and allocate the volume of sales of vitamins B-3 (niacin and niacinamide) and B-4 (choline chloride) in the United States.

6. For purpose of forming and carrying out the charged combination and conspiracy, defendants and their co-conspirators, including executives from both United States and European affiliates of defendants, have also participated in numerous other meetings and conversations in Europe and the United States, including:

(a) Meetings in the Black Forest in Germany in the 1990's, in which it was agreed during those

meetings and conversations, to allocate among the corporate conspirators the volumes of sales of, and markets for, vitamins, vitamin premixes, bulk vitamins and other vitamin products to be sold by each corporate conspirator in the United States and elsewhere. The conspiracy divided and allocated such markets by region and by vitamin and was implemented by United States marketing managers acting under instructions from their European supervisors. Executives participating in these meetings and discussions include Wilhelm Tell, Edmund McDonald, Kuno Sommers and Oscar Mendoza of the Roche Vitamins and Fine Chemicals Division; and Lloyd Curtis, Vernon Schaefer and Peter Haag of BASF, and others.

- (b) A 1997 meeting in Atlanta, Georgia between a premix blender and European executives of BASF at which the BASF executives told the blender that it was competing in BASF markets and should get out of the markets;
- (c) At least two meetings in 1995 and 1996 in Ludwigshafen, Germany at which BASF executives instructed brokers and distributors not to sell vitamin A in the United States or they would be denied access to the raw materials necessary to manufacture vitamin A;

(d) Secret meetings and discussions between executives of Roche, BASF and Lonza in 1995 and 1996 wherein it was agreed that Lonza would control the market for vitamin B-3/niacin with Roche as a customer and Lonza would stop selling biotin/vitamin H;

(e) Meetings and discussions in which salespersons and executives of Roche and Rhone Poulenc told customers in the United States that they would bid on only a percentage of a customer's business and that their products were not to be resold to poultry producers;

(f) Meetings and discussions in which BASF executives in Europe instructed brokers and distributors not to sell choline chloride or face the prospect of being driven out of business;

7. In furtherance of the illegal combination and conspiracy alleged herein, defendants also engaged in numerous other acts, practices, and courses of conduct including:

(a) Jointly agreeing to engage in "denied access marketing" by setting the prices of vitamin components of vitamin premixes higher collectively than the price of premixes as a means to implement and protect the horizontal conspiracy. Through this strategy, the conspiracy has used its control over the inputs and vitamin components to drive premixers and blenders out of business who might

threaten the conspiracy's power to control outputs and supply in the premix markets. For example, a secret 1991 BASF business report expressly describes the pricing of "straights in premixes" to be offered to implement this denied access marketing strategy. This denied access marketing strategy was implemented by, among others, United States executives for BASF acting at the direction of BASF officials in Germany. The purpose of this marketing strategy is to eliminate the market for component vitamin purchases of premixes, with the result that the horizontal conspiracy would control over 90 percent of the markets for vitamin premixes, markets which are allocated among the members of the conspiracy. Indeed, a BASF business plan from 1993 or 1994 for example states the conspiracy's intent to end competition by small premix blenders leaving the conspiracy with control of over 90% of the vitamin premix market.

- (b) Roche and BASF reallocated business from Roche to BASF after a customer gave its exclusive business to Roche;
- (c) A BASF business plan from 1993 or 1994 sets forth the conspiracy's intent to end competition by small premix blenders leaving the conspiracy with control of over 90% of the vitamin premix market;

- (d) Purchasing manufacturing plants and facilities and formed joint ventures throughout the world to control the supply and markets for vitamins, including a 1997 joint venture Roche Taishan (Shanghai) Vitamin Products and two 1997 joint ventures in Xinghuo, China for the production of vitamins E and A. Roche has also purchased and shutdown vitamin A and vitamin E facilities in Shanghai to control the output of these vitamins pursuant to the terms of the conspiracy.
- (e) Issuing price announcements in publications and coordinating price quotations to customers in accordance with the agreements reached.

II. JURISDICTION AND VENUE

8. Plaintiff brings this action pursuant to the Minnesota Antitrust Law of 1971, Minn. Stat. Ann. §§ 325D.51, 325D.53, 325D.57, and 325D.58 to obtain injunctive relief and to recover damages and the costs of suit, including reasonable attorneys' fees, from defendants for the injuries sustained by plaintiff and the class (as defined herein) by reason of defendants' and their co-conspirators' violations of Minnesota law.

9. Defendants transact business in the State of Minnesota. Without limiting the generality of the foregoing, the torts and wrongs alleged herein were committed within the jurisdiction of this Court; the damages and losses alleged herein were suffered within the jurisdiction of this Court; the damages and losses

alleged herein were suffered in this jurisdiction; the rights of the plaintiff and the plaintiff class were impaired in this jurisdiction; and the defendants' wrongful activities were directed by or on their behalf into this jurisdiction, all as more particularly described herein.

10. Without limiting the generality of the foregoing, the defendants (directly or through agents who were at the time acting with actual and/or apparent authority and within the scope of such authority) have:

- (a) transacted business in this state and in this county;
- (b) contracted to supply or obtain services or goods in this state and in this county;
- (c) intentionally availed themselves of the benefits of doing business in this state and in this county;
- (d) produced, promoted, sold, marketed and/or distributed their products or services in this state and in this county and, thereby, have purposefully profited from their access to this state's and county's markets;
- (e) caused tortious damage by act or omission in this state and county;
- (f) caused tortious damage in this state and county by act or omission committed outside this state while
 - (i) regularly doing or soliciting business in this state, and/or
 - (ii) engaging in other persistent

courses of conduct within this state and/or (iii) deriving substantial revenue from goods used or consumed or services rendered in this state and this county;

(g) committed acts and omissions which defendants knew or should have known would cause damage (and, in fact, did cause damage) in this state to the plaintiff and members of the plaintiff class while (i) regularly doing or soliciting business in this state, and/or (ii) engaging in other persistent courses of conduct within this state and/or (iii) deriving substantial revenue from goods used or consumed or services rendered in this state and this county; and/or

(h) otherwise had the requisite minimum contacts with this state and this county, such that under the circumstances, it is fair and reasonable to require the defendants to come to this Court to defend this action.

11. Plaintiff and the plaintiff class seek relief in the form of injunctive and monetary relief as provided by Minnesota Antitrust Law, Minn. Stat. Ann. §§ 325D.57 and 325D.58. Plaintiff and each member of the class has incurred damages under the laws of Minnesota in an amount less than \$75,000, and neither the plaintiff nor any other member of the class seeks damages exceeding \$75,000, nor do their damages individually exceed \$75,000, inclusive of

interest and attorneys' fees and all relief of any nature sought hereunder. Plaintiff does not seek any form of "common" recovery, but rather individual recoveries not to exceed \$75,000 for any class member, inclusive of interest and attorneys' fees and all relief of any nature sought hereunder.

12. Plaintiff states, and intends to state, causes of action solely under the laws of Minnesota and specifically denies any attempt to state a cause of action under the laws of the United States of America, including without limitation the Sherman Act, 15 U.S.C. § 1.

III. PARTIES

13. Plaintiff Denise DeNardi is an individual with her residence in Mendota Heights, Minnesota. Plaintiff is an indirect purchaser of vitamins manufactured by one or more of the defendants.

14. 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 distribution and sale of vitamins, vitamin premixes and other vitamin products in Minnesota and elsewhere.

15. Defendant Hoffman-LaRoche, Inc. ("Roche Inc.") is a New Jersey corporation with its principal place of business in Nutley, New Jersey. Roche Inc. is an affiliate of Roche Ltd.; is wholly-controlled and dominated by Roche Ltd.; and is (among other things)

Roche Ltd.'s agent for service of process. Roche Inc., is engaged in the distribution and sale of vitamins, vitamin premixes and other vitamin products in Minnesota and elsewhere.

16. Defendant 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 pricing conduct within Minnesota. Roche Vitamins is directly engaged in this business of the distribution and sale of vitamins, vitamin premixes and other vitamin products in Minnesota and elsewhere. Defendants Roche Ltd., Roche Inc. and Roche Vitamins collectively are hereinafter referred to as "Roche."

17. Defendant Rhone-Poulenc S.A. ("RPSA") is a French corporation with operations in the United States RPSA, through its affiliates, is engaged in the business of the distribution and sale of vitamins, vitamin premixes and other vitamin products in Minnesota and elsewhere.

18. Defendant Rhone Poulenc Animal Nutrition, Inc. ("RPAN") is a Delaware corporation with its principal place of business in Atlanta, Georgia. RPAN is wholly-controlled and dominated by RPSA, both with respect to the conduct of its business within Minnesota generally and specifically with respect to its challenged horizontal pricing conduct therein. RPAN is a successor to Rhone-Poulenc, Inc. ("RP Inc."), a New York Corporation, with operations in the United States. RP Inc. was engaged in the business of the

distribution and sale of vitamins, vitamin premixes, and other vitamin products throughout Minnesota and elsewhere until at least 1996. Since at least 1996, RPAN has been directly engaged in the business of the distribution and sale of vitamins, vitamin premixes and other vitamin products throughout the Minnesota and elsewhere.

19. Defendant RP Inc. is a New York corporation with operations in the United States and its principal place of business in Monmouth, New Jersey. RP Inc. was engaged in the business of the distribution and sale of vitamins, vitamin premixes and other vitamin products throughout Minnesota and elsewhere until at least 1996. RP Inc. is a subsidiary of RPSA and is RPSA's agent for service of process. Defendants RPAN, RPSA and RP Inc., are hereinafter collectively referred to as "Rhone-Poulenc."

20. 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 other vitamin products throughout Minnesota and elsewhere.

21. Defendant BASF Corporation is a German corporation with operations in the United States through its principal place of business in Mount Olive, New Jersey. BASF Corporation is engaged in the business of the distribution and sale of vitamins, vitamin premixes and other vitamin products throughout Minnesota and elsewhere. BASF Corporation is a wholly-owned affiliate of BASF A.G.; is wholly-controlled and dominated by BASF A.G.; and is BASF

A.G.'s agent for service of process. Defendants BASF A.G. and BASF Corporation are hereinafter collectively referred to as "BASF."

22. Defendant LONZA Inc. ("LONZA") is a New York Corporation with its principal place of business in Fair Lawn, New Jersey.

23. Defendant Chinook Group, Ltd., headquartered in Toronto, Canada, is a limited partnership that was formed in and is currently organized and existing under the laws of Ontario, Canada. During the period of this Complaint, Chinook Group, Ltd. was a manufacturer of choline chloride. Choline chloride is a vitamin of the B-complex group (Vitamin B-4). During the period of this Complaint, Chinook Group, Ltd. was engaged in the sale of choline chloride in the United States and elsewhere.

24. Defendant Chinook Group, Inc. is a Minnesota Corporation with its principal place of business in White Bear Lake, Minnesota. Defendant Chinook Group, Inc. is a wholly owned subsidiary of defendant Chinook Group, Ltd. In conjunction with Chinook Group Ltd., Chinook Group Inc. is engaged in the sale of choline chloride throughout the United States and elsewhere.

25. Defendant John Kennedy is Vice President of Sales and Marketing for defendant Chinook Group Inc. Defendant Kennedy has pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, by conspiring to fix prices and allocate customers and the sales of vitamin B-4 (choline chloride).

26. Defendant Robert Samuelson is a national sales manager for defendant Chinook Group Inc. Defendant Samuelson has pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, by

conspiring to fix prices and allocate customers and the sales of vitamin B-4 (choline chloride). Defendants Chinook Ltd., Chinook Inc., Kennedy, and Samuelson are hereinafter referred to as "Chinook."

27. Defendant DuCoa, L.P. is a joint venture between DuPont de Nemours and Company ("DuPont"), a United States corporation with its principal place of business in Wilmington, Delaware, and ConAgra, Inc., a United States corporation with its principal place of business in Omaha, Nebraska. DuCoa, L.P.'s principal place of business is in Highland, Illinois. DuCoa, L.P. manufactures choline chloride in Highland, Illinois and is engaged in the sale of choline chloride throughout the United States and elsewhere.

28. Defendant Lindell Hilling is the former President of defendant DuCoa, L.P. Defendant Hilling has pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, by conspiring to fix prices and allocate customers and the sales of vitamin B-4 (choline chloride).

29. Defendant J.L. "Pete" Fischer was employed initially as Manager, then as Vice President and subsequently, beginning in January 1996, as the President, Basic Products and International Division for defendant DuCoa, L.P. Defendant Fischer has pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, by conspiring to fix prices and allocate customers and the sales of vitamin B-4 (choline chloride).

30. Defendant Antonio Felix is Vice President, Basic Products and International Division for defendant DuCoa. Defendant Felix

has pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, by conspiring to fix prices and allocate customers and the sales of vitamin B-4 (choline chloride). Defendants DuCoa, Samuelson, Fischer, and Felix are hereinafter referred to as "DuCoa."

