

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

IN RE VITAMINS ANTITRUST  
LITIGATION

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This filing relates to:

LIVENGOOD FEEDS, INC., et al.,

Plaintiffs,

– against –

MERCK KGaA., et al.,

Defendants.

Misc. No. 99-0197 (TFH)  
M.D.L. No. 1285

**FILED**

OCT 14 2003

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

**ORDER PRELIMINARILY APPROVING PROPOSED SETTLEMENTS**

Upon review and consideration of the Settlement Agreements dated as of November 1, 2002, March 6, 2003, July 10, 2003, and August 1, 2003, executed on behalf of plaintiffs and the Vitamin Products Class (as defined therein and pursuant to orders of the Court dated February 25, 2002 and September 16, 2002) by Plaintiffs' Co-Lead Counsel and on behalf of Sumitomo Chemical Co., Ltd., Sumitomo Chemical America, Inc., Tanabe Seiyaku Co., Ltd., Tanabe USA, Inc., Reilly Industries, Inc., and Reilly Chemicals, S.A., Lonza Inc., Lonza AG, Degussa AG, Degussa Corp., and Nepera, Inc., (jointly referred to as the "Biotin and Niacin Defendants" or "Settling Defendants") by their counsel, and the exhibits attached thereto (the "Settlement Agreements"), it is hereby **ORDERED** as follows:

**Preliminary Approval of Settlements**

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

2. Within 20 days after the date of the entry of this Order, Plaintiffs' Co-Lead Counsel shall cause copies of the Notice of Proposed Settlements and Settlement Hearing, substantially in the form attached as Exhibit 6 to the Motion for Preliminary Approval of Settlements ("Mail Notice"), to be mailed by first class mail, postage pre-paid, to all members of the Vitamin Products 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 shall be substantially in the form attached as Exhibit 7 to the Motion for Preliminary Approval of Settlements ("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 settlements and the

Settlement Hearing to all persons affected by and/or entitled to participate in the settlements, in full compliance with the notice requirements of Fed. R. Civ. P. 23.

Claim Forms

6. Court-approved Claim Forms and a proposed plan of distribution shall be provided at a later date to members of the Vitamin Products Class.

The Settlement Hearing

7. 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.

8. Any member of the Vitamin Products Class 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 settlements 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 settlements, 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 settlements, 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:

Counsel for Plaintiffs  
Michael D. Hausfeld, Esq.  
Cohen, Milstein, Hausfeld  
& Toll, P.L.L.C.  
1100 New York Avenue  
West Tower, Suite 500  
Washington, D.C. 20005-3964  
(202) 408-4600  
(202) 408-4699

Counsel for Defendants  
Moses Silverman  
Aidan Synnott  
Paul, Weiss, Rifkind, Wharton & Garrison  
1285 Avenue of the Americas  
New York, NY 10019-6064  
(212) 373-3000  
(212) 757-3990  
Sumitomo Chemical America Inc. and  
Sumitomo Chemical Co. Ltd.

Mark Riera  
Sheppard Mullin Richter & Hampton, LLP  
333 South Hope Street  
Forty-Eighth Floor

Los Angeles, CA 90071  
(213) 617-4214  
(213) 620-1398  
Tanabe U.S.A. Inc. and  
Tanabe Seiyaku Co. Ltd.

Dennis P. Orr  
Thomas M. Mueller  
Mayer, Brown, Rowe & Maw, LLP  
1675 Broadway  
New York, NY 10019  
(212) 506-2500  
(212) 262-1910  
Lonza Group Ltd., Lonza AG and  
Lonza Inc.

Peter Halle  
Morgan, Lewis & Brokious, LLP  
1111 Pennsylvania Avenue, N.W.  
Washington, D.C. 2004  
(202) 739-3000  
(202) 739-3001  
Degussa AG and Degussa Corp.

Gary Kubek  
Debevoise & Plimpton  
919 Third Avenue  
New York, NY 10022  
(212) 909-6000  
(212) 909-6836  
Nepera, Inc.

Karen N. Walker  
Kirkland & Ellis  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5096  
(202) 879-5200  
Reilly Industries, Inc. and  
Reilly Chemicals S.A.

9. 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

10. Terms used in this Order that are defined in the Settlement Agreements are, unless otherwise defined herein, used in this Order as defined in the Settlement Agreements.

11. Upon approval of the settlement, the Settlement Agreements 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.

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

13. 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 settlements and, if it approves the settlements, enters final judgment as provided in the Settlement Agreements.

SO ORDERED this 14 day of October, 2003.



The Honorable Thomas F. Hogan  
Chief Judge  
United States District Court for the  
District of Columbia