

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE VITAMINS ANTITRUST LITIGATION)

This filing relates to:)

LIVENGOOD FEEDS, INC., et al.,)

Plaintiffs.)

- against -)

MERCK KGaA., et al.,)

Defendants.)

Misc. No. 99-197 (TFH)

MDL No. 1285

FILED

SEP 16 2002

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER PRELIMINARILY APPROVING PROPOSED SETTLEMENT

Upon review and consideration of the settlement agreement dated as of ^{August 9} ~~July~~ ____, 2002, executed on behalf of plaintiffs and the Vitamin Products Class (as defined therein and in this Court's Order dated February 25, 2002, with the inclusion of vitamin B9) by Plaintiffs' Co-Lead Counsel and on behalf of E. Merck, Merck KGaA, and EM Industries, Inc. (the "Settling Defendants") by their counsel, and the exhibits attached thereto (the "Settlement Agreement"), it is hereby **ORDERED** as follows:

Preliminary Approval of Settlement

1. The terms of the Settlement Agreement are hereby preliminarily approved, subject to further consideration thereof at the Settlement Hearing provided for below. The Court finds that said settlement is sufficiently within the range of reasonableness so that notice of the proposed settlement should be given as provided in paragraphs 2 and 3 of this Order.

2. Within 20 days after the date of entry of this Order or of an Order resolving Class Plaintiffs' Motion to Amend the Certified Vitamin Products Class Definition, whichever is later, Plaintiffs' Co-Lead Counsel shall seek this Court's approval of a Notice of Class Certification and Proposed Merck Settlement and Settlement Hearing. Reference to the Proposed Settlement shall be substantially in the form attached as Exhibit B to the Settlement Agreement ("Mail Notice"). Mail Notice shall be mailed by first class mail, postage pre-paid, to all potential members of the Vitamin Products Class and the Choline Chloride Class, to the extent that they can be identified with reasonable diligence, from the database of customers maintained by the Claims Administrator in this action.

3. Plaintiffs' Co-Lead Counsel shall cause to be published a summary notice, which, as to the Proposed Merck Settlement, shall be substantially in the form attached as Exhibit C to the Settlement Agreement ("Publication Notice"), one day a week for two consecutive weeks in the national edition of THE WALL STREET JOURNAL and once in FEEDSTUFFS and the CHEMICAL MARKET REPORTER, as soon as practicable after mailing of Notice, and in all events, at least 30 days prior to the Settlement Hearing.

4. Prior to the Settlement Hearing, Plaintiffs' Co-Lead Counsel shall serve and file a sworn statement attesting to compliance with the provisions of paragraphs 2 and 3 of this Order.

5. The notice to be provided as set forth in paragraphs 2 and 3 of this Order is hereby found to be the best means of providing notice practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed settlement and the Settlement Hearing to all persons affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23.

Requests for Exclusion from the Vitamin Products Class

6. Any member of the Vitamin Products Class or any assignee or transferee thereof, or successor thereto, that wishes to be excluded from the Vitamin Products Class (as well as the Merck Settlement) shall mail a written request for exclusion according to procedures to be specified at a later point in time.

7. Any member of the Vitamin Products Class that does not properly and timely request exclusion from the Vitamin Products Class shall be included in such Vitamin Products Class and shall be bound by all the terms and provisions of the Settlement Agreement, including but not limited to the releases, waivers and covenants described in paragraphs 14, 15 and 20 thereof, whether or not such person shall have objected to the settlement and whether or not such person makes a claim upon, or participates in, the Vitamin Products Fund.

Claim Forms

8. Court-approved Claim Forms and a proposed plan of distribution shall be provided at a later date to members of the Vitamin Products Class that have not timely and validly excluded themselves from the Vitamin Products Class.

The Settlement Hearing

9. A hearing on final settlement approval (the "Settlement Hearing") is hereby scheduled to be held before the undersigned at a date to be determined and included in the Notices sent to members of the Vitamin Products Class to consider the fairness, reasonableness and adequacy of the proposed settlement, the dismissal with prejudice of the Class Action with respect to the Settling Defendants and the entry of final judgment in the Class Action.

10. Any member of the Vitamin Products Class that has not previously filed a Request

for Exclusion in the manner set forth above may appear at the Settlement Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness and adequacy of the proposed settlement and the dismissal with prejudice of the Class Action as to the Settling Defendants and the entry of final judgment; provided, however, that no person shall be heard in opposition to such settlement, dismissal and/or entry of final judgment, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless on or before a date to be determined prior to sending notice, such person: (a) files with the Clerk of the Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition to the proposed settlement, the dismissal of claims and/or the entry of final judgment and any documentation in support of such opposition, and (b) serves copies of such notice, statement and documentation, as well as any other papers or briefs that such person files with the Court, either in person or by mail, upon the following counsel:

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11. The date and time of the Settlement Hearing shall be set forth in the Mail Notice and Publication Notice, but shall be subject to adjournment by the Court without further notice to the members of the Vitamin Products Class other than that which may be posted at the Court and on the Court's web site.

Other Provisions

12. Terms used in this Order that are defined in the Settlement Agreement are, unless

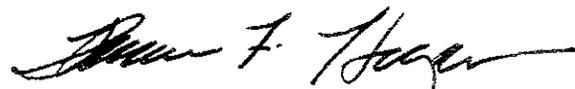
otherwise defined herein, used in this Order as defined in the Settlement Agreement.

13. Upon approval of the settlement provided for in the Settlement Agreement, the Settlement Agreement and each and every term and provision thereof, shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

14. In the event that the settlement is terminated in accordance with the provisions of the Settlement Agreement, the settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo ante rights of the Settling Defendants and the members of the Vitamin Products Class.

15. All proceedings in the Class Action against the Settling Defendants are hereby stayed until such time as the Court renders a final decision regarding the approval of the settlement and, if it approves the settlement, enters final judgment as provided in the Settlement Agreement.

SO ORDERED this 16 day of September, 2002.


The Honorable Thomas F. Hogan
Chief Judge
United States District Court
Washington, D.C.