31. Defendant Lonza, AG is a corporation organized and existing under the laws of Switzerland. Lonza, AG was formed in and exists under the laws of Switzerland. Lonza, AG is an indirect parent of Lonza, Inc., a ~~United States~~ corporation organized under the laws of New Jersey. Lonza, Inc. has its principal place of business in Fairlawn, New Jersey. Lonza, AG is a manufacturer of niacin and niacinamide, and through Lonza, Inc., is engaged in the sale of vitamins, including niacin and niacinamide, in the United States and elsewhere. Defendant Lonza, AG has pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, for conspiring to fix prices and allocate the volume of sales of vitamin B-3 (niacin and niacinamide).

32. The acts alleged in this Complaint as having been done by defendants were authorized, ordered or done by their officers, agents, employees, or representatives, while actively engaged in the management of defendants' business or affairs and acting within the scope of their authority.

33. Various other persons, companies and corporations, sued herein as DOES 1-50, the identities of which are presently unknown, have participated as co-conspirators with defendants in the violations alleged herein and have performed acts and made

statements in Minnesota and elsewhere in furtherance thereof. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1-50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

IV. CLASS ACTION ALLEGATIONS

34. Plaintiff brings this action on behalf of herself under Rule 23 of the Minnesota Rules of Civil Procedure as representative of a class (the "class" or "plaintiff class") defined as:

all persons or entities who indirectly purchased vitamins, vitamins premixes, and/or other vitamin products from any of the defendants of their co-conspirators from January 1, 1989, to the present, for use within the State of Minnesota and not for resale. Excluded from the class are all governmental entities, defendants, other manufacturers of vitamins, vitamin premixes and other vitamin products, and their respective subsidiaries and affiliates.

35. The class is so numerous that joinder of each of the members of the class would be impracticable.

36. Plaintiff's claims are typical of the members of the class. Plaintiff and all members of the plaintiff class were damaged by the same wrongful conduct by defendants.

37. Plaintiff will fairly and adequately protect and represent the interests of the plaintiff class. The interests of

plaintiff are coincident with, and not antagonistic to, those of the class.

38. Plaintiff is represented by counsel who are experienced and competent in the prosecution of complex class action and antitrust litigation.

39. There are questions of law and fact which are common to the claims of plaintiff and the class. These common questions include, but are not limited to:

- ~~(a)~~ whether defendants combined, agreed, and conspired among themselves to fix, raise, maintain, or stabilize the prices for vitamins, vitamin premixes and other vitamin products sold or distributed in Minnesota;
- (b) whether the acts and omissions alleged herein constitute an unlawful trust under the laws of Minnesota;
- (c) the existence and duration of the horizontal agreements alleged in this Complaint to fix, raise, maintain, or stabilize the prices for vitamins, vitamin premixes and other vitamin products sold in the State of Minnesota;
- (d) whether each defendant was a member of, or participant in, the contract, combination and/or conspiracy alleged in this Complaint;

- (e) whether defendants took steps to conceal their conspiracy from plaintiff and the members of the class;
- (f) whether, and to what extent, the conduct of defendants caused injury to the business or property of plaintiff and members of the class; and, if so, the appropriate measure of damages;
- (g) whether plaintiff and members of the class are entitled to declaratory and/or injunctive relief;
- (h) whether defendants' agents, officers, employees, or representatives participated in telephone calls and meetings in furtherance of the illegal conspiracy alleged herein; and if so, whether such agents, officers, employees, or representatives were acting within the scope of their authority and in furtherance of defendants' business interests;
- (i) whether defendants are properly within the scope of this Court's jurisdiction;
- (j) whether plaintiff and the plaintiff class have standing under the antitrust laws of Minnesota to bring this action as indirect purchasers of the products sold or distributed by defendants;
- (k) whether the purpose and/or effect of the acts and omissions alleged herein was to affect, fix, control and/or maintain, the prices for vitamins,

vitamin premixes, and other vitamin products sold or distributed in Minnesota;

- (l) whether the unlawful combination and conspiracy alleged herein included the allocation or division of customers or markets among the defendants; and
- (m) whether the unlawful combination and conspiracy alleged herein involved some or all of the vitamins described in this Complaint; and if so, which ones.

40. The questions of law and fact ~~which~~ are common to the claims of the plaintiff and the plaintiff class predominate over questions, if any, that may affect only individual members of the class because, among other reasons, defendants have acted on grounds generally applicable to the entire class.

41. Class action treatment is the superior (if not the only) method for the fair and efficient adjudication of this controversy because, among other reasons, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary 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 the management of this case as a class action.

V. TRADE AND COMMERCE

42. Defendants are manufacturers, marketers, and distributors of vitamins (synthetic and natural, and in dry and oil form), vitamin premixes, and other vitamin products for sale to customers in Minnesota and elsewhere. Defendants are engaged in the sale, marketing, and distribution of vitamins, vitamin premixes, and other vitamin products to manufacturers and users of animal feed and nutrition products. The vitamin premixes and other vitamin products manufactured by defendants are commonly used in the Minnesota agricultural industry as an ingredient in animal nutrition products and animal feed mixes.

43. Defendants are also engaged in the sale, marketing, and distribution of vitamins, vitamin premixes, and other vitamin products to manufacturers and distributors of vitamin products designed for human consumption. Such vitamin products are purchased and consumed by millions of Minnesota consumers each year.

44. The manufacture of vitamins, vitamin premixes and other vitamin products is a multi-billion dollar a year industry worldwide. The North American market for animal nutrition alone is an over \$500 million industry.

45. During the period described in the Complaint, the world markets for vitamins, vitamin premixes and other vitamin products were dominated by three companies: Roche, Rhone-Poulenc and BASF. Defendants control over 60 percent of the world vitamin market and approximately 80 percent of the vitamin markets for animal

nutrition. According to published reports, Roche is the world's largest provider of vitamins with a 40 percent share of the worldwide market.

46. During the period of this Complaint, the conduct of defendants and their co-conspirators has taken place in and/or affected the trade and commerce of Minnesota.

47. The vitamins, vitamin premixes, bulk vitamins, and other vitamin products of defendants are sold in commerce in this state as well as throughout the United States. Roche sells in intrastate commerce vitamins such as vitamin A (acetate and palmatate), vitamin B, vitamin C, vitamin D, vitamin E (D-Alpha and DL-Alpha), pantothenic acid, folic acid, riboflavin, beta carotene and biotin. BASF sells vitamins in intrastate commerce, such as vitamin A (acetate and palmatate), vitamin C, vitamin E (D-Alpha and DL-Alpha), vitamin B2, folic acid, riboflavin, and beta carotene. Rhone-Poulenc sells, among others, vitamin A (acetate and palmatate), vitamin B12, vitamin D3 and vitamin E (D-Alpha and DL-Alpha). Roche, BASF and Rhone-Poulenc together control over 95 percent of the worldwide markets for vitamins A and E. Defendant LONZA sells in intrastate commerce vitamins such as vitamin B-3 (niacin and niacinamide). Defendant DuCoa sells in intrastate commerce vitamins such as vitamin B-4 (choline chloride). Defendant Chinook sells in intrastate commerce vitamins such as vitamin B-4 (choline chloride).

VI. FACTUAL BACKGROUND

The Defendants' Conspiracy

48. Beginning no later than 1989, defendants and their co-conspirators entered into and engaged in a combination and conspiracy to suppress competition by fixing the price and allocating the markets and sales volumes of vitamins, vitamin premixes, bulk vitamins, and other vitamin products offered for sale to customers in this state and elsewhere. The combination and conspiracy, engaged in by the defendants and ~~their co-conspirators~~, was an unreasonable restraint of interstate trade and commerce in violation of the Minnesota Antitrust Act, Minn. Stat. Ann. §§ 325D.51 and 325.53.

49. The acts committed by defendants as alleged herein violate Minnesota Antitrust Act. Specifically, defendants illegally:

- (a) created or carried out restrictions in trade or commerce by, e.g., setting by agreement the prices which the defendants charged for vitamins, vitamin premixes, and other vitamin products sold in Minnesota;
- (b) limited or reduced the production of vitamins, vitamin premixes, and other vitamin products sold in Minnesota by, e.g., allocating sales volumes among defendants pursuant to an agreement as alleged herein;

- (c) prevented competition in the manufacture or sale of vitamins, vitamin premixes, and other vitamin products sold in Minnesota by, e.g. agreeing among themselves not to compete over sales volumes and prices;
- (d) fixed the price of vitamins, vitamin premixes, and other vitamin products in such a way as to control or establish, at least in part, the prices paid by consumers and the public;
- (e) entered into, executed, and carried out contracts, obligations, and agreements in which they (i) bound themselves not to sell vitamins, vitamin premixes, and other vitamin products below a fixed price; (ii) agreed to keep the prices of vitamins, vitamin premixes, and other vitamin products at a fixed price; and (iii) established and settled the price of vitamins, vitamin premixes, and other vitamin products so as to directly or indirectly preclude a free and unrestricted competition among themselves.

50. Each of the above acts constitutes an unlawful trade practice is a distinct and independent violation of Minnesota law.

51. The combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the conspirators, the substantial terms of which were: --

- (a) to fix, stabilize, and maintain prices and/or to coordinate price increases for the sale of

vitamins, vitamin premixes, bulk vitamins, and other vitamin products in this state and elsewhere; and

- (b) to allocate the volumes of sales of, and markets for, vitamins, vitamin premixes, bulk vitamins, and other vitamin products among the corporate conspirators in this state and elsewhere;
- (c) to control the markets for vitamin premixes, for example, by agreeing to price premixes at levels in excess of the prices offered for the component vitamin ingredients.

52. For purposes of forming and carrying out the charged combination and conspiracy, defendants and their co-conspirators, including executives from both United States and European affiliates of defendants, participated in covert meetings and conversations in which the prices, volume of sales, and markets for vitamins and vitamin premixes were discussed and agreed. Executives participating in these meetings and discussions include defendants John Kennedy, Robert Samuelson, Lindell Hilling, J.L. "Pete" Fischer, and Antonio Felix. Further, for purpose of carrying out the charged combination and conspiracy, defendants and their co-conspirators have issued price announcements in publications and have coordinated price quotations to customers in accordance with the agreements reached.

53. In the above described meetings and discussions during the period of the conspiracy,

- (a) The prices and volumes of vitamins and vitamin premixes were discussed;
- (b) It was agreed to increase and maintain those prices;
- (c) It was agreed to allocate markets for premixes and vitamin ingredients for such premixes; and
- (d) Methods to conceal the agreements were discussed.

54. For purposes of forming and carrying out the charged combination and conspiracy, ~~defendants~~ defendants and their co-conspirators, including executives from both United States and European affiliates of defendants, have participated in meetings and conversations in which it was agreed to allocate among the corporate conspirators the volumes of sales of, and markets for, vitamins, vitamin premixes, bulk vitamins, and other vitamin products, to be sold by each corporate conspirator in the United States and elsewhere. The conspiracy divided and allocated such markets by region and by vitamin and was implemented by defendants' and their co-conspirators' executives and United States marketing managers acting under instructions from European executives.

55. For example, for purposes of carrying out the charged international combination and conspiracy, co-conspirator Roche and defendant LONZA agreed that LONZA would control the markets for vitamin B-3/niacin with Roche as a customer, and LONZA would withdraw from selling biotin/ vitamin H in 1995 or 1996. In addition, defendants and their co-conspirators have allocated the United States markets for B-4/choline chloride to sellers other

than their co-conspirator BASF, and the B-4/choline chloride markets in Europe have been allocated to their co-conspirator BASF.

56. Defendants have issued price announcements in accordance with the agreements, and have participated in meetings and conversations to monitor and enforce adherence to the agreed-upon prices and sales volumes.

Additional Facilitating Practices and Agreements

57. For purposes of carrying out the charged combination and conspiracy, defendants and their co-conspirators have rigged bids for contracts to supply vitamins, vitamin premixes, bulk vitamins, and other vitamin products.

58. For purposes of forming and carrying out the charged combination and conspiracy, defendants and their co-conspirators have exchanged information on the volumes of sales of vitamins, vitamin premixes, bulk vitamins, and other vitamin products and chemicals necessary for the production of vitamins in the United States and elsewhere, for the purpose of monitoring and enforcing adherence to the agreed-upon prices, sales volumes and market allocations.

The Impermissible Effect on Relevant Markets

59. Prior to the late 1980's, the markets for vitamins and vitamin premixes were characterized by low prices and competition. Since then, the markets for several vitamins sold by defendants, such as vitamins A, B12 and E and vitamin premixes, have been characterized by stability and steady price increases. Due to

defendants' price fixing and market allocation activity, steady price increases have taken place in these products despite fluctuations in the costs of production. As a result of defendants' conduct, prices have been maintained at all time high levels since the beginning of the decade.

60. For many years, vitamin prices have not followed the laws of supply and demand existing in a competitive market. Price reductions, for example, have not followed increases in supply.

For example, due to defendants' price fixing, market allocation, and other anti-competitive conduct, prices increased even as new supply and production came on the market.

61. The foregoing conduct has continued until at least 1998. Executives of Roche, BASF, and Rhone Poulenc continued until at least then to discuss price fixing and market allocation, both by telephone, wireline and cellular, and in person. The purpose of these communications has been to anticompetitively manage the markets for bulk vitamins.

