



ON READING the following:

- (a) the notice of motion and record returnable March 8, 2005;
- (b) the Akzo Settlement Agreement and the Amended Settlement Agreement, filed;
- (c) the letter from the counsel to the Public Guardian and Trustee, filed;
- (d) the letter from the counsel to the Children's Lawyer, filed; and
- (e) the affidavits of :
  - (i) Charles M. Wright, sworn February 17, 2005 and March 3, 2005;
  - (ii) Andrea DeKay, sworn February 16, 2005 and March 3, 2005;
  - (iii) Heather Rumble Peterson, sworn February 28, 2005, March 5, 2005 and March 6, 2005;
  - (iv) Patricia A. Speight, sworn February 28, 2005;
  - (v) Thomas Ross, sworn February 8, 2005;
  - (vi) Christian Breton of Aliments Breton Ltd., sworn February 18, 2005;
  - (vii) Glen Ford, sworn February 15, 2005;
  - (viii) Bill Fleming of Fleming Feed Mill Ltd., sworn February 15, 2005;
  - (ix) Marcy David, sworn February 16, 2005;
  - (x) Jannick Desforges, sworn February 7, 2005;
  - (xi) Margaret Woltz, sworn February 17, 2005;
  - (xii) Craig Flinn, sworn February 18, 2005;

- (xiii) Jennifer Bald, sworn February 22, 2005;
- (xiv) Joe Fiorante, sworn March 3, 2005;
- (xv) David Jones, sworn March 3, 2005;
- (xvi) William Dermody, sworn March 7, 2005; and

- (f) the written objections,

AND ON HEARING the submissions of counsel for the plaintiffs, some of the Defendants, William Dermody, the friend of the court, and the objectors, Lars Soderstrom, Milton Bowling, Phil G. Anderson and David Rowland,

AND without any admission of liability on the part of Akzo, Akzo having denied liability,

1. THIS COURT ORDERS AND DECLARES that for the purposes of this judgment, the definitions set out in the Akzo Settlement Agreement apply to and are incorporated into this judgment and, in addition, the following definitions also apply:

- (a) “*Administrator*” means the administrator appointed under the Amended Settlement Agreement;
- (b) “*Akzo*” means Akzo Nobel Chemicals BV;
- (c) “*Akzo Settlement Agreement*” means the settlement agreement between the plaintiffs in the Choline Chloride Actions and Akzo made as of the 6<sup>th</sup> day of January, 2005;
- (d) “*Amended Settlement Agreement*” means the Settlement Agreement made in the Choline Chloride Actions and other actions made as of the 1<sup>st</sup> day of November, 2004 and amended as of the 6<sup>th</sup> day of January, 2005 which is annexed as Schedule 1 to the Akzo Settlement Agreement;

- (e) **“Courts”** means the Supreme Court of British Columbia, the Ontario Superior Court of Justice and the Quebec Superior Court;
- (f) **“Ontario Actions”** means the Ontario Choline Chloride Action; the Ontario Biotin Action, File No. 00-CV-202080CP; the Ontario Bulk Vitamins Action, File No. 00-CV-200045CP; the Ontario Methionine Action, File No. 00-CV-201723CP; and, the Ontario Niacin Action, File No. 00-CV-200044CP;
- (g) **“Ontario Choline Chloride Action”** means this action, File No. 00-CV-198647CP;
- (h) **“Ontario Choline Chloride Settlement Class”** means: All persons in Canada who purchased in Canada choline chloride (Vitamin B4) and products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or from animals which had consumed choline chloride (Vitamin B4) from January 1, 1988 to December 31, 1998 except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No. L002690 and in Quebec Court (District of Montreal) Action No. 500-06-000083-994;
- (i) **“Ontario Choline Chloride Releasers”** means, jointly and severally, the plaintiffs herein and the members of the Ontario Choline Chloride Settlement Class;
- (j) **“Released Ontario Choline Chloride Claims”** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties and lawyers’ fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that Ontario Choline Chloride Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct from the beginning of time to the date hereof in respect of the purchase, sale, pricing, discounting, marketing or distributing in Canada of choline chloride (Vitamin B4) and products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or from animals which had consumed choline chloride (Vitamin B4), or relating to any conduct alleged (or which could have been alleged) in the Ontario Choline Chloride Action, including, without limitation, any such claims which have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase in Canada of choline chloride (Vitamin B4) and products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or from animals which had consumed choline chloride (Vitamin B4); and

- (k) “**SCSD**” means Sutts, Strosberg LLP, Camp Fiorante Matthews, Siskind Cromarty Ivey & Dowler LLP and Siskinds, Desmeules.

