

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SEP 27 11 43 AM '00

FILED

OCT 3 - 2000

NANCY MAYER-WHITTINGTON,
U.S. DISTRICT COURT

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IN RE VITAMIN ANTITRUST
LITIGATION :
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This Document Relates to: :
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ALL CLASS ACTIONS :
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Misc. No. 99-197 (TFH)
(M.D.L. No. 1285)

*Approved
9/3/2000
Hogan, J.*

STIPULATION OF CLASS COUNSEL AND
CERTAIN SETTLING DEFENDANTS AND JOINT REQUEST FOR
ORDER DIRECTING PAYMENT OF REFUND BY ESCROW AGENT

Settling Defendants BASF Corporation, Hoechst Marion Roussel, S.A., Hoffmann-La Roche Inc., Rhone-Poulenc Animal Nutrition S.A. and Roche Vitamins Inc. (collectively, the "Initial Settling Defendants") and Class Plaintiffs' Co-Lead Counsel hereby respectfully jointly petition the Court for an order directing Citibank, N.A., as escrow agent ("Escrow Agent") for the Vitamin Products Settlement Fund (the "Fund"), to refund to Settling Defendants Hoffmann-La Roche Inc. and Roche Vitamins Inc. (the "Roche Settling Defendants") \$92,553,388, together with the estimated net income thereon, in accordance with paragraphs 7(c) and (d) of the class settlement agreement in these actions dated November 3, 1999 (the "Settlement Agreement") and section 6(b)(ii) of the associated escrow agreement (the "Escrow Agreement"), and less the "holdback" described in paragraph 5 hereof, and hereby stipulate as follows:

1. On or before December 31, 1999, the Initial Settling Defendants collectively paid \$140,000 into the Fund pursuant to paragraph 7(a) of the Settlement Agreement. In addition, on December 31, 1999, the Roche Settling Defendants paid

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\$284,400,000 into the Fund pursuant to paragraph 7(b) of the Settlement Agreement. The Initial Settling Defendants have thus collectively paid \$284,540,000 into the Fund (\$140,000 + \$284,400,000 = \$284,540,000). Such amounts have been invested by the Escrow Agent in accordance with the terms of the Escrow Agreement.

2. Paragraph 7(c) of the Settlement Agreement provides that the Initial Settling Defendants are entitled to a refund from the Fund to the extent that the Initial Settling Defendants' payments into the Fund exceed the Initial Settling Defendants' "Final Settlement Payment." Paragraphs 7(c) and (d) of the Settlement Agreement further provide that, in the event of such a refund, the Initial Settling Defendants shall also receive from the Fund the net income earned in escrow with respect to such refund.

3. The Initial Settling Defendants and Class Plaintiffs' Co-Lead Counsel are in agreement (i) that, after computation of the "Opt-Out Reduction" pursuant to paragraph 10 of the Settlement Agreement, the Initial Settling Defendants' Final Settlement Payment is \$191,986,612; (ii) that the Initial Settling Defendants are accordingly entitled to a refund of principal from the Fund of \$92,553,388 (*i.e.*, the difference between the \$284,540,000 collectively paid by the Initial Settling Defendants and the Initial Settling Defendants' Final Settlement Payment of \$191,986,612) (the "Overpayment"), together with the net income earned in escrow on the Overpayment; and (iii) that such amount should be refunded by the Escrow Agent to the Roche Settling Defendants, subject to the "holdback" described in paragraph 5 hereof.

4. The Initial Settling Defendants and Class Plaintiffs' Co-Lead Counsel also agree that there is no good reason to delay the refund from the Fund until the "Funding Date" of October 14, 2000 (on or before which date the refund must be paid

pursuant to paragraph 7(d) of the Settlement Agreement). The Initial Settling Defendants and Plaintiffs' Co-Lead Counsel accordingly propose that such refund be made upon a date to be fixed jointly by them (the "Refund Date"), after consultation with the Escrow Agent and PricewaterhouseCoopers, the accountant for the Fund. After the Refund Date is fixed, PricewaterhouseCoopers will compute the net income on the Overpayment as of the Refund Date (the "Net Income") in accordance with paragraph 7(d) of the Settlement Agreement and section 6(b)(ii) of the Escrow Agreement (and subject to the approval of the Initial Settling Defendants and Class Plaintiffs' Co-Lead Counsel).