62. During the period covered by the Complaint, plaintiff and members of the class indirectly purchased vitamins, vitamin premixes, and other vitamin products manufactured by defendants. By reason of the violations of Minnesota law as alleged herein, plaintiff and the class paid more for vitamins, vitamin premixes and other vitamin products and substitute 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.

Fraudulent Concealment

63. Plaintiff 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 plaintiff by one or more of the following affirmative acts, including acts in furtherance of the conspiracy:

- (a) Covert meetings in the Black Forest in Germany and elsewhere in which the prices, volumes of sale and markets for vitamins and vitamin premixes were discussed and agreed;
- (b) Allocating secretly among themselves either customers, including, without limitation, plaintiff, or contracts for the sale of vitamins, vitamin premixes and vitamin products as compensation for losing customers or markets as compensation for losing customers or markets;
- (c) Intentionally bidding with inflated bids for customer business 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, including a rejected offer of increased orders by telephone in 1997 to a individual in Arkansas by a BASF buyer in exchange for his silence about the conspiracy;
- (f) Instructing members of the conspiracy at the above described 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 key officials at each defendant company;
- (h) Conducting covert, secret conspiracy telephone calls, and meetings in hotels and other places in the United States and Europe; and
- (i) Avoiding either references in documents, or the creations of documents otherwise created in the ordinary course of defendants' businesses, regarding conduct which would constitute an antitrust violation or anticompetitive act.

VII. FIRST CAUSE OF ACTION

(Unreasonable Restraint Of Trade)

64. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

65. Defendants agreed to, and did in fact, affect, fix, control and/or maintain, at artificial and non-competitive levels, the prices at which vitamins, vitamin premixes, and other vitamin products were sold, bartered, or used in Minnesota and elsewhere.

66. Defendants agreed to, and did in fact, allocate among themselves the sales volumes, customers or markets, for vitamins, vitamin premixes, and other vitamin products sold, bartered, or used in Minnesota and elsewhere.

67. The acts committed by defendants as alleged herein are unlawful combinations and against public policy pursuant to Minnesota Antitrust Law, Minn. Stat. Ann. §§ 325D.51 and 325D.53. Specifically, defendants illegally combined the acts of two or more persons for the purposes of:

- (a) creating or carrying out unreasonable restraints of trade or commerce by, e.g., setting by agreement the prices which the defendants charged for vitamins, vitamin premixes, and other vitamin products sold in Minnesota;
- (b) limiting or reducing the production of vitamins, vitamin premixes, and other vitamin products sold in Minnesota by, e.g., allocating sales volumes

among defendants pursuant to an agreement as alleged herein;

(c) preventing competition in the manufacture or sale of vitamins, vitamin premixes, and other vitamin products sold in Minnesota by, e.g., agreeing among themselves not to compete over sales volumes and prices;

(d) fixing the price of vitamins, vitamin premixes, and other vitamin products in such a way as to control or establish, at least in part, the prices paid by consumers and the public;

(e) entering into, executing, and carrying out contracts, obligations, and agreements in which they: (i) bound themselves not to sell vitamins, vitamins premixes, and other vitamin products below a fixed price; (ii) agreed to keep the prices of vitamins, vitamins premixes, at a fixed price; and (iii) established and settled the price of vitamins, vitamin premixes, and other vitamin products so as to directly or indirectly preclude a free and unrestricted competition among themselves.

68. Each of the above acts constitutes an unlawful trust under Minnesota Antitrust Law, Minn. Stat. Ann. §§ 325D.51 and 325D.53 and is a distinct and independent violation of Minnesota law.

69. Plaintiff and the plaintiff class were injured in their trade or business by reason of unlawful acts of defendants as alleged herein (e.g., plaintiff and the plaintiff class were forced to pay higher prices for the vitamin products they purchased than they would have had to pay if the prices charged by defendants to their customers were the product of fair and open competition and not of an illegal price-fixing agreement). Pursuant to the Minnesota Antitrust Law, Minn. Stat. Ann. §§ 325D.57 and 325D.58, as persons injured directly or indirectly by defendants unlawful conduct, plaintiff and the plaintiff class are entitled to recover three times the damages sustained by them, permanent injunctive relief, attorneys' fees, and cost of suit.

VIII. PRAYER FOR RELIEF

WHEREFORE, plaintiff prays:

A. That the Court determine that this action may be maintained as a class action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure and direct that reasonable notice be given to members of the class;

B. That the combination and conspiracy alleged herein be adjudged and decreed to be an unlawful restraint of trade pursuant to Minnesota Antitrust Law, Minn. Stat. Ann. §§ 325D.51 and 325.53;

C. That plaintiff and the plaintiff class be awarded three times the reasonable damages sustained by them pursuant to Minnesota Antitrust Law, Minn. Stat. Ann. § 325D.57, in an amount believed to be in excess of \$50,000;

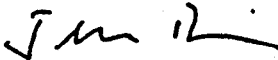
D. That plaintiff and the plaintiff class be awarded reasonable attorneys' fees and costs of suit pursuant to Minnesota Antitrust Law, Minn. Stat. Ann. § 325D.57;

E. That the Court enter joint and several judgments in favor of plaintiff and the plaintiff class against the defendants, and each of them, in accordance with A-D above;

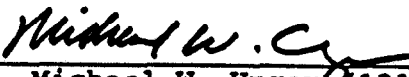
F. That defendants be enjoined from continuing the unlawful combination and conspiracy alleged herein, pursuant to Minnesota Antitrust Law, Minn. Stat. Ann. § 325D.58; -

G. That the plaintiff and the plaintiff class 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.

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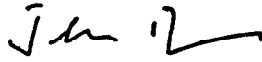
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Dated: March 17, 1999

ACKNOWLEDGMENT

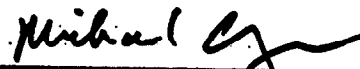
The party upon whose behalf this pleading is submitted, by and through the undersigned, hereby acknowledges that sanctions may be imposed for a violation of Minn. Stat. § 549.211.

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

Thomas Murr, on)
 behalf of himself and all)
 other persons and entities similarly situated,)
)
 Plaintiff,)

Case Number: _____

v.)

F. Hoffman-LaRoche, Ltd.,)
 a Swiss corporation; Hoffman-LaRoche, Inc.,)
 a New Jersey corporation; Roche Vitamins, Inc.,)
 a Delaware corporation; Rhone-Poulenc S.A.,)
 a French corporation; Rhone-Poulenc Animal)
 Nutrition, Inc., a Delaware corporation;)
 Rhone-Poulenc Ag Company, Inc.,)
 a New York corporation;)
 BASF A.G., a German corporation;)
 BASF Corporation, a Delaware corporation;)
 Lonza Ag, a Swiss corporation; Lonza Inc.,)
 a New York corporation; Chinook Group, Ltd.,)
 a Canadian limited partnership;)
 Chinook Group, Inc., a Minnesota corporation;)
 DCV, Inc., a Delaware corporation; Ducoa, L.P.,)
 an Illinois limited partnership;)
)
 Defendants.)

**AMENDED
CLASS ACTION COMPLAINT**

Plaintiff Thomas Murr, on his own behalf and on behalf of all others similarly situated,
 brings this action for treble damages and injunctive relief, as well as attorneys' fees and costs,
 under the antitrust laws of Minnesota.

I
SUMMARY OF CLAIM

1. This civil action is brought as a class action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure on behalf of a plaintiff class consisting of all persons and entities who indirectly purchased commercially sold vitamins (including natural and synthetic, dry and oil, raw and bulk vitamin products including, but not limited to, A, B, C, D, E and H, and vitamin pre-mixes) from defendants during period from January 1, 1989 to the present.

2. Defendants are the largest manufacturers and sellers of vitamins in the world. The gravamen of this action is that defendants combined and conspired to fix, raise, maintain and stabilize the prices at which vitamins were sold in Minnesota (and elsewhere) and further, the defendants combined, conspired and agreed to allocate sales volumes and sales markets for the sale of vitamins in Minnesota (and elsewhere). Because of the unlawful conduct of the defendants, which resulted in illegal agreements to eliminate competition, maintain market control and raise prices for vitamins, plaintiff and the other class members paid artificially-inflated prices for vitamins indirectly purchased from defendants.

II
JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to Minn. Stat. §484.01.

4. Venue in this District is proper because, on information and belief, each of the defendants transacts business or otherwise can be found here. Many of the unlawful acts alleged herein directly affected indirect purchasers of vitamins within the State of Minnesota, and more specifically, within Dakota County.

III.
THE PARTIES

5. Plaintiff Thomas Murr is an Eagan resident, who, during the period in question, indirectly purchased vitamins from the defendants. More specifically, Murr purchased the vitamins at issue in this litigation, as a distributor. Between 1978 and continuing to the present, Murr has been the sole proprietor of Better Health Products. As sole proprietor, Murr has purchased large quantities of vitamins, including B, B6, B Complex, C, E, as well as calcium and magnesium, for resale to Minnesota chiropractors. Also, between 1978 to 1985, Murr, through Better Health Products, operated a health food store in Inver Grove Heights, where he resold the same vitamins to consumers. Also, Murr is the majority shareholder of a currently defunct Nevada corporation that – from 1988 through 1991 - purchased vitamin premixes, including B1, B2 and B6, for use in vitamin-enriched chocolate milk and chocolate bars that were resold to vendors. The vitamins purchased by Murr through his sole proprietorship and through the non-defunct corporation were manufactured by at least some of the defendants, and thus were subject to the conspiracy described herein.

6. 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 vitamins throughout the United States, including sales within this judicial district. BASF A.G., directly and through affiliates that it controls, has set prices and allocated market pursuant to illegal horizontal agreements.

7. 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 manufactured and sold vitamins, vitamin pre-mixes and bulk vitamins distributed and used throughout the United States, including sales within this district. BASF

CORPORATION is a wholly-owned affiliate of BASF A.G. and is (among other things) BASF A.G.'s agent for service of process. Defendants BASF A.G. and BASF CORPORATION are hereinafter collectively referred to as "BASF."

8. Defendant F. Hoffman-LaRoche Ltd. ("LaRoche Ltd.") is a Swiss corporation with operations in the United States. LaRoche Ltd. is a subsidiary of Roche Holding Ltd., a Swiss pharmaceutical company based in Basel, Switzerland. LaRoche Ltd., through its affiliates, is engaged in the business of the distribution and sale of vitamins, vitamin pre-mixes and bulk vitamin products, in Minnesota and elsewhere. LaRoche Ltd., directly and through affiliates that it controls, set prices and allocated markets pursuant to illegal horizontal agreements.

9. Defendant Hoffman-LaRoche Inc. is a New Jersey corporation with operations in the United States and its principal place of business in Nutley, New Jersey. LaRoche Inc. is wholly controlled and dominated by LaRoche Ltd., and is (among other things) LaRoche Ltd.'s agent for service of process. LaRoche Inc. is engaged in the business of the distribution and sale of vitamins, vitamin pre-mixes and bulk vitamin products throughout the United States, including Minnesota.

10. Defendant Roche Vitamins, Inc. is a Delaware corporation with its principal place of business in Parsippany, New Jersey. Roche Vitamins is wholly controlled and dominated by LaRoche Ltd. Roche Vitamins is directly engaged in the business of the distribution and sale of vitamins, vitamin pre-mixes and bulk vitamin products, throughout the United States, including Minnesota. LaRoche Ltd., LaRoche Inc., and Roche Vitamins are hereinafter collectively referred to as "Roche."

11. 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 pre-mixes and bulk vitamin products throughout the United States, including Minnesota. RP S.A., directly and through affiliates that it controls, has set prices and allocated markets pursuant to illegal horizontal agreements.

12. Defendant Rhone-Poulenc Ag Company, Inc. ("RP Inc.") is a New York corporation with its principal place of business in New Jersey. RP Inc. was engaged in the distribution and sale of vitamins, vitamin pre-mixes and bulk vitamin products throughout the United States, including Minnesota. RP Inc. is wholly controlled by RP S.A.

13. Defendant Rhone-Poulenc Animal Nutrition, Inc. ("RP Animal Nutrition") is a Delaware corporation with its principal place of business in Atlanta, Georgia. RP Animal Nutrition is wholly-controlled and dominated by RP S.A., and is engaged in the business of the distribution and sale of vitamins, vitamin pre-mixes and bulk vitamin products, throughout the United States, including sales within Minnesota. RP S.A., RP Inc., and RP Animal Nutrition are hereinafter referred to as "Rhone-Poulenc."

14. Defendant 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 vitamins throughout the United States, including this district. Lonza A.G., directly and through affiliates that it controls, has set prices and allocated markets pursuant to illegal horizontal agreements.

15. Defendant Lonza Inc. is a New York corporation with its principal place of business in Fair Lawn, New Jersey. Lonza Inc. is engaged in the business of the distribution and sale of vitamins, vitamin pre-mixes, and bulk vitamins in Minnesota and elsewhere. Lonza Inc. is a wholly owned affiliate of Lonza A.G. and is Lonza A.G.'s agent for service of process. Defendants LONZA A.G. and LONZA Inc. are hereinafter referred to as "Lonza."

16. Defendant DCV, Inc. ("DCV") is a Delaware corporation whose principal place of business is Wilmington, Delaware. DCV, directly and through affiliates it controls, has set prices and allocated markets pursuant to illegal horizontal agreements. DCV, Inc. is engaged in the distribution and sale of vitamins, vitamin pre-mixes and bulk vitamins, in Minnesota and elsewhere.