2. THIS COURT ORDERS AND DECLARES, pursuant to s. 12 of the *Class Proceedings Act, 1992*, that the court shall consider the fairness of the Akzo Settlement Agreement and that no further notice to the classes is necessary because of the notice of the fairness hearing given to the classes relating to the Amended Settlement Agreement.

3. THIS COURT ORDERS that:

- (a) this action is hereby certified against Akzo;

- (b) the Ontario Choline Chloride Settlement Class is defined as:

All persons in Canada who purchased in Canada choline chloride (Vitamin B4) and products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or from animals which had consumed choline chloride (Vitamin B4) from January 1, 1988 to December 31, 1998 except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No. L002690 and in Quebec Court (District of Montreal) Action No. 500-06-000083-994;

- (c) Aliments Breton Inc., Marcy David, Glen Ford and Fleming Feed Mill Ltd. are hereby appointed as the representative plaintiffs; and

- (d) the common issue is:

Did Akzo agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for choline chloride (Vitamin B4) in Canada from January 1, 1988 to December 31, 1998?

4. THIS COURT DECLARES, for greater certainty, that a person may be a member of the Ontario Choline Chloride Settlement Class pursuant to this judgment and may also be a member of the Settlement Class(es) defined in the Amended Settlement Agreement in one, some or all of the Ontario Actions.

5. THIS COURT ORDERS AND ADJUDGES that the proposed settlement of this action against Akzo as particularized in this judgment and the Akzo Settlement Agreement is fair, reasonable, adequate, and in the best interests of the members of the Ontario Choline Chloride Settlement Class.

6. THIS COURT ORDERS that the Akzo Settlement Agreement, attached as Appendix 1, is incorporated by reference into this judgment and is hereby approved and shall be implemented in accordance with its terms.

7. THIS COURT ORDERS AND DECLARES that each Ontario Choline Chloride Releasor in this action has released and shall be conclusively deemed to have fully, finally and forever released the Akzo Releasees from any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, penalties and lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that said Ontario Choline Chloride Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to the Released Ontario Choline Chloride Claims.

8. THIS COURT ORDERS AND DECLARES that the use of the terms “Ontario Choline Chloride Releasers” and “Released Ontario Choline Chloride Claims” in this judgment does not constitute a release of claims by those members of the Ontario Choline Chloride Settlement Class in this action who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

9. THIS COURT ORDERS AND DECLARES that each member of the Ontario Choline Chloride Settlement Class in this action who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Akzo Releasees in respect of or in relation to the Released Ontario Choline Chloride Claims.

10. THIS COURT ORDERS that the members of the Ontario Choline Chloride Settlement Class in this action shall be given notice of this judgment, by the publication of the notice substantially in the form at Appendix 2 to this judgment in the manner set out in Schedule J of the Amended Settlement Agreement and that any other notice is dispensed with.

11. THIS COURT ORDERS that each member of the Ontario Choline Chloride Settlement Class who elects to opt out of this action must do so in the manner provided in sections 14.1 and 14.2 of the Amended Settlement Agreement on or before August 5, 2005 at 5:00 p.m. eastern.

12. THIS COURT ORDERS AND DECLARES that this judgment, including the Akzo Settlement Agreement, is binding upon each member of the Ontario Choline Chloride Settlement Class who does not opt out of this action in accordance with the terms of this judgment, including those persons who are minors or are mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the Rules of Civil Procedure are dispensed with in respect to this action. And, for greater certainty, this judgment, including the Akzo Settlement Agreement, is binding upon each Direct Purchaser and each Distributor of choline chloride (Vitamin B4) who is a member of the Ontario Choline Chloride Settlement Class and who does not opt out in accordance with the terms of this judgment.

13. THIS COURT ORDERS that each member of the Ontario Choline Chloride Settlement Class who is a Direct Purchaser or a Distributor of choline chloride (Vitamin B4) shall submit a claim to the Administrator, in accordance with the provisions of the Amended Settlement Agreement, on or before November 5, 2005 at 5:00 p.m. eastern, and, any Direct Purchaser or Distributor who fails to do so, shall not share in any distribution made in accordance with the Amended Settlement Agreement unless the judge hearing the Ontario Approval Hearing orders otherwise.

