

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re: Vitamins Antitrust Litigation

MDL No. 1285

Misc. No. 99-0197 (TFH)

This Document Relates To:

ALL CASES

FILED

AUG 20 2001

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

[PROPOSED]

**STIPULATION REGARDING PRODUCTION OF INTERROGATORY RESPONSES,
PREEXISTING ELECTRONIC OR SUMMARY TRANSACTIONAL, COST AND
FINANCIAL DATA, AND PRIVILEGE LOGS BY CERTAIN PARTIES**

WHEREAS, pursuant to this Court's July 28, 2001 Order re: Second Amended Pretrial Schedule (the "July 28 Order"), the Foreign Defendants in the above-captioned matter subject to this Court's June 20, 2001 Opinion and Order (the "Foreign Defendants") were required to answer by August 6, 2001 the approved Interrogatories and to substantially complete their production of preexisting electronic or summary transactional, cost and financial data in response to the approved discovery requests identified in the Appendix to the Special Master's April 23, 2001 Report and Recommendation as modified by this Court's June 20, 2001 Opinion and Order;

WHEREAS, pursuant to the July 28 Order, all parties in the above-captioned matter (other than the Foreign Defendants) were required to produce privilege logs for documents produced prior to this Court's June 20, 2001 on or before August 15, 2001;

WHEREAS, the Foreign Defendants were required to produce privilege logs relating to "core conspiracy" documents on or before July 5, 2001 and, as anticipated by the first footnote

contained in the July 28 Order, plaintiffs and the Foreign Defendants dispute whether the definition of "core conspiracy" documents contained in the Court's June 20, 2001 Order includes those documents purportedly responsive to Request Nos. 1 and 2 of Plaintiffs' Merits Discovery Requests, i.e., documents that have been characterized by the parties as governmental communications documents (the "Governmental Communications Documents") and those documents purportedly responsive to Request No. 4 of Plaintiffs' Merits Discovery Requests, i.e., documents that have been characterized by the plaintiffs as internal investigation documents (the "Internal Investigation Documents");

WHEREAS, there is a national holiday in Japan from August 11-15, 2001; and

WHEREAS no party in the above-captioned matter received notice of or a copy of the July 28 Order until August 7, 2001:

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that:

1. Defendants F. Hoffmann-La Roche Ltd, BASF AG, Rhone-Poulenc S.A., Rhone-Poulenc Animal Nutrition S.A., Hoechst Marion Roussel S.A., Merck KGaA, E. Merck, Reilly Chemical, S.A., Degussa AG and Lonza AG shall have until August 14, 2001 (instead of August 6, 2001) to answer the approved Interrogatories and to substantially complete their production of preexisting electronic or summary transactional, cost and financial data in response to the approved discovery requests identified in the Appendix to the Special Master's April 23, 2001 Report and Recommendation as modified by this Court's June 20, 2001 Opinion and Order.
2. Defendants F. Hoffmann-La Roche Ltd, BASF AG, Rhone-Poulenc S.A., Rhone-Poulenc Animal Nutrition S.A., Hoechst Marion Roussel S.A., Merck KGaA, E. Merck, Reilly Chemical, S.A., Degussa AG and Lonza AG may, if necessary, submit unverified responses to

the approved Interrogatories on or before August 14, 2001 so long as verified Interrogatory responses are filed by those foreign defendants as soon as is practicable thereafter.

3. Defendants Takeda Chemical Industries, Ltd., Eisai Co., Ltd. and Daiichi Pharmaceutical Co., Ltd. shall have until August 21, 2001 (instead of August 6, 2001) to provide verified answers to the approved Interrogatories and to substantially complete their production of preexisting electronic or summary transactional, cost and financial data in response to the approved discovery requests identified in the Appendix to the Special Master's April 23, 2001 Report and Recommendation as modified by this Court's June 20, 2001 Opinion and Order.

4. All parties in the above-captioned matter (other than the Foreign Defendants) shall have until August 21, 2001 (instead of August 15, 2001) to produce privilege logs for documents produced prior to this Court's June 20, 2001 Order.