17. Defendant DUCOA, L.P. ("DUCOA"), is a limited partnership with its principal place of business in Highland, Illinois. DUCOA is a division of DCV. DUCOA is engaged in the business of the distribution and sale of vitamins, vitamin pre-mixes and bulk vitamins, in Minnesota and elsewhere.

18. Defendant Chinook Group, Ltd. is a Canadian limited partnership headquartered in Toronto, Canada and organized and existing under the laws of Ontario, Canada. Chinook Group, Ltd., through its affiliates, is engaged in the business of the distribution and sale of vitamins, vitamin pre-mixes and bulk vitamin products in Minnesota and elsewhere. Chinook Group, Ltd., directly and through affiliates it controls, has set prices and allocated markets pursuant to illegal horizontal agreements.

19. Defendant Chinook Group, Inc. is a Minnesota corporation, and is a wholly owned subsidiary of Chinook Group, Ltd., with its principal place of business in White Bear Lake, Minnesota. Chinook Group Inc. is engaged in the business of the distribution and sale of vitamins, vitamin pre-mixes and bulk vitamins in Minnesota and elsewhere. Chinook Group, Inc. is Chinook Group, Ltd.'s agent for service of process. Defendants Chinook Group, Inc. and Chinook Group, Ltd. are hereinafter referred to as "Chinook."

IV.
BACKGROUND

20. During the period covered by this Complaint, the defendants were the major producers and/or sellers of vitamins in the State of Minnesota.

21. The manufacture of vitamins, vitamin premixes, and other bulk vitamin products is a multibillion dollar-a-year industry worldwide. The North American market for animal nutrition vitamins is a \$500 million-a-year industry. In 1995, global sales for Vitamins A, B2 and E were approximately \$574 million, \$139 million, and \$1 billion, respectively.

22. During the period described in this Complaint, the world market for vitamins, vitamin premixes, and other bulk vitamin products was dominated by three companies: Roche, Rhone-Poulenc and BASF. Defendants control between 70 percent to 95 percent of the world vitamin market for Vitamins A, B2 and E.

23. During the period described in this Complaint, the conduct of defendants and their co-conspirators has taken place in and affected the interstate and foreign trade and commerce of Minnesota and the United States.

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

25. Beginning no later than 1989, defendants and their co-conspirators entered into and engaged in a combination and conspiracy to suppress competition by fixing the price and allocating the sales volumes among themselves for vitamins, vitamin premixes, and other vitamin products offered for sale to customers in Minnesota elsewhere. The combination and conspiracy, engaged in by the defendants and co-conspirators, was an unreasonable restraint of trade and commerce in violation of Minnesota Antitrust Law, Minn. Stat. §§ 325D.51 and 325D.53.

26. The markets for several vitamins, vitamin premixes and other vitamins A, B12 and E, have been characterized by stability and steady price increases. Due to defendants' price fixing activity, steady price increases have taken place in these products despite fluctuations in the costs of production. In addition, due to defendants' price fixing and other anti-competitive conduct, prices have continued to increase even as new supply and production have come on the market.

27. The bulk vitamin industry is characterized by economic conditions that are consistent with the conspiracy alleged herein. 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.

28. The combination and conspiracy consisted of continuing agreement, understanding, and concert of action among the conspirators, the substantial terms of which included:

- a. affecting, fixing, controlling and maintaining, prices and price increases for vitamins, vitamin premixes, and other vitamin products sold in Minnesota and elsewhere; and
- b. allocating or dividing among the defendants the customers, markets or sales volumes for vitamins, vitamin premixes, and other vitamin products sold in Minnesota and elsewhere.

29. For the purposes of forming and carrying out the agreement, combination, and conspiracy, defendants and their co-conspirators, among other things:

- a. participated in meetings and conversations to discuss the prices, price increases and the effective date of price increases for the sales of vitamins, vitamin premixes, and other vitamin products sold in Minnesota and elsewhere;
- b. agreed, during those meetings and conversations, to charge prices at certain levels and otherwise to increase and maintain the prices for vitamins, vitamin premixes, and other vitamin products sold in Minnesota and elsewhere;
- c. agreed, during those meetings and conversation, to allocate among the defendants the customers, markets, or sales volumes for vitamins, vitamin premixes, and

- other vitamin products to be sold by each defendant or by their co-conspirators in Minnesota and elsewhere;
- d. issued price announcements and price quotations in accordance with the agreements reached;
 - e. participated in meetings and conversations to discuss prices and sales volumes for vitamins, vitamin premixes, and other vitamin products sold in Minnesota and elsewhere; and
 - f. exchanged information regarding the prices and sales volumes for vitamins, vitamin premixes, and other vitamin products sold in Minnesota and elsewhere, for the purpose of monitoring and enforcing adherence to the agreed-upon prices and sales volumes.

30. The combination and conspiracy thus consisted of a continuing express or tacit combination, agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which were to fix, raise, maintain, and stabilize the price of vitamins sold in the State of Minnesota at supra-competitive levels. The combination and conspiracy included meetings, among other things, meetings among the defendants, held at least 4 times a year, to fix prices, rig contract bids, and monitor progress on setting prices.

Defendants agreed on who among them would offer the lowest bids on contracts for vitamin premixes sold for adding to other foods. The conspirators then agreed to stay out of the bidding war or offer significantly higher bids. This meeting, called the "top shot" meeting, would also establish price increases for the coming year. To confirm that the co-conspirators were sticking to the plan, the defendants swapped sales and customer information to monitor and enforce adherence to the conspiracy.

31. A few months later, the defendants' global marketing heads would meet to approve the "budget" derived from their conspiracy. At a third yearly meeting, defendants' executives would meet to make certain that the participating conspirators were sticking to the "rules."

32. The defendants developed an elaborate set of rules to ensure that prices at market allocations each year were fixed and stayed that way. In addition, to hide their activities, the defendants burned any paper that documented their conspiracy.

V.
GUILTY PLEAS

33. On or about March 2, 1999, defendant Lonza A.G. agreed to plead guilty to a criminal Information that charged defendant Lonza A.G. and others with an international conspiracy to suppress and eliminate competition by fixing the price and allocating the sales volume of vitamin B3 (niacin and niacinamide) in the United States and elsewhere.

34. The federal information filed against Lonza A.G. charges that the company agreed to set niacin and niacinamide prices, agreed to allocate the sales volumes of niacin and niacinamide, issued price announcements in accordance with the agreements, and participated in meetings and conversations to monitor and to enforce adherence to the agreed-upon prices and sales volumes.

35. The terms and conditions of the plea agreement require defendant Lonza A.G. to pay \$10.5 million in criminal fines to the United States of America.

36. On or about March 2, 1999, John Kennedy, Vice President of Sales and Marketing of Chinook Group, Inc., the United States subsidiary of Chinook Group, Ltd., agreed to plead guilty to his participation, on behalf of defendant Chinook Group, Inc., to fixing prices and allocating customers in the sales of Vitamin B4 (choline chloride), and agreed to pay a criminal fine. John Kennedy, along with his named and unnamed co-conspirators, agreed to set choline chloride prices, agreed to allocate choline chloride customers, agreed to divide the world markets for choline chloride, participated in meetings and conversations to monitor and to

enforce adherence to the agreed-upon prices and market shares, and rigged bids for contracts to supply choline chloride.

37. On or about March 2, 1999, Robert Samuelson, Sales Manager of Chinook Group, Inc., the United States subsidiary of Chinook Group, Ltd., agreed to plead guilty to his participation, on behalf of defendant Chinook Group, Inc., to fixing prices and allocating customers in the sales of Vitamin B4 (choline chloride), and agreed to pay a criminal fine. Robert Samuelson, along with his named and unnamed co-conspirators, agreed to set choline chloride prices, agreed to allocate choline chloride customers, agreed to divide the world markets for choline chloride, participated in meetings and conversations to monitor and to enforce adherence to the agreed-upon prices and market shares, and rigged bids for contracts to supply choline chloride.

38. On or about March 2, 1999, Lindell Hilling, former President of DuCoa L.P., a division of DCV, Inc., agreed to plead guilty to his participation, on behalf of defendant DuCoa L.P., to fixing prices and allocating customers in the sales of Vitamin B4 (choline chloride) and agreed to pay a criminal fine. Lindell Hilling, along with his named and unnamed co-conspirators, agreed to set choline chloride prices, agreed to allocate choline chloride customers, agreed to divide the world markets for choline chloride, participated in meetings and conversations to monitor and to enforce adherence to the agreed-upon prices and market shares, and rigged bids for contracts to supply choline chloride.

39. On or about March 2, 1999, J.L. "Pete" Fischer, President of Basic and International Products of DuCoa L.P., a division of DCV, Inc., agreed to plead guilty to his participation, on behalf of defendant DuCoa L.P., to fixing prices and allocating customers in the sales of Vitamin B4 (choline chloride), and agreed to pay a criminal fine. J.L. "Pete" Fischer,

along with his named and unnamed co-conspirators, agreed to set choline chloride prices, agreed to allocate choline chloride customers, agreed to divide the world markets for choline chloride, participated in meetings and conversations to monitor and to enforce adherence to the agreed-upon prices and market shares, and rigged bids for contracts to supply choline chloride.

40. On or about March 2, 1999, Antonio Felix, Vice President, Basic and International Products of DuCoa L.P., a division of DCV, Inc., agreed to plead guilty to his participation, on behalf of defendant DuCoa L.P., to fixing prices and allocating customers in the sales of Vitamin B4 (choline chloride), and agreed to pay a criminal fine. Antonio Felix, along with his named and unnamed co-conspirators, agreed to set choline chloride prices, agreed to allocate choline chloride customers, agreed to divide the world markets for choline chloride, participated in meetings and conversations to monitor and to enforce adherence to the agreed-upon prices and market shares, and rigged bids for contracts to supply choline chloride.

41. In May 1999, BASF plead guilty and agreed to pay \$225 million in fines for a worldwide price-fixing scheme involving vitamins A, B2, B5, 6, E and Beta-Carotene.

42. On May 20, 1999, F. Hoffman-LaRoche Ltd, plead guilty and agreed to pay \$500 million in fines for a word-wide price-fixing scheme involving vitamins A, B2, B5, C, E and Beta-Carotene.

43. One of the defendants (Lonza A.G.) admitted that at least certain of the allegations against it in the criminal cases are true and constituted proof that they had knowingly committed criminal violations of the federal antitrust laws.

VI **EFFECTS**

44. The combination and conspiracy has had the following effects, among others:

- a) buyers of vitamins from defendants and co-conspirators were deprived of free and open competition in the purchase of vitamins;
- b) competition in the sale of vitamins among defendants and co-conspirators was restrained, suppressed, and eliminated; and
- c) prices of vitamins sold by defendants and co-conspirators were raised, fixed, and maintained at artificial and noncompetitive levels.

45. As a direct and proximate result of defendants' unlawful conduct, the plaintiff and members of the class have been injured in their business and property in that they paid more for vitamins than they otherwise would have paid in the absence of the defendants' unlawful conduct.

46. Throughout the period set forth herein, defendants have fraudulently concealed their unlawful combination and conspiracy from plaintiff and the class members.

47. Plaintiff had no knowledge that defendants were violating the antitrust laws as alleged in this Complaint until shortly before the filing of this Complaint. Plaintiffs could not have discovered any of the violations before that time by the exercise of due diligence because of the fraudulent concealment of the conspiracy by defendants and their co-conspirators.

48. Defendants and their co-conspirators engaged in a successful, illegal price-fixing conspiracy that, by its nature, was inherently self-concealing.

49. The affirmative actions of defendants heretofore alleged were wrongfully concealed and carried out in a manner that precluded detection:

- a) defendants met secretly in the United States and Europe to discuss prices and volumes of sales of vitamins;

- b) defendants exchanged information regarding the prices and volumes of sales of vitamins for the purpose of monitoring and enforcing adherence to the agreed-upon prices, volumes of sales, and markets;
- c) defendants instructed members of the conspiracy at conspiracy meetings not to divulge the existence of the conspiracy; and
- d) defendants took other steps, including manipulating bidding practices, to disguise the existence of the conspiracy.

50. By virtue of the fraudulent concealment of defendants and their co-conspirators, the running of any statute of limitations has been tolled and suspended with respect to any damages that plaintiff and the other class members have suffered as a result of the unlawful combination and conspiracy.

VII.

CLASS ACTION ALLEGATIONS

51. Plaintiff brings this action on behalf of himself and, under Rule 23 of the Minnesota Rules of Civil Procedure, as a representative of the following class:

All individuals or entities in the State of Minnesota who purchased vitamins (i.e. natural and synthetic, dry and oil, raw and bulk vitamin products, including, but not limited to, vitamins A, B, C, D, E, and H, and vitamin pre-mixes) from distributors for resale and/or other commercial purposes in circumstances where the distributors purchased the vitamins directly or indirectly from any of the defendants, including any parents, subsidiaries or affiliates thereof, or their co-conspirators, during the period from January 1, 1989 through the present.