14. THIS COURT ORDERS AND DECLARES that this judgment does not affect any claims or causes of action that any member of the Ontario Choline Chloride Settlement Class has or may have against DCV, Inc., Ducoa L.P. in this action and against UCB S.A. and UCB Chemicals Corporation in Ontario Court File No. 40610/02 (London).

15. THIS COURT ORDERS AND DECLARES that:

- (a) \$37,500 for SCSD's fees relating to the Akzo Settlement Agreement is fair and reasonable;
- (b) if the Courts issue the orders contemplated in s. 16.1 of the Amended Settlement Agreement, then, the Administrator shall forthwith pay to Sutts, Strosberg LLP, in trust, for SCSD these fees plus applicable taxes; and
- (c) such payment be allocated as an equal charge to each of the Director Purchaser Fund, Intermediate Purchaser Fund and Consumer Fund.

16. THIS COURT ORDERS AND ADJUDGES that, save as aforesaid, this action be and is hereby dismissed against Akzo without costs and with prejudice.

*April 5, 2005*

*Peter A. Cumming J.*  
\_\_\_\_\_  
JUSTICE

281410

ENTERED AT/INSCRIT À TORONTO  
ON/BOOK NO:  
LEAD/FILE NO:  
APR 5 2005  
AS FOR  
À TITRE DE DOCUMENT NO:  
PERSONNEL

## **APPENDIX 1**

### **AKZO SETTLEMENT AGREEMENT**

**Made as of the 6<sup>th</sup> day of January, 2005**

Between

**Fleming Feed Mill Ltd.  
Aliments Breton Inc.  
Glen Ford  
Marcy David  
Ritchie-Smith Feeds, Inc.  
Wendy Weberg  
Option Consommateurs  
André Bernard Guévin**

and

**Akzo Nobel Chemicals BV**

#### **RECITALS**

- A. Proceedings have been commenced in British Columbia, Ontario and Quebec under each province's respective class proceedings legislation which allege that Akzo and others committed violations of law including, but not limited to, conspiring to fix, raise, maintain or stabilize the prices of, and allocating markets and customers for choline chloride (Vitamin B4) in Canada.
- B. And whereas a Settlement Agreement has been entered into by the plaintiffs and others relating to the Choline Chloride Actions and other actions in respect of choline chloride (Vitamin B4) and other vitamins.
- C. And whereas Akzo also wishes to settle all claims made against it in the Choline Chloride Actions.
- D. And whereas the members of the Choline Chloride Settlement Class are Releasers under the Settlement Agreement and are entitled to claim thereunder or will benefit from the cy prés distribution thereunder.

#### **SECTION 1 – DEFINITIONS**

In this agreement, including the Recitals and Schedules hereto:

- (1) **Akzo** means Akzo Nobel Chemicals BV.
- (2) **Akzo Releasees** means Akzo, its direct and indirect parents, subsidiaries and affiliates, the present and former officers, directors, members of any supervisory board or board of management, employees, agents, and legal representatives of each of the foregoing, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.
- (3) **Akzo Settlement Agreement** means this agreement.
- (4) **Akzo Settlement Amount** means \$250,000.
- (5) **Akzo Settling Plaintiffs** means the plaintiffs in the Choline Chloride Actions.
- (6) **Choline Chloride Actions** means British Columbia Court File, Vancouver Registry, No. L002690, Ontario Court File No. 00-CV-198647CP and Quebec Court (District of Montreal) Action No. 500-06-000083-994.
- (7) **Choline Chloride Settlement Class** means all persons in Canada who purchased in Canada choline chloride (Vitamin B4) and products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or from animals which had consumed choline chloride (Vitamin B4) from January 1, 1988 to December 31, 1998 except the Excluded Persons.
- (8) **Courts** means the Supreme Court of British Columbia, the Ontario Superior Court of Justice and the Quebec Superior Court.
- (9) **Excluded Persons** means, in respect of the Choline Chloride Actions, each defendant, the directors and officers of each defendant, the subsidiaries or affiliates of each defendant, the entities in which each defendant or any of that defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of any Excluded Person.
- (10) **Final Order** means a final judgment entered by any of the Courts in respect of the certification of a Choline Chloride Action as a class proceeding and the approval of this Akzo Settlement Agreement, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been a final disposition of all appeals.
- (11) **Parties** means the Akzo Settling Plaintiffs and Akzo.
- (12) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties and lawyers' fees, known or unknown, suspected or

unsuspected, in law, under statute or in equity, that Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct from the beginning of time to the date hereof in respect of the purchase, sale, pricing, discounting, marketing or distributing in Canada of choline chloride (Vitamin B4) and products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or from animals which had consumed choline chloride (Vitamin B4), or relating to any conduct alleged (or which could have been alleged) in the Choline Chloride Actions, including, without limitation, any such claims which have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase in Canada of choline chloride (Vitamin B4) and products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or from animals which had consumed choline chloride (Vitamin B4).