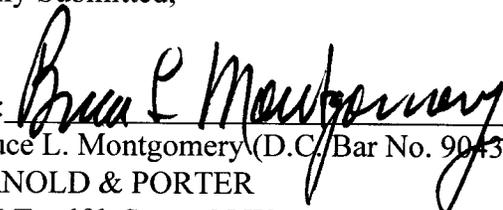
5. The Initial Settling Defendants and Class Plaintiffs' Co-Lead Counsel further agree that the refund of the Overpayment and the Net Income (together, the "Refund") to the Roche Settling Defendants shall be subject to the terms of the letter agreement dated July 27, 2000 between Franklin R. Liss, Esq., on behalf of the Roche Settling Defendants, and William Isaacson, Esq., for Class Plaintiffs' Co-Lead Counsel (attached as Exhibit A hereto), which provides, *inter alia*, that any refund to the Roche Settling Defendants shall be subject to a "holdback" not to exceed \$132,677, together with the net income earned thereon, pending a determination by the Settlement Administrator of the validity of the claim submitted by plaintiff class member Borden Inc.

6. The Initial Settling Defendants and Plaintiffs' Co-Lead Counsel further agree that, in the event that estimated taxes paid by the Fund exceed the Fund's actual tax liability, and the Fund receives any refund of taxes paid on any income earned on the Overpayment, such refund shall promptly be paid to the Roche Settling Defendants.

7. The Initial Settling Defendants and Class Plaintiffs' Co-Lead Counsel accordingly respectfully request that the Court direct the Escrow Agent to pay the Refund to the Roche Settling Defendants as set forth in the proposed form of order attached as Exhibit B hereto.

Dated: September 27, 2000

Respectfully Submitted,

By: 
Bruce L. Montgomery (D.C. Bar No. 9043)
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EXHIBIT A

ARNOLD & PORTER

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ARNOLD R. LISS
219-2-5000

July 27, 2000

BY TELECOPIER

William Isaacson, Esq.
Boies, Schiller & Flexner, LLP
5301 Wisconsin Avenue, NW
Suite 570
Washington, DC 20015

Re: Vitamins Antitrust Litigation

Dear Bill:

This letter memorializes the agreement that we have reached regarding the opt-out calculations of Hoffmann-La Roche Inc. and Roche Vitamins Inc. (collectively the "Roche Settling Defendants") pursuant to Paragraph No. 10 of the Class Settlement Agreement. We have agreed as follows:

1. Roche's total Opt-Out Sales are two billion three hundred eighty eight million two hundred twelve thousand thirty six dollars (\$2,388,212,036), resulting in an Opt-Out Reduction of four hundred thirty one million seven hundred eighty eight thousand seven hundred thirty six dollars (\$431,788,736).
2. Any refund to the Roche Settling Defendants from the Vitamin Products Escrow Account shall be subject to a holdback not to exceed one hundred thirty two thousand six hundred seventy seven dollars (\$132,677) pending a determination by the settlement administrator of the validity of the class claim form submitted by Borden Inc., which includes as Schedule 3 thereto a claim for vitamin purchases from the Roche Settling Defendants totaling seven hundred thirty three thousand eight hundred thirty two dollars (\$733,832) even though these purchases are reflected in the Roche Settling Defendants' sales data as purchases by Ventura Foods, an opt-out from the Vitamin Products Settlement Class.
3. In the event that the Borden Inc. Schedule 3 claimed class purchases are ultimately disallowed, in whole or in part, the Roche Settling Defendants shall be entitled to a supplemental distribution from the Vitamin Products Escrow Account equal to 18.08% of any such disallowed purchases, plus accrued interest. In no event shall the base amount of such supplemental distribution

EXHIBIT A

WOLD & PORTER

William Isaacson, Esq.
July 27, 2000
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(not including accrued interest) exceed the amount of the holdback described in Paragraph No. 2 above.