52. This action satisfies the numerosity, commonality, typicality, and adequacy requirements of Rule 23.01 and the predominance and superiority requirements of Rule 23.02.

53. The class is so numerous that joinder of all members is impracticable. During the class period, hundred or thousands of persons and entities located throughout Minnesota indirectly purchased vitamins, vitamin premixes and bulk vitamin products

from defendants and their co-conspirators. Thus, joinder of all class members is impracticable.

54. Plaintiff's claims are typical of the claims of all class members, because plaintiff was an indirect purchaser of vitamins from one or more of the defendants, like all other class members. Plaintiff's claims arise from the same conduct giving rise to the claims of the class, and the relief plaintiff seeks is common to the class.

55. Plaintiff will fairly and adequately protect the interests of the class, because plaintiff is typical, and plaintiff has no interests antagonistic to those of the other Class members. Plaintiff has retained competed counsel experienced in class action antitrust litigation.

56. Questions of law and fact common to all members of the class predominate over individual questions and include, but are not limited to, the following:

- (a) Whether defendants and their co-conspirators engaged in a combination, agreement or conspiracy to raise, fix maintain, and/or stabilize the prices of vitamins;
- (b) Whether defendants and their co-conspirators engaged in a combination, agreement or conspiracy to illegally allocate markets for vitamins;
- (c) The existence, scope, duration, and extent of the combination or conspiracy alleged herein;
- (d) Whether each defendant was a participant in the combination, agreement or conspiracy alleged herein;
- (e) Whether the alleged combination, agreement or conspiracy caused damage to plaintiff and members of the class;
- (f) Whether plaintiff and other members of the Class are entitled to declaratory and/or injunctive relief;
- (g) Whether the defendants and their co-conspirators fraudulently concealed the conspiracy alleged herein; and

- (h) The appropriate measure of damages sustained by plaintiff and other members of the class.

57. This action is superior to any alternatives for the fair and efficient adjudication of this controversy. Class treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously and efficiently. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of the controversy.

COUNT 1
VIOLATION OF THE MINNESOTA ANTITRUST LAW

58. As a direct and proximate result of defendants' unlawful conduct described above, plaintiff and members of the class have been injured in their business and property in that they have paid more for vitamins than they otherwise would have paid in the absence of defendants' unlawful conduct. Plaintiffs and the class have suffered damages in amounts presently undetermined.

59. The defendants' establishment of their unlawful pricing practices constitute per se illegal horizontal price fixing in the vitamin market in violation of Minn. Stat. §325D.49 *et seq.*

60. This unlawful horizontal contract, combination or conspiracy in restraint of trade or commerce in the vitamin market has caused, and continues to cause, substantial injury and damage to the plaintiff, the class and the public.

PRAYER FOR RELIEF

61. **WHEREFORE**, plaintiff prays that this Court enter judgment on his behalf adjudging and decreeing that:

- a) this action be certified as a class action with the named plaintiff as its representative and the undersigned attorneys as class counsel;
- b) defendants have engaged in a trust, contract combination and conspiracy in violation of Minn. Stat. § 325D.49 *et seq.*, and that plaintiffs and the members of the class have been damaged and injured in their business and property as a result of this violation;
- c) plaintiff and the members of the class they represent recover threefold the damages determined to have been sustained by them as a result of the conduct of defendants complained of herein as provided in Minn. Stat. §325D.57, and that judgment be entered against each defendant for the amount so determined;
- d) plaintiff and the members of the class recover from defendants the costs of this action, including reasonable attorneys' fees;
- e) plaintiff and the members of the class have such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury for all issues so triable.

Dated: 9/29/99, 1999

Respectfully submitted,

By: 

Wood R. Foster, Jr.

Jordan M. Lewis

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ACKNOWLEDGEMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded to the party against whom the allegations in this pleading are asserted for the violation of Minn. Stat § 549.211, subd. 2.


Jordan M. Lewis

62-KRB-09/01/99-21883-FL-COMPLAINT

RECEIVED

OCT - 6 1999

William L. Sippel

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF KANDIYOHI

EIGHTH JUDICIAL DISTRICT

Case Type: Other Civil

Court File No.: _____

CUSTOM NUTRITION, INC., AND
BRINTON VETERINARY SUPPLY, INC.,

Plaintiff,

CLASS ACTION COMPLAINT

Jury Trial Demanded

v.

F. HOFFMAN-LA ROCHE, LTD;
HOFFMAN-LA ROCHE INC.;
RHONE POULENC S.A.; ROCHE VITAMINS, INC.;
RHONE POULENC ANIMAL NUTRITION;
BASF A.G.; BASF CORPORATION; LONZA, AG;
LONZA, INC.; CHINOOK GROUP, INC.;
CHINOOK GROUP, LTD.; DCV, INC.; DUCOA, L.P.

Defendants.

NATURE OF THE CASE

This is a civil antitrust case in which the Plaintiffs, Custom Nutrition, Inc. and Brinton Veterinary Supply, Inc. ("Plaintiffs"), by and through their undersigned attorneys, seek treble damages and injunctive relief for Defendants' violations of the Minnesota Antitrust Act of 1971, Minn. Stat. § 325D.49-66 (1994). Plaintiffs herein allege that Defendants have conspired to restrain trade by

fixing the prices of certain vitamins, identified below as "Class Vitamins," at artificially high levels between January 1, 1988 and September 29, 1998, in violation of Minn. Stat. §§ 325D.51 and 325D.53, subd. (1) (1996).

PARTIES

Plaintiff Custom Nutrition, Inc. is a Minnesota corporation with its principal place of business in Kandiyohi County. Plaintiff purchased Class Vitamins during the Class Period as alleged in this Complaint.

Plaintiff Brinton Veterinary Supply, Inc. is a Minnesota corporation with its principal place of business in Kandiyohi County. Plaintiff purchased Class Vitamins during the Class Period as alleged in this Complaint.

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, throughout United States, and specifically within Minnesota.

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. Roche Inc. 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, including Minnesota. Roche 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 specifically within Minnesota, until at least 1997.

Defendant Roche Vitamins, Inc. ("Roche Vitamins") is a Delaware corporation with its principal place of business in Parsippany, New Jersey. Roche Vitamins 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, including Minnesota. 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, throughout the United States, and specifically within Minnesota. Roche Ltd., Roche Inc., and Roche Vitamins are referred to collectively in this Complaint as "Roche."

Defendant Rhone Poulenc S.A. ("RPS.A.") is a French corporation with operations in the United States. RPS.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, throughout the world, and specifically within Minnesota. RPS.A., 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 pursuant to illegal horizontal agreements, and those horizontal practices were designed to have substantial and adverse impact within the United States and, in fact, did have a substantial and adverse impact within the United States, and specifically within Minnesota.

Defendant Rhone Poulenc Animal Nutrition, Inc. ("RP Animal Nutrition") is a Delaware corporation with its principal place of business in Atlanta, Georgia. RP Animal Nutrition is wholly-controlled and dominated by RPS.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, including Minnesota. 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 specifically within Minnesota.

Defendant RP Inc. is a New York corporation with its principal place of business in Princeton, New Jersey. RP Inc. was engaged in the business of the

distribution and sale of vitamins, vitamin premixes, and bulk vitamin products throughout the United States, and specifically within Minnesota, until at least 1998. RP Inc. is wholly-controlled by RPS.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, including Minnesota. RPS.A., RP Inc., and RP Animal Nutrition are referred to collectively in this Complaint as "Rhone Poulenc."

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 products, including one or more of the Class Vitamins, throughout the world, and specifically within Minnesota. BASF A.G., 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 pursuant to illegal horizontal agreements, and these horizontal practices were designed to have substantial and adverse impact within the United States and, in fact, did have a substantial and adverse impact within the United States, and specifically within Minnesota.

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 engaged in the business of the distribution and

sale of vitamins, vitamin premixes, and bulk vitamins, including one or more of the Class Vitamins, throughout the world, and specifically within Minnesota. BASF Corporation 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, including Minnesota. Defendants BASF A.G. and BASF Corporation are referred to collectively in this Complaint as "BASF."

Defendant Chinook Group, Ltd. is a Canadian limited partnership headquartered in Toronto, Canada. Chinook Group, Ltd., through its affiliates, was engaged in the business of the distribution and sale of vitamins, vitamin premixes, and bulk vitamins, including one or more of the Class Vitamins.

Defendant Chinook Group, Inc., is a corporation whose principal place of business is White Bear Lake, MN. Chinook Group, Inc. is a subsidiary of Chinook Group, Ltd. Chinook Group 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, throughout the United States, and specifically within Minnesota. Chinook Group, Inc. is controlled by Chinook Group, Ltd., 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, including Minnesota.

Defendant DCV, Inc. is a corporation whose principal place of business is Wilmington, DE. DCV, Inc., through its affiliates and subsidiaries, is engaged in the distribution and sale of vitamins, vitamin premixes, and bulk vitamins, including one or more of the Class Vitamins, throughout the United States, and specifically within Minnesota.

Defendant DuCoa, L.P., with its principal place of business in Highland Park, IL., 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 throughout the United States, and specifically within Minnesota. DuCoa, L.P. is an affiliate of DCV, Inc. DuCoa, L.P. is controlled by DCV, Inc., 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, including Minnesota.

Defendant Lonza, A.G. ("Lonza") is a Swiss corporation with its principal place of business in Basel, Switzerland. Lonza 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 world, including the United States and specifically within Minnesota.

Defendant Lonza, Inc. is a corporation with its principal place of business in Fairlawn, New Jersey. Lonza, Inc. 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 specifically within Minnesota. Lonza, Inc. is wholly controlled by Lonza 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, including Minnesota.

The acts charged in this Complaint as having been done by Defendants were authorized, ordered, or done by their officers, agents, employees, or representatives, while actively engaged in the management of Defendants' business or affairs.

UNNAMED CO-CONSPIRATORS

Various other persons, companies, and corporations, the identities of which are presently unknown, and which are not named as defendants, in this Complaint, may have participated as co-conspirators with Defendants in the violations alleged, and may have performed acts and made statements in furtherance of those violations. Additional Defendants may be named and joined as discovery dictates.

JURISDICTION AND VENUE

This Court has jurisdiction pursuant to Minn. Stat. §§ 325D.57-58.

The exact amount of damages caused to the Class members cannot be precisely determined without access to Defendants' records but exceeds \$50,000.

Plaintiffs do business in Kandiyohi County, Minnesota and have purchased the vitamins which are the subject of this action in Kandiyohi County. As such, the cause of action as against at least one of the Defendants arose in whole or in part in Kandiyohi County. Pursuant to Minn. Stat. §§ 325D.65 and 542.01, venue is proper.

DEFINITION

As used in this Complaint, the term "Class Vitamins" means vitamin A, B complex vitamins, including vitamins B2, B3, B4, and vitamin E, sold in bulk, including premixes, for both human and animal consumption.

CLASS ACTION ALLEGATION

Plaintiffs bring this action on behalf of themselves, and pursuant to Rule 23.02(a)(1) and (c) of the Minnesota Rules of Civil Procedure, as representatives of a class (the "Class") defined as:

All persons or entities (excluding all governmental entities, Defendants, and their subsidiaries and affiliates) who purchased one or more of the Class Vitamins sold by Defendants in the State of Minnesota from January 1, 1988 to September 29, 1998.

The Class is so numerous that joinder is impracticable. Plaintiffs believe that there are hundreds of Class members, the exact number and their identities being known by Defendants and their co-conspirators.

Plaintiffs' claims are typical of the Claims of members of the Class. Plaintiffs and all members of the Class were damaged by the same wrongful conduct of Defendants.

Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs' interests are coincidental with, and not antagonistic to, those of the Class. In addition, Plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex class action and antitrust litigation. Questions of law and fact are common to the Class. These questions include, but are not limited to:

- a. Whether Defendants conspired to fix, raise, maintain, or stabilize the prices for one or more of the Class Vitamins;
- b. Whether Defendants conspired to allocate customers among themselves;
- c. Whether the conspiracy was implemented;
- d. Whether Defendants' conduct violated the Minnesota Antitrust Act;
- e. Whether Defendants' conduct affected interstate commerce;

f. Whether Defendants' conduct caused the prices of one or more of the Class Vitamins to be set at artificially high and non-competitive levels;

g. Whether Defendants' conduct caused injury to Plaintiffs and other Class members' business or property, and, if so, what the appropriate measure is of class-wide damages; and

h. Whether Defendants took steps to actively conceal the conspiracy.

Common questions of law and fact predominate over questions, if any, that may affect only individual Class members.

The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

Defendants have acted, or refused to act, on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

Class action treatment is a superior 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 to prosecute their common claims in a single forum simultaneously, efficiently, and without the necessary

duplication of evidence, effort, and expense that numerous individual actions would engender.

TRADE AND COMMERCE

The manufacture of vitamins, vitamin premixes, and other bulk vitamin products is a multi-billion dollar a year industry worldwide. The North American market for animal nutrition vitamins, for example, is an over \$500 million industry. Vitamins are also sold for use in products intended for human consumption. In 1995, global sales for Vitamins A, B2, and E were approximately \$574 million, \$139 million, and \$1 billion.