(13) **Releasors** means jointly and severally, the Akzo Settling Plaintiffs and the Choline Chloride Settlement Class Members.

(14) **Settlement Agreement** means the settlement agreement made in the Choline Chloride Actions and other actions as of the 1<sup>st</sup> day of November, 2004 as amended by an agreement made as of the 6<sup>th</sup> day of January, 2005 which is annexed hereto as Schedule 1.

(15) **Supplementary Choline Chloride Actions** means British Columbia Court File, Vancouver Registry, No. L023727 and Ontario Court File No. 40610/02 (London).

## **SECTION 2 – RECITALS**

The Recitals hereto are true and form part of the Akzo Settlement Agreement.

## **SECTION 3 – SETTLEMENT APPROVAL**

### **3.1 Motion for Approval**

Contemporaneous with the motions to approve the Settlement Agreement in British Columbia, Ontario and Quebec the Akzo Settling Plaintiffs shall bring motions before the Courts to approve the Akzo Settlement Agreement and shall seek an order:

- (a) in Ontario, substantially in the form attached as Schedule 2;
- (b) in British Columbia, substantially in the form attached as Schedule 3; and
- (c) in Quebec, substantially in the form attached as Schedule 4.

### **3.2 Effect of Non-Approval**

If any one of the Courts does not approve the Akzo Settlement Agreement then, it shall be null and void and of no force and effect.

## **SECTION 4 – PAYMENT OF THE AKZO SETTLEMENT AMOUNT**

Akzo shall pay the Akzo Settlement Amount in full satisfaction of the Released Claims upon the orders of the Courts approving the Akzo Settlement Agreement becoming Final Orders.

## **SECTION 5 – NOTIFICATION OF THE AKZO SETTLEMENT AGREEMENT**

### **5.1 Notice**

- (1) Akzo and the Akzo Settling Plaintiffs intend that:
  - a) the notification of the motions for approval of the Settlement Agreement as provided therein be notice of the motions for approval of the Akzo Settlement Agreement;
  - b) any notification of the approval of the Settlement Agreement be notice of any approval of the Akzo Settlement Agreement; and
  - c) the Akzo Settlement Agreement and any Akzo Settlement Agreement approval orders be posted on the website [www.vitaminsclassaction.com](http://www.vitaminsclassaction.com).
- (2) If any one of the Courts requires further or other notification of the Akzo Settlement Agreement and/or of any approval of the Akzo Settlement Agreement, then Akzo shall pay all the costs of any such advertising.

## **SECTION 6 – DISTRIBUTION OF THE SETTLEMENT AMOUNT**

Akzo shall pay the Akzo Settlement Amount to the Administrator appointed under the Settlement Agreement to be added to the Direct Purchaser Fund and distributed in accordance with the Settlement Agreement.

## **SECTION 7 – RELEASES**

Upon receipt by the Administrator of the Akzo Settlement Amount, the Releasers forever and absolutely release the Akzo Releasees from the Released Claims.

#### **SECTION 8 – COVENANT NOT TO SUE**

Notwithstanding section 7, for the purposes of the action commenced as British Columbia Court File, Vancouver Registry, No. L002690 and for any Choline Chloride Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Akzo Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, or continue any proceeding in any jurisdiction against the Akzo Releasees in respect of or in relation to the Released Claims, it being expressly understood that the Akzo Settling Plaintiffs and the members of the Choline Chloride Settlement Class intend to continue the Choline Chloride Actions and/or the Supplementary Choline Chloride Actions against DCV, Inc., Ducoa L.P., UCB S.A., UCB Chemicals Corporation and UCB, Inc..

#### **SECTION 9 – NO BAR ORDER**

The Courts shall not grant a bar order in favour of Akzo.

#### **SECTION 10 – CLAIMS AGAINST OTHER ENTITIES RESERVED**

Except as provided herein, this Akzo Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by members of the Choline Chloride Settlement Class against any person other than the Akzo Releasees. And, Akzo specifically acknowledges that the Akzo Settling Plaintiffs and the members of the Choline Chloride Settlement Class intend to continue the Choline Chloride Actions and/or the Supplementary Choline Chloride Actions against DCV, Inc., Ducoa L.P., UCB S.A., UCB Chemicals Corporation and UCB, Inc. and that Akzo is not receiving a bar order.