4. In the event that the settlement administrator determines to allow, in whole or in part, the Borden Inc. Schedule 3 claims, counsel for the Roche Settling Defendants shall be provided with a copy of all documentation supporting such determination. Moreover, counsel for the Vitamin Products Settlement Class agree that in the event of a disagreement regarding the validity of the Borden Inc. Schedule 3 purchases, the Roche Settling Defendants shall have standing to move the Court to resolve the issue.
5. Counsel for the Vitamin Products Settlement Class agree that they will not assert a right to any supplemental payment pursuant to Paragraph No. 22 (Most Favored Nation) of the Class Settlement Agreement arising from any determination regarding the validity, in whole or in part, of the Borden Inc. Schedule 3 claimed purchases.

Please indicate your agreement with the terms set forth in this letter by countersigning below and returning a copy to my attention.

Sincerely,



Franklin R. Liss
Counsel for the Roche Settling Defendants

AGREED AND ACCEPTED



William Isaacson, Esq.
Counsel for the Vitamin Products Settlement Class

EXHIBIT B

FILED

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT**

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 IN RE VITAMIN ANTITRUST :
 LITIGATION :
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 : Misc. No. 99-197 (TFH)
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 This Document Relates to: : (M.D.L. No. 1285)
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 ALL CLASS ACTIONS :
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~~PROPOSED~~ **DEF** ORDER APPROVING PAYMENT OF REFUND
TO HOFFMANN-LA ROCHE INC. AND ROCHE VITAMINS INC.

Upon the joint request of the Initial Settling Defendants and Class Plaintiffs' Co-Lead Counsel, and pursuant to paragraphs 7(c) and (d) of the Settlement Agreement dated November 3, 1999 and section 6(b)(ii) of the Escrow Agreement, the payment by the Escrow Agent to Settling Defendants Hoffmann-La Roche Inc. and Roche Vitamins Inc. (the "Roche Settling Defendants") of a refund from the Vitamin Products Settlement Fund (the "Fund") of ninety-two million, five hundred fifty-three thousand, three hundred eighty-eight dollars (\$92,553,388), together with the net income earned in escrow thereon (as shall be computed by PricewaterhouseCoopers in accordance with paragraph 7(d) of the Settlement Agreement and section 6(b)(ii) of the Escrow Agreement and jointly approved by the Initial Settling Defendants and Class Plaintiffs' Co-Lead Counsel), and less a "holdback" of one hundred thirty-two thousand, six hundred seventy-seven dollars (\$132,677), together with the net income earned thereon, pending a determination by the Settlement Administrator of the validity of the

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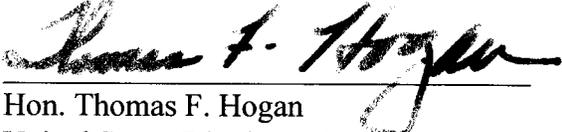
EXHIBIT B

claim submitted by plaintiff class member Borden Inc. (as set forth in the letter agreement dated July 27, 2000 between Franklin R. Liss, Esq., and William Isaacson, Esq.), is hereby APPROVED.

The Escrow Agent is authorized and directed to make such payment by wire transfer(s) on the date to be fixed jointly by the Initial Settling Defendants and Plaintiffs' Co-Lead Counsel and pursuant to the wire transfer instructions to be provided by counsel for the Roche Settling Defendants.

In the event that estimated taxes paid by the Fund exceed the Fund's actual tax liability, and the Fund receives any refund of taxes paid on any income earned on any amount to be refunded to the Roche Settling Defendants in accordance with this Order, such refund shall promptly be paid to the Roche Settling Defendants.

Dated: ~~September~~ October 3, 2000.


Hon. Thomas F. Hogan
United States District Judge