During the period described in this Complaint, the market for vitamins, vitamin premixes, and other bulk vitamin products, including the Class Vitamins, was highly concentrated. The market was dominated by three companies: Roche, Rhone Poulenc, and BASF. Defendants control between 70 to 95 percent of the world vitamin market for Vitamins A, B2, and E.

Defendants' vitamins, vitamin premixes, and other bulk vitamin products are sold within Minnesota. For example, Roche sells vitamins such as vitamin A (acetate and palmitate), vitamin B2 (riboflavin), B5 (pantothenic acid), B9 (folic acid), vitamin C, vitamin D, vitamin E (D-Alpha and DL-Alpha) in interstate commerce, Roche, BASF, and Rhone-Poulenc together control over 95

percent of the worldwide markets for vitamins A and E. Lonza sells vitamin B3 (niacin).

The bulk vitamin industry is characterized by economic conditions that are consistent with the conspiracy alleged in this Complaint. The Class Vitamins are considered to be commodities; there are 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.

The conspiracy alleged herein artificially increased the prices of the Class Vitamins throughout Minnesota. Because retail prices charged for Class Vitamins are a function of the wholesale prices charged by the Defendants, the wholesale price overcharge for Class Vitamins artificially increased the retail prices paid for Class Vitamins by the Plaintiffs and members of the Class.

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

VIOLATIONS ALLEGED

Beginning no later than January 1, 1988 and continuing until at least September 29, 1998, Defendants and their co-conspirators entered into and engaged in a combination and conspiracy to suppress competition by artificially raising, fixing, maintaining, or stabilizing the prices of the Class Vitamins in Minnesota and elsewhere. The combination and conspiracy, engaged in by the

Defendants and their co-conspirators, was an unreasonable restraint of trade and commerce in violation of Minn. Stat. § 325D.51 and § 325D.53 of the Minnesota Antitrust Act § 325D.49 *et. seq.*

Pursuant to their conspiracy alleged in this Complaint, Defendants and their co-conspirators engaged in a wide range of anti-competitive activities, the purpose and effect of which was to raise the price of Class Vitamins. These activities included the following:

- a. Defendants agreed to fix and maintain prices or to coordinate price increases for the sale of vitamins, vitamin premixes, and bulk vitamin products, including one or more of the Class Vitamins, in Minnesota and elsewhere.
- b. Defendants agreed to allocate the volumes of, sales of, and markets for, vitamins, vitamin premixes, and bulk vitamin products, including one or, more of the Class Vitamins, among the corporate conspirators in Minnesota and elsewhere.
- c. Defendants attempted to control the markets for vitamin premixes, for example, by agreeing to price premixes at levels in excess of the prices offered for the component vitamin ingredients.

d. Defendants participated in meetings and conversations for the purpose of monitoring and enforcing adherence to the agreed upon prices and sales volumes.

The allegations concerning Defendants' agreement, conspiracy, and actions are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

In connection with the United States Government's ongoing investigation of the bulk vitamin market, on March 2, 1999, John Kenney, Vice President of Sales and Marketing for Chinook Group, Inc., Robert Samuelson, Sales Manager of Chinook Group, Inc., Lindell Hilling, former President of DuCoa, L.P., and Antonio Felix, Vice President, Basic and International Products of DuCoa, L.P., pleaded guilty to criminal information charging them with conspiring with unnamed co-conspirators to suppress and eliminate competition in the choline chloride (vitamin B4) market in the United States and elsewhere from at least January 1988 through September 29, 1998. Also, Lonza, Inc. agreed to plead guilty to charges that the company, along with unnamed co-conspirators, agreed to fix prices and allocate the sales volumes of niacin and niacinamide (vitamin B3) prices, issued price announcements in accordance with the agreements, and participated in meetings and conversations to monitor and enforce adherence to the agreed upon prices and sales volumes.

In May of 1999, Defendants Roche and BASF pleaded guilty to charges of participating in a conspiracy to suppress and eliminate competition by fixing, increasing, and maintaining the price and allocating the volume of certain vitamins, including one or more of the "Class Vitamins," sold in the United States and elsewhere and, allocating among corporate conspirators certain contracts for vitamin premixes for customers located throughout the United States through the submission of rigged and non-competitive bids for such contracts. These Defendants have agreed to pay federal authorities fines totaling \$725 million. Rhone Poulenc avoided criminal penalties by cooperating with federal investigators. Although the entire scope of the conspiracy is not yet known, several former executives of the Defendants have been cooperating with government investigators to provide even more detail as to the nature and breadth of the vitamin conspiracy.

FRAUDULENT CONCEALMENT

Throughout the period set forth in this Complaint, Defendants have fraudulently concealed their unlawful combination and conspiracy from Plaintiffs and the Class members.

Plaintiffs had no knowledge that Defendants were violating the antitrust laws as alleged in this Complaint until shortly before the filing of this Complaint. Plaintiffs could not have discovered any of the violations before that

time by the exercise of due diligence because of the fraudulent concealment of the conspiracy by Defendants and their co-conspirators.

Defendants and their co-conspirators engaged in a successful, illegal price-fixing conspiracy that, by its nature, was inherently self-concealing.

Defendants' affirmative actions as alleged in this Complaint, as well as those set forth below, were wrongfully concealed and carried out in a manner that precluded detection.

- a. Defendants met secretly in the United States and Europe to discuss prices and volumes of sales of one or more of the Class Vitamins;
- b. Defendants instructed members of the conspiracy at conspiracy meetings not to divulge the existence of the conspiracy; and
- c. Defendants took other steps to disguise the existence of the conspiracy.

By virtue of the fraudulent concealment of Defendants and their coconspirator, the running of any statute of limitations has been tolled and suspended with respect to any damages that Plaintiffs and the other Class members have suffered as a result of the unlawful combination and conspiracy.

EFFECTS

The unlawful contract, combination, or conspiracy has had the following effects, among others:

- a. Price competition in the sale of Class Vitamins among Defendants and their co-conspirators has been artificially restrained;
- b. Prices for Class Vitamins sold by the Defendants and their co-conspirators have been raised, fixed, maintained and stabilized at artificially high and non-competitive levels; and
- c. Purchasers of Class Vitamins from Defendants and their co-conspirator have been deprived of the benefit of free and open competition.

VIOLATION ALLEGED
Restraint of Trade in Violation of the Minnesota Antitrust Act

Plaintiffs reallege Paragraphs 1-47, above, and incorporate them by reference as if fully alleged in this paragraph.

Beginning no later than January 1, 1988 and continuing until at least September 29, 1998, Defendants engaged in a continuing combination, contract, arrangement, or conspiracy, express or implied, in violation of Minn. Stat. §§ 325D.51 and 325D.53, subd. 1(a) (1994), the substantial terms of which were to raise, fix, maintain, and stabilize, at artificially high levels, the prices of Class Vitamins sold in Minnesota.

Plaintiffs and members of the class, who purchased Class Vitamins sold by Defendants, paid retail prices that were artificially inflated by the continuing combination, contract, arrangement, or conspiracy alleged herein, and

were thereby injured by reason of Defendants' violations of Minn. Stat. §§ 325D.51 and 325D.53, in an amount presently undetermined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

A. That the Court determine that this action be maintained as a class action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure;

B. That the unlawful combination and conspiracy alleged in this Complaint be adjudged and decreed to be an unreasonable restraint of trade or commerce in violation Minn. Stat. § 325D.51 and § 325D.53 of the Minnesota Antitrust Act § 325D.49 *et. seq.*;

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

D. That Plaintiffs and the Class members be awarded pre- and post judgment interest;

E. That Defendants be enjoined from continuing this unlawful combination and conspiracy alleged in this Complaint pursuant to Minn. Stat. § 325D.58;

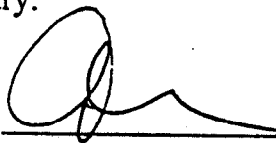
F. That Plaintiffs and the Class recover their costs of this suit, including reasonable attorneys' fees, as provided by Minn. Stat. § 325D.57; and

G. That Plaintiffs and the Class 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 hereby demands a trial by jury.

Dated: September 13, 1999



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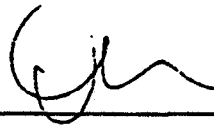
ACKNOWLEDGMENT

The undersigned acknowledges that reasonable attorneys' fees, witness fees, costs, and other disbursements may be awarded to the parties against whom the allegations in this pleading are made, pursuant to Minn. Stat. § 549, subd. 2.

Dated:

9/13/99

By:



D

STATE OF MINNESOTA
COUNTY OF CHIPPEWA

DISTRICT COURT
EIGHTH JUDICIAL DISTRICT

Case Type: Other Civil

Court File No.: _____

BIG VALLEY MILLING, INC.,

Plaintiff,

CLASS ACTION COMPLAINT
Jury Trial Demanded

v.

F. HOFFMAN-LA ROCHE, LTD;
HOFFMAN-LA ROCHE INC.;
RHONE POULENC S.A.; ROCHE VITAMINS, INC.;
RHONE POULENC ANIMAL NUTRITION;
BASF A.G.; BASF CORPORATION; LONZA, AG;
LONZA, INC.; CHINOOK GROUP, INC.;
CHINOOK GROUP, LTD.; DCV, INC.; DUCOA, L.P.

Defendants.

NATURE OF THE CASE

This is a civil antitrust case in which the Plaintiff, Big Valley Milling, Inc. ("Plaintiff"), by and through its undersigned attorneys, seeks treble damages and injunctive relief for Defendants' violations of the Minnesota Antitrust Act of 1971, Minn. Stat. § 325D.49-66(1994). Plaintiff herein alleges that Defendants have conspired to restrain trade by fixing the prices of certain vitamins, identified

below as "Class Vitamins," at artificially high levels between January 1, 1988 and September 29, 1998, in violation of Minn. Stat. §§ 325D.51 and 325D.53, subd. (1) (1996).

PARTIES

Plaintiff Big Valley Milling, Inc. is a Minnesota corporation with its principal place of business in Kandiyohi County. Plaintiff purchased Class Vitamins during the Class Period as alleged in this Complaint.

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, throughout United States, and specifically within Minnesota.

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. Roche Inc. 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, including Minnesota.

Roche 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 specifically within Minnesota, until at least 1997.

Defendant Roche Vitamins, Inc. ("Roche Vitamins") is a Delaware corporation with its principal place of business in Parsippany, New Jersey. Roche Vitamins 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, including Minnesota.

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, throughout the United States, and specifically within Minnesota. Roche Ltd., Roche Inc., and Roche Vitamins are referred to collectively in this Complaint as "Roche."

Defendant Rhone Poulenc S.A. ("RPS.A.") is a French corporation with operations in the United States. RPS.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, throughout the world, and specifically within Minnesota. RPS.A., 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 pursuant to illegal horizontal agreements, and those horizontal practices were designed to have substantial and adverse impact within the United States and, in fact, did have a substantial and adverse impact within the United States, and specifically within Minnesota.

Defendant Rhone Poulenc Animal Nutrition, Inc. ("RP Animal Nutrition") is a Delaware corporation with its principal place of business in Atlanta, Georgia. RP Animal Nutrition is wholly-controlled and dominated by RPS.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, including Minnesota. 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 specifically within Minnesota.

Defendant RP Inc. is a New York corporation with its principal place of business in Princeton, New Jersey. RP Inc. was engaged in the business of the distribution and sale of vitamins, vitamin premixes, and bulk vitamin products throughout the United States, and specifically within Minnesota, until at least 1998. RP Inc. is wholly-controlled by RPS.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, including Minnesota. RPS.A., RP Inc., and RP Animal Nutrition are referred to collectively in this Complaint as "Rhone Poulenc."

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 products, including one or more of the Class Vitamins, throughout the world, and specifically within Minnesota. BASF A.G., 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 pursuant to illegal horizontal agreements, and these horizontal practices were designed to have substantial and adverse impact within the United States and, in fact, did have a substantial and adverse impact within the United States, and specifically within Minnesota.

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 engaged in the business of the distribution and sale of vitamins, vitamin premixes, and bulk vitamins, including one or more of the Class Vitamins, throughout the world, and specifically within Minnesota. BASF Corporation 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, including Minnesota. Defendants BASF A.G. and BASF Corporation are referred to collectively in this Complaint as "BASF."

Defendant Chinook Group, Ltd. is a Canadian limited partnership headquartered in Toronto, Canada. Chinook Group, Ltd., through its affiliates, was engaged in the business of the distribution and sale of vitamins, vitamin premixes, and bulk vitamins, including one or more of the Class Vitamins.

Defendant Chinook Group, Inc., is a corporation whose principal place of business is White Bear Lake, MN. Chinook Group, Inc. is a subsidiary of Chinook Group, Ltd. Chinook Group 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, throughout the United States, and specifically within Minnesota. Chinook Group, Inc. is controlled by Chinook Group, Ltd., 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, including Minnesota.

Defendant DCV, Inc. is a corporation whose principal place of business is Wilmington, DE. DCV, Inc., through its affiliates and subsidiaries, is

engaged in the distribution and sale of vitamins, vitamin premixes, and bulk vitamins, including one or more of the Class Vitamins, throughout the United States, and specifically within Minnesota.