#### **SECTION 11 – NO ADMISSION OF LIABILITY**

Neither this Akzo Settlement Agreement, nor anything contained herein, shall be interpreted as concessions or admissions of wrongdoing or liability, or as concessions or admissions of the truthfulness of any claim or allegation asserted in the Choline Chloride Actions. Neither this Akzo Settlement Agreement, nor anything contained herein, shall be used

or construed as an admission of any fault, omission, liability or wrongdoing in any statement, release or written document or financial report.

## **SECTION 12 – CERTIFICATION FOR SETTLEMENT ONLY**

The Parties agree that the Choline Chloride Actions shall be certified as class proceedings solely for purposes of settlement and the approval of this Akzo Settlement Agreement by the Courts.

## **SECTION 13 – MISCELLANEOUS**

### **13.1 Headings, etc.**

In this Akzo Settlement Agreement:

- (a) the division of this Akzo Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Akzo Settlement Agreement;
- (b) the terms “this Akzo Settlement Agreement”, “hereof”, “hereunder” and similar expressions refer to this Akzo Settlement Agreement and not to any particular section or other portion of this Akzo Settlement Agreement;
- (c) all amounts referred to are in lawful money of Canada; and
- (d) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships, limited liability companies, or governmental or quasi-governmental entities, except when person is used in the phrase “natural persons” in which case it shall mean only individuals.

### **13.2 Governing Law**

This Akzo Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

### **13.3 Entire Agreement**

This Akzo Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or

representations with respect to the subject matter of this Akzo Settlement Agreement, unless expressly incorporated herein. This Akzo Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

#### **13.4 Survival**

The representations and warranties contained in this Akzo Settlement Agreement shall survive its execution and implementation.

#### **13.5 Counterparts**

This Akzo Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Akzo Settlement Agreement.

#### **13.6 Negotiated Agreement**

This Akzo Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Akzo Settlement Agreement shall have no force and effect. The Parties agree that the language contained in or not contained in previous drafts of this Akzo Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Akzo Settlement Agreement.

#### **13.7 Schedules**

The Schedules annexed hereto form part of this Akzo Settlement Agreement.

#### **13.8 Acknowledgements**

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this Akzo Settlement Agreement;
- (b) the terms of this Akzo Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of this Akzo Settlement Agreement and its effect; and

- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Akzo Settlement Agreement.

### **13.9 Authorized Signatures**

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Akzo Settlement Agreement.

### **13.10 Notice**

Where this Akzo Settlement Agreement requires a notice or any other communication or document to be given, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representative of the person to whom notice is being provided, as identified below:

#### **For Akzo Settling Plaintiffs:**

Harvey T. Strosberg, Q.C.  
**Sutts, Strosberg LLP**  
**Barristers and Solicitors**  
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**Windsor ON N9A 6V1**

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Facsimile: 519-561-6203  
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**Barristers and Solicitors**  
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Phone: (416) 595-8604  
Fax: Fax:(416) 595-8695  
Email: aroman@millerthomson.ca

The Parties have executed this Akzo Settlement Agreement as of the 6<sup>th</sup> day of January, 2005.

**Glen Ford**

“Charles M. Wright”

**Fleming Feed Mill Ltd.**

By:

“Charles M. Wright”

Name:

Title:

**Marcy David**

“H. Rumble Peterson”  
Counsel

**Aliments Breton Inc.**

By:

“H. Rumble Peterson”

Name:

Title: Counsel

**Wendy Weberg**

“J.J. Camp”

**Ritchie Smith Feeds, Inc.**

By:

“J.J. Camp”

Name: J.J. Camp

Title: Counsel for Ritchie Smith Feeds  
Inc.