5. On or before August 21, 2001, the Foreign Defendants will produce a log of all "Written Substantive Communications" from the Foreign Defendants to the U.S. Department of Justice, the European Commission, or similar law enforcement agencies, authorities or commissions or other governmental or judicial entities or authorities. "Written Substantive Communications" means written communications which discuss or refer to any aspect of the alleged vitamins conspiracy or conspiracies including, without limitation, correspondence and documents that discuss or refer to any communications, meetings, agreements, or the alleged vitamins conspiracy or conspiracies involving the production, pricing, sale, marketing or distribution of vitamins, raw materials or intermediates between or among any manufacturers or distributors of vitamins, as well as documents relating to the impact of the alleged vitamins conspiracy or conspiracies and damages caused by the alleged vitamins conspiracy or conspiracies, and excludes all written communications which do not discuss or refer to any

aspect of the alleged vitamins conspiracy or conspiracies including, but not limited to, routine correspondence confirming meetings (and containing no other substantive information about the alleged vitamins conspiracy or conspiracies), routine transmittal letters forwarding documents (and containing no other substantive information about the alleged vitamins conspiracy or conspiracies), submissions or studies regarding general market conditions, submissions regarding the use, consumption or manufacture of vitamins or vitamins containing products, or submissions regarding the finances or financial condition of any of the Foreign Defendants. In addition, on or before August 21, 2001, the Foreign Defendants will produce a list of their current employees and former employees, if any, who met with or were interviewed by the U.S. Department of Justice, the European Commission, or similar law enforcement agencies, authorities or commissions or other governmental or judicial entities or authorities. This list will include all employees of the parent company and any of its subsidiaries. The Foreign Defendants expressly agree to forego and waive any argument that Request Nos. 1 and 2 of Plaintiffs' Merits Discovery Requests are improper under In re Milk Products Antitrust Litig., 84 F. Supp.2d 1016 (D. Minn. 1997) only for those Written Substantive Communications that will be logged on or before August 21, 2001 pursuant to the terms of this paragraph. The logs and identification of current and former employees required by this stipulation shall be limited to information currently known to the Foreign Defendants' U.S. counsel.

6. On or before August 21, 2001, the Foreign Defendants will produce: (1) a log of all Internal Investigation Documents that have been disclosed to third parties (excluding consultants retained to assist in their legal defense and counsel that are part of a joint defense arrangement); (2) a list which sets forth the general categories of the Foreign Defendants' Internal Investigation Documents (such as, by way of example only, memoranda summarizing

interviews of current or former employees; memoranda to management, memoranda to file prepared by counsel); and (3) a list which states, for each current employee or former employee identified pursuant to the terms of paragraph 5 of this stipulation, whether any notes or memoranda or other documents summarizing or discussing any meeting or interview or grand jury or other testimony of such current employee or former employee exist.

7. On or before August 28, 2001, each Foreign Defendant shall provide plaintiffs with an approximation of the volume of Internal Investigation Documents within their possession, custody or control.

8. With the exception of the limited specific Milk Products waiver set forth in paragraph 5 of this stipulation, this stipulation is intended to preserve all outstanding issues relating to the production or logging of the Foreign Defendants' Governmental Submissions Documents and Internal Investigation Documents. The briefing schedule on all such issues before Special Master Pollak shall be as follows: (1) plaintiffs shall serve an appropriate motion on or before August 31, 2001; (2) the Foreign Defendants shall serve an appropriate opposition to the plaintiffs' motion on or before September 14, 2001; and (3) plaintiffs shall serve an appropriate reply in further support of their motion on or before September 24, 2001.

Dated: August 15, 2001.

Respectfully submitted,

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Defendants For Purposes of This Stipulation*

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*On Behalf of All Plaintiffs for Purposes
of This Stipulation*

SO ORDERED:

Thomas F. Hogan
THOMAS F. HOGAN
UNITED STATES DISTRICT JUDGE

Dated: Aug. 17, 2001