Defendant DuCoa, L.P., with its principal place of business in Highland Park, IL., 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 throughout the United States, and specifically within Minnesota.

DuCoa, L.P. is an affiliate of DCV, Inc. DuCoa, L.P. is controlled by DCV, Inc., 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, including Minnesota.

Defendant Lonza, A.G. ("Lonza") is a Swiss corporation with its principal place of business in Basel, Switzerland. Lonza 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 world, including the United States and specifically within Minnesota.

Defendant Lonza, Inc. is a corporation with its principal place of business in Fairlawn, New Jersey. Lonza, Inc. 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,

specifically, within Minnesota. Lonza, Inc. is wholly controlled by Lonza 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, including Minnesota.

The acts charged in this Complaint as having been done by Defendants were authorized, ordered, or done by their officers, agents, employees, or representatives, while actively engaged in the management of Defendants' business or affairs.

UNNAMED CO-CONSPIRATORS

Various other persons, companies, and corporations, the identities of which are presently unknown, and which are not named as Defendants, in this Complaint, may have participated as co-conspirators with Defendants in the violations alleged, and may have performed acts and made statements in furtherance of those violations. Additional Defendants may be named and joined as discovery dictates.

JURISDICTION AND VENUE

This Court has jurisdiction pursuant to Minn. Stat. §§ 325D.57-58. The exact amount of damages caused to the Class members cannot be precisely determined without access to Defendants' records but exceeds \$ 50,000.

Plaintiff does business in Chippewa County, Minnesota and have purchased the vitamins which are the subject of this action in Chippewa County. As such, the cause of action as against at least one of the Defendants arose in whole or in part in Chippewa County. Pursuant to Minn. Stat. §§ 325D.65 and 542.01, venue is proper.

DEFINITION

As used in this Complaint, the term "Class Vitamins" means vitamin A, B complex vitamins, including vitamins B2, B3, B4, and vitamin E, sold in bulk, including premixes, for both human and animal consumption.

CLASS ACTION ALLEGATION

Plaintiff brings this action on behalf of itself, and pursuant to Rule 23.02(a)(1) and (c) of the Minnesota Rules of Civil Procedure, as representatives of a class (the "Class") defined as:

All persons or entities (excluding all governmental entities, Defendants, and their subsidiaries and affiliates) who purchased one or more of the Class Vitamins sold by Defendants in the State of Minnesota from January 1, 1988 to September 29, 1998.

The Class is so numerous that joinder is impracticable. Plaintiff believes that there are hundreds of Class members, the exact number and their identities being known by Defendants and their co-conspirators.

Plaintiff's claims are typical of the Claims of members of the Class. Plaintiffs and all members of the Class were damaged by the same wrongful conduct of Defendants.

Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff's interests are coincidental with, and not antagonistic to, those of the Class. In addition, Plaintiff is represented by counsel who are experienced and competent in the prosecution of complex class action and antitrust litigation.

Questions of law and fact are common to the Class. These questions include, but are not limited to:

- a. Whether Defendants conspired to fix, raise, maintain, or stabilize the prices for one or more of the Class Vitamins;
- b. Whether Defendants conspired to allocate customers among themselves;
- c. Whether the conspiracy was implemented;
- d. Whether Defendants' conduct violated the Minnesota Antitrust Act;
- e. Whether Defendants' conduct affected interstate commerce;
- f. Whether Defendants' conduct caused the prices of one or more of the Class Vitamins to be set at artificially high and non-competitive levels;

g. Whether Defendants' conduct caused injury to Plaintiff and other Class members' business or property, and, if so, what the appropriate measure is of class-wide damages; and

h. Whether Defendants took steps to actively conceal the conspiracy.

Common questions of law and fact predominate over questions, if any, that may affect only individual Class members.

The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

Defendants have acted, or refused to act, on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

Class action treatment is a superior 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 to prosecute their common claims in a single forum simultaneously, efficiently, and without the necessary duplication of evidence, effort, and expense that numerous individual actions would engender.

TRADE AND COMMERCE

The manufacture of vitamins, vitamin premixes, and other bulk vitamin products is a multi-billion dollar a year industry worldwide. The North American market for animal nutrition vitamins, for example, is an over \$500 million industry. Vitamins are also sold for use in products intended for human consumption. In 1995, global sales for Vitamins A, B2, and E were approximately \$574 million, \$139 million, and \$1 billion.

During the period described in this Complaint, the market for vitamins, vitamin premixes, and other bulk vitamin products, including the Class Vitamins, was highly concentrated. The market was dominated by three companies: Roche, Rhone Poulenc, and BASF. Defendants control between 70 to 95 percent of the world vitamin market for Vitamins A, B2, and E.

Defendants' vitamins, vitamin premixes, and other bulk vitamin products are sold within Minnesota. For example, Roche sells vitamins such as vitamin A (acetate and palmitate), vitamin B2 (riboflavin), B5 (pantothenic acid), B9 (folic acid), vitamin C, vitamin D, vitamin E (D-Alpha and DL-Alpha) in interstate commerce, Roche, BASF, and Rhone-Poulenc together control over 95 percent of the worldwide markets for vitamins A and E. Lonza sells vitamin B3 (niacin).

The bulk vitamin industry is characterized by economic conditions that are consistent with the conspiracy alleged in this Complaint. The Class

Vitamins are considered to be commodities; there are 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.

The conspiracy alleged herein artificially increased the prices of the Class Vitamins throughout Minnesota. Because retail prices charged for Class Vitamins are a function of the wholesale prices charged by the Defendants, the wholesale price overcharge for Class Vitamins artificially increased the retail prices paid for Class Vitamins by the Plaintiff and members of the Class.

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

VIOLATIONS ALLEGED

Beginning no later than January 1, 1988 and continuing until at least September 29, 1998, Defendants and their co-conspirators entered into and engaged in a combination and conspiracy to suppress competition by artificially raising, fixing, maintaining, or stabilizing the prices of the Class Vitamins in Minnesota and elsewhere. The combination and conspiracy, engaged in by the Defendants and their co-conspirators, was an unreasonable restraint of trade and commerce in violation of Minn. Stat. § 325D.51 and § 325D.53 of the Minnesota Antitrust Act § 325D.49 *et. seq.*

Pursuant to their conspiracy alleged in this Complaint, Defendants and their co-conspirators engaged in a wide range of anti-competitive activities, the purpose and effect of which was to raise the price of Class Vitamins. These activities included the following:

a. Defendants agreed to fix and maintain prices or to coordinate price increases for the sale of vitamins, vitamin premixes, and bulk vitamin products, including one or more of the Class Vitamins, in Minnesota and elsewhere.

b. Defendants agreed to allocate the volumes of, sales of, and markets for, vitamins, vitamin premixes, and bulk vitamin products, including one or, more of the Class Vitamins, among the corporate conspirators in Minnesota and elsewhere.

c. Defendants attempted to control the markets for vitamin premixes, for example, by agreeing to price premixes at levels in excess of the prices offered for the component vitamin ingredients.

d. Defendants participated in meetings and conversations for the purpose of monitoring and enforcing adherence to the agreed upon prices and sales volumes.

The allegations concerning Defendants' agreement, conspiracy, and actions are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

In connection with the United States Government's ongoing investigation of the bulk vitamin market, on March 2, 1999, John Kenney, Vice President of Sales and Marketing for Chinook Group, Inc., Robert Samuelson, Sales Manager of Chinook Group, Inc., Lindell Hilling, former President of DuCoa, L.P., and Antonio Felix, Vice President, Basic and International Products of DuCoa, L.P., pleaded guilty to criminal information charging them with conspiring with unnamed co-conspirators to suppress and eliminate competition in the choline chloride (vitamin B4) market in the United States and elsewhere from at least January 1988 through September 29, 1998. Also, Lonza, Inc. agreed to plead guilty to charges that the company, along with unnamed co-conspirators, agreed to fix prices and allocate the sales volumes of niacin and niacinamide (vitamin B3) prices, issued price announcements in accordance with the agreements, and participated in meetings and conversations to monitor and enforce adherence to the agreed upon prices and sales volumes.

In May of 1999, Defendants Roche and BASF pleaded guilty to charges of participating in a conspiracy to suppress and eliminate competition by fixing, increasing, and maintaining the price and allocating the volume of certain

vitamins, including one or more of the "Class Vitamins," sold in the United States and elsewhere and, allocating among corporate conspirators certain contracts for vitamin premixes for customers located throughout the United States through the submission of rigged and non-competitive bids for such contracts. These Defendants have agreed to pay federal authorities fines totaling \$725 million. Rhone Poulenc avoided criminal penalties by cooperating with federal investigators. Although the entire scope of the conspiracy is not yet known, several former executives of the Defendants have been cooperating with government investigators to provide even more detail as to the nature and breadth of the vitamin conspiracy.

FRAUDULENT CONCEALMENT

Throughout the period set forth in this Complaint, Defendants have fraudulently concealed their unlawful combination and conspiracy from Plaintiff and the Class members.

Plaintiff had no knowledge that Defendants were violating the antitrust laws as alleged in this Complaint until shortly before the filing of this Complaint. Plaintiff could not have discovered any of the violations before that time by the exercise of due diligence because of the fraudulent concealment of the conspiracy by Defendants and their co-conspirators.

Defendants and their co-conspirators engaged in a successful, illegal price-fixing conspiracy that, by its nature, was inherently self-concealing.

Defendants' affirmative actions as alleged in this Complaint, as well as those set forth below, were wrongfully concealed and carried out in a manner that precluded detection.

- a. Defendants met secretly in the United States and Europe to discuss prices and volumes of sales of one or more of the Class Vitamins.
- b. Defendants instructed members of the conspiracy at conspiracy meetings not to divulge the existence of the conspiracy; and
- c. Defendants took other steps to disguise the existence of the conspiracy.

By virtue of the fraudulent concealment of Defendants and their coconspirator, the running of any statute of limitations has been tolled and suspended with respect to any damages that Plaintiff and the other Class members have suffered as a result of the unlawful combination and conspiracy.

EFFECTS

The unlawful contract, combination, or conspiracy has had the following effects, among others:

- a. Price competition in the sale of Class Vitamins among Defendants and their co-conspirators has been artificially restrained;

b. Prices for Class Vitamins sold by the Defendants and their co-conspirators have been raised, fixed, maintained and stabilized at artificially high and non-competitive levels; and

c. Purchasers of Class Vitamins from Defendants and their co-conspirator have been deprived of the benefit of free and open competition.

VIOLATION ALLEGED
Restraint of Trade in Violation of the Minnesota Antitrust Act

Plaintiff realleges Paragraphs 1-47 above, and incorporates them by reference as if fully alleged in this paragraph.

Beginning no later than January 1, 1988 and continuing until at least September 29, 1998, Defendants engaged in a continuing combination, contract, arrangement, or conspiracy, express or implied, in violation of Minn. Stat. §§ 325D.51 and 325D.53, subd. 1(a) (1994), the substantial terms of which were to raise, fix, maintain, and stabilize, at artificially high levels, the prices of Class Vitamins sold in Minnesota.

Plaintiff and members of the class, who purchased Class Vitamins sold by Defendants, paid retail prices that were artificially inflated by the continuing combination, contract, arrangement, or conspiracy alleged herein, and were thereby injured by reason of Defendants' violations of Minn. Stat. §§ 325D.51 and 325D.53, in an amount presently undetermined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

A. That the Court determine that this action be maintained as a class action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure;

B. That the unlawful combination and conspiracy alleged in this Complaint be adjudged and decreed to be an unreasonable restraint of trade or commerce in violation Minn. Stat. § 325D.51 and § 325D.53 of the Minnesota Antitrust Act § 325D.49 *et. seq.*;

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

D. That Plaintiff and the Class members be awarded pre- and post judgment interest;

E. That Defendants be enjoined from continuing this unlawful combination and conspiracy alleged in this Complaint pursuant to Minn. Stat. § 325D.58;

F. That Plaintiff and the Class recover their costs of this suit, including reasonable attorneys' fees, as provided by Minn. Stat. § 325D.57; and

F. That Plaintiff and the Class recover their costs of this suit, including reasonable attorneys' fees, as provided by Minn. Stat. § 325D.57; and

G. That Plaintiff and the Class 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

Plaintiff hereby demands a trial by jury.

Dated: September 13, 1999



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ACKNOWLEDGMENT

The undersigned acknowledges that reasonable attorneys' fees, witness fees, costs, and other disbursements may be awarded to the parties against whom the allegations in this pleading are made, pursuant to Minn. Stat. § 549, subd. 2.

Dated:

9/13/24

By:

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a wavy line.

STATE OF MINNESOTA

IN SUPREME COURT

C4-87-2406

In Re Minnesota Asbestos
Litigation

ORDER

WHEREAS, it appearing to the Court that a large number of asbestos-related claims have been and are anticipated to be brought in Minnesota state courts as personal injury or death claims and as damage to property actions; and

WHEREAS, these actions will involve, in numerous instances, similar questions of law and fact, problems in discovery, theories of recovery and defense; and

WHEREAS, the same limited number of asbestos industry defendants appear to be involved in multiple claims; and

WHEREAS, it being necessary for the convenience and economy of the parties, all counsel, the public and the Court that a consistent, efficient and economical system be fashioned to manage all phases of this litigation and properly allocate limited court facilities and judicial personnel;

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to Minn. Stat. §§480.16 and 2.724:

1. The Honorable Jack A. Mitchell of the First Judicial District, having consented pursuant to statute, is hereby appointed to hear and decide all matters, including all pretrial and trial proceedings, in all presently pending and future actions before Minnesota state trial courts, whether relating to personal injury, death or property damage, that arise from or seek recovery for the manufacture, distribution, use or exposure to asbestos and asbestos-containing products.
2. Case Management Orders governing all phases of pleading, discovery, motions, settlement and trial shall be prepared, pursuant to Rules 16, 26.02 and 26.06 of the Rules of Civil Procedure, after consultation with counsel for as many affected parties as reasonably possible.

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MN APPELLATE COURT

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Exhibit E

3. Matters not resolved by agreement of the parties, when determined by the Court to be ready for trial, shall be scheduled promptly for trial in the county of original venue or as agreed upon by all affected counsel, giving due consideration to the scheduling concerns of affected counsel, the parties and the public interest in avoiding protracted delay in trial.
4. Trials in said cases shall be heard by Judge Mitchell or, as may be necessary to assure prompt disposition of the case, a judge of the venued district.
5. Each district administrator shall assist in scheduling court facilities and judicial personnel so as to permit prompt trial by Judge Mitchell or a judge of the venued district for each matter identified as ready for trial.
6. This assignment shall govern all such asbestos cases, wherever venued, and apply in all districts and counties in the State of Minnesota.
7. The effectiveness of asbestos case consolidation under this order shall be reviewed periodically.

Dated: December 14, 1987

BY THE COURT


Douglas K. Amdahl
Chief Justice

OFFICE OF
APPELLATE COURTS

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FILED

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MN APPELLATE COURT

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F

STATE OF MINNESOTA
IN SUPREME COURT
CO-91-706

In Re Minnesota L-tryptophan
Litigation

ORDER

WHEREAS, it appearing to the Court that a large number of L-tryptophan-related claims have been and are anticipated to be brought in Minnesota state courts; and

WHEREAS, these actions will involve, in numerous instances, similar questions of law and fact, problems in discovery, theories of recovery and defense; and

WHEREAS, it being necessary for the convenience and economy of the parties, all counsel, the public and the Court that a consistent, efficient and economical system be fashioned to manage all phases of this litigation and properly allocate limited court resources;

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to Minn. Stat. §§480.16 and 2.724:

1. The Honorable Robert F. Carolan of the First Judicial District, having consented pursuant to statute, is hereby appointed to hear and decide all matters, including all pretrial and trial proceedings, in all presently pending and future actions before Minnesota state trial courts, that arise from or seek recovery for the manufacture, distribution, or use of L-tryptophan.
2. Case Management Orders governing all phases of pleading, discovery, motions, settlement and trial shall be prepared, pursuant to Rules 16, 26.02 and 26.06 of the Rules of Civil Procedure, after consultation with counsel for as many affected parties as reasonably possible.

Exhibit F

3. Matters not resolved by agreement of the parties, when determined by the Court to be ready for trial, shall be scheduled promptly for trial in the county of original venue or as agreed upon by all affected counsel, giving due consideration to the scheduling concerns of affected counsel, the parties and the public interest in avoiding protracted delay in trial.
4. Trials in said cases shall be heard by Judge Robert F. Carolan or, as may be necessary to assure prompt disposition of the case, a judge of the venued district.
5. Each district administrator shall assist in scheduling court facilities and judicial personnel so as to permit prompt trial by Judge Robert F. Carolan or a judge of the venued district for each matter identified as ready for trial.
6. This assignment shall govern all such L-tryptophan cases, wherever venued, and apply in all districts and counties in the State of Minnesota.
7. The effectiveness of L-tryptophan case consolidation under this order shall be reviewed periodically.

Dated: April 24, 1991

BY THE COURT

OFFICE OF
APPELLATE COURTS

APR 24 1991

FILED



A. M. Keith
Chief Justice

G

JUDICIAL PANEL ON
MULTIDISTRICT
LITIGATION

JUN - 7 1999

FILED
CLERK'S OFFICE**DOCKET NO. 1285****BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION****IN RE VITAMIN ANTITRUST LITIGATION****BEFORE JOHN F. NANGLE, CHAIRMAN, WILLIAM B. ENRIGHT,
CLARENCE A. BRIMMER, JOHN F. GRADY, BAREFOOT SANDERS,^{*}
LOUIS C. BECHTLE AND JOHN F. KEENAN, JUDGES OF THE PANEL****TRANSFER ORDER**

This litigation currently consists of the sixteen actions listed on the attached Schedule A and pending in four federal districts as follows: eight actions in the District of the District of Columbia, four actions in the Northern District of Texas, three actions in the District of New Jersey, and one action in the District of Minnesota.¹ Before the Panel is a motion by defendants² for centralization, pursuant to 28 U.S.C. §1407, of the actions in the District of the District of Columbia for coordinated or consolidated pretrial proceedings. All responding plaintiffs support transfer to the District of the District of Columbia.

^{*}Judge Sanders took no part in the decision of this matter.

¹In addition to the sixteen actions before the Panel, the parties have advised the Panel of nine other actions pending in the following federal districts: four each in the District of the District of Columbia and the Northern District of Texas, and one in the District of New Jersey. These actions and any other related actions will be treated as potential tag-along actions. See Rules 7.4 and 7.5, R.P.J.P.M.L., 181 F.R.D. 1, 10-11 (1998).

²The defendants are F. Hoffman-La Roche Ltd., Hoffman-La Roche Inc., Roche Vitamins Inc., Rhone-Poulenc S.A., Rhone-Poulenc Inc., Rhone-Poulenc Animal Nutrition Inc., Rhodia Inc., BASF AG, BASF Corporation, Lonza AG, Lonza Inc., Degussa AG, Degussa Corporation, DuCoc L.P., DCV Inc., Lindell Hilling, J.L. "Pete" Fischer, Antonio Felix, Chinook Group Ltd., Chinook Group Inc., John Kennedy, Robert Samuelson, Takeda Chemical Industries Inc., Takeda Vitamin & Food USA Inc., Takeda USA Inc., Eisai Co. Ltd., Eisai USA Inc., Eisai Inc., Bioproducts Inc., Merck KGaA, E. Merck, and EM Industries, Inc. According to the papers filed, no defendant opposes centralization in the District of the District of Columbia.

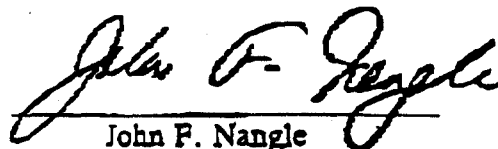
- 2 -

On the basis of the papers filed,³ the Panel finds that the sixteen actions in this litigation involve common questions of fact, and that centralization under Section 1407 in the District of the District of Columbia will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. All actions involve allegations that the defendants conspired to eliminate competition, maintain market control, and raise prices for vitamins and vitamin products in violation of Section 1 of the Sherman Antitrust Act. Centralization under Section 1407 is thus necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.

In selecting the District of the District of Columbia as transferee district, we note that 1) eight of the sixteen actions, plus four potential tag-along actions, are already pending there, and 2) all responding parties support transfer to the District of Columbia forum.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. §1407, the actions listed on the attached Schedule A and pending other than in the District of the District of Columbia be, and the same hereby are, transferred to the District of the District of Columbia and, with the consent of that court, assigned to the Honorable Henry H. Kennedy, Jr., for coordinated or consolidated pretrial proceedings with the actions on Schedule A that are pending in that district.

FOR THE PANEL:



John F. Nangle
Chairman

³The parties waived oral argument and, accordingly, the question of Section 1407 transfer in this docket was submitted on the briefs. Rule 16.2, *supra*, 181 F.R.D. at 14.

SCHEDULE A

MDL-1285 – In re Vitamin Antitrust Litigation

District of District of Columbia

- Donaldson & Hasenbein, Inc. v. F. Hoffman-LaRoche, Ltd., et al., C.A. No. 1:98-762*
- Donaldson & Hasenbein, Inc. v. Roche Vitamins, Inc., et al., C.A. No. 1:98-1116*
- Animal Science Products, Inc. v. Hoffman-LaRoche, Inc., et al., C.A. No. 1:98-2947*
- Animal Science Products, Inc. v. Chinook Group, Ltd., et al., C.A. No. 1:99-544*
- Dad's Products Co., Inc. v. F. Hoffman-LaRoche, Ltd., et al., C.A. No. 1:99-599*
- Pilgrim's Pride Corp. v. Chinook Group, Ltd., et al., C.A. No. 1:99-718*
- Pilgrim's Pride Corp. v. Hoffman-LaRoche, Inc., et al., C.A. No. 1:99-720*
- Livengood Feeds, Inc. v. Hoffman-LaRoche, Inc., et al., C.A. No. 1:99-782*

District of Minnesota

- Domain, Inc. v. BASF Corp., et al., C.A. No. 0:99-384*

District of New Jersey

- McDuffy Feed & Supply, Inc. v. Rhone-Poulenc, Inc., et al., C.A. No. 2:99-1051*
- Midwestern Pet Foods, Inc. v. F. Hoffman-LaRoche, Ltd., et al., C.A. No. 2:99-1162*
- AG Mark, Inc. v. BASF AG, et al., C.A. No. 2:99-1414*

Northern District of Texas

- Nature's Value, Inc. v. BASF, AG, et al., C.A. No. 3:99-464*
- J.B.D.L. Corp. v. BASF, AG, et al., C.A. No. 3:99-529*
- Allied Feed, Inc. v. F. Hoffman-LaRoche, Ltd., et al., C.A. No. 3:99-543*
- Horizon Laboratories, Inc. v. F. Hoffman-LaRoche, Inc., et al., C.A. No. 3:99-612*

1535/3.6

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

September 8, 1999

NO. 25,930

ATTEST: A TRUE COPY

Kathleen J. Wilson
Clerk of the Supreme Court
of the State of New Mexico

F. HOFFMAN-LAROCHE, INC.,
ROCHE VITAMINS, INC., RHONE-POULENC,
INC., n/k/a RHONE-POULENC AG COMPANY,
INC., RHONE-POULENC ANIMAL NUTRITION,
INC., BASF CORPORATION, LONZA, INC.,
and DUCOA, INC.,

Petitioners,

vs.

HON. SUSAN M. CONWAY, HON. ROBERT
L. THOMPSON, Judges, Second Judicial
District, and HON. ART ENCINIAS,
HON. CAROL J. VIGIL, and HON. DANIEL
A. SANCHEZ, Judges, First Judicial
District,

Respondents.

WRIT OF SUPERINTENDING CONTROL

THE STATE OF NEW MEXICO

TO: Hon. W. John Brennan
P.O. Box 488
Albuquerque, New Mexico 87103-0488

Hon. Susan M. Conway
P.O. Box 488
Albuquerque, New Mexico 87103-0488

Hon. Robert L. Thompson
P.O. Box 488
Albuquerque, New Mexico 87103-0488

Hon. Art Encinias
P.O. Box 2268
Santa Fe, New Mexico 87504-2268

Exhibit H

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2 Hon. Daniel A. Sanchez
3 P.O. Box 2268
4 Santa Fe, New Mexico 87504-2268

5 Hon. Carol J. Vigil
6 P.O. Box 2268
7 Santa Fe, New Mexico 87504-2268

8 GREETINGS:

9 WHEREAS, a verified petition for writ of superintending
10 control having been filed in this matter by F. Hoffman-LaRoche,
11 Inc., Roche Vitamins, Inc., Rhone-Poulenc, Inc., n/k/a Rhone-
12 Poulenc AG Company, Inc., Rhone-Poulenc Animal Nutrition, Inc.,
13 BASF Corporation, Lonza, Inc., and Ducoa, Inc., and the Court
14 being sufficiently informed, and good cause appearing for the
15 issuance of a writ of superintending control;

16 NOW, THEREFORE, IT IS ORDERED that respondents hereby are
17 directed to proceed no further in your respectively-assigned
18 causes;

19 IT IS FURTHER ORDERED that all currently pending state
20 vitamin cases including causes numbered CV-99-05882, Budagher
21 v. F. Hoffman-LaRoche, et al., CV-99-05942, Currens, et al. v.
22 Hoffman-LaRoche, et al., CV-99-014108, King v. Rhone-Poulenc,
23 Inc., et al., CV-99-01558, Morales v. Lonza, A.G., et al., and
24 CV-99-01559, Villejos v. Lonza, A.G., et al., and all future
25 cases raising similar claims, shall be CONSOLIDATED in the
26 Second Judicial District Court;

27 IT IS FURTHER ORDERED that Chief Judge W. John Brennan
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shall recommend to this Court the name of a judge to preside over the consolidated matters on or before September 20, 1999; and

Service of this writ shall be made on respondents, Hon. W. John Brennan, and the real parties in interest in the manner prescribed by the Rules of Appellate Procedure.

WITNESS, The Honorable Pamela B. Minzner, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of this Court this 8th day of September, 1999.

(S E A L)


Kathleen Jo Gibson, Chief Clerk of the Supreme Court of the State of New Mexico