**André Bernard Guévin**

“Unterberg Labelle Lebeau”  
“Sylvestre Charbonneau Fafard”

**Option Consommateurs**

By:

“J. Desforges”

Name: Jannick Desforges

Title: Resp. du serv. juridique

**Akzo Nobel Chemicals BV**

By: “Andrew J. Roman”

Name: Andrew J. Roman

Title: Legal Counsel for Akzo  
Nobel Chemicals BV

SCHEDULE 1

amended January 6, 2005

**AMENDED**  
**CANADIAN**  
**VITAMINS CLASS ACTIONS**  
**NATIONAL SETTLEMENT AGREEMENT**

Made as of the 1<sup>st</sup> day of November, 2004

**Amended as of the 6<sup>th</sup> day of January, 2005**

Between

**Glen Ford**  
**Fleming Feed Mill Ltd.**  
**Marcy David**  
**Aliments Breton Inc.**  
**Roger Awad**  
**Mary Helen Awad**  
**Kristi Cappa**  
**Ritchie Smith Feeds, Inc.**  
**Wendy Weberg**  
**Option Consommateurs**  
**André Bernard Guévin**  
**Yves Laferrière**  
**Top Shelf Feeds Inc.**

and

**Aventis Animal Nutrition S.A.**  
**BASF Aktiengesellschaft**  
**Bioproducts, Incorporated**  
**Chinook Group Limited**  
**Degussa Canada Inc.**  
**Daiichi Pharmaceutical Company, Ltd.**  
**Eisai Co., Ltd.**  
**F. Hoffmann-La Roche Ltd.**  
**Lonza AG**  
**Merck KGaA**  
**Nepera, Inc.**  
**Roussel Canada Inc.**  
**Sumitomo Chemical Co. Ltd.**  
**Takeda Pharmaceutical Company Limited**  
**Tanabe Seiyaku Co. Ltd.**

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**CANADIAN  
VITAMINS CLASS ACTIONS  
NATIONAL SETTLEMENT AGREEMENT**

**RECITALS**

A. Proceedings have been commenced in British Columbia, Ontario and Quebec under each province's respective class proceedings legislation which allege that the Defendants named in each Proceeding committed violations of law including, but not limited to, conspiring to fix, raise, maintain or stabilize the prices of, and allocating markets and customers for, Vitamins in Canada.

B. The Dismissed Actions, which were commenced in British Columbia, Ontario and Quebec, have been dismissed or discontinued by earlier orders of the Courts.

C. The Settling Defendants, using their best efforts, have estimated the Purchase Price of all Vitamins sold in Canada during the Purchase Periods to be \$950 million.

D. During the pendency of some of the Proceedings, counsel for some of the Parties discussed the merits of the claims and the defences thereto, and reached an agreement in principle on settlement payment and scope in April 2002. Thereafter, counsel for some of the Parties continued with discussions that resulted in this Settlement Agreement.

E. The Settling Plaintiffs have reviewed the terms of this Settlement Agreement. Class Counsel have fully explained the terms of this Settlement Agreement to them. Based on the analyses of the facts and law applicable to the claims of the Settling Plaintiffs, and having regard to the burdens and expense in prosecuting the Settling Proceedings, including the risks and uncertainties associated with trials and appeals, the Settling Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Settling Plaintiffs and the classes they seek to represent.

F. Despite their belief that they are not liable for the claims asserted in the Settling Proceedings and have defences thereto, the Settling Defendants are entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against them or their Affiliated Defendants by the Settling Plaintiffs, to avoid the expense, inconvenience and burden of litigation, and the related distraction and diversion of their

personnel and resources, to put to rest this controversy and to avoid the risks inherent in uncertain litigation.

G. The Parties therefore wish to, and hereby do, finally resolve on a national basis, without prejudice or admission of liability, all of the Settling Proceedings as against the Settling Defendants and their Affiliated Defendants.

H. For the purposes of settlement only and contingent on approvals by the Courts, as provided for in this Settlement Agreement, the Parties have consented to certification of the Settling Proceedings as class proceedings and have consented to a Settlement Class and a Common Issue in each of the Settling Proceedings.

I. The Settling Plaintiffs assert that they are adequate class representatives for the Settlement Classes and will seek to be appointed representative plaintiffs in their respective Settling Proceedings.

FOR VALUE RECEIVED, the Parties agree as follows:

## **SECTION 1 – INTERPRETATION**

### **1.1 Definitions**

In this Settlement Agreement, including the Recitals and Schedules hereto:

- (1) *Account* means an interest bearing trust account at a Canadian bank in Ontario under the control of the Escrow Agent.
- (2) *Administration Expenses* means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Settling Plaintiffs, the Administrator, the Escrow Agent, the Referee, the Management Committee or otherwise, for the approval, implementation and operation of this Settlement Agreement, including Non-Refundable Expenses, but excluding Class Counsel Fees.
- (3) *Administration Expenses Reserve* means the sum of \$250,000 which will be held by the Administrator for payment of final Administration Expenses.
- (4) *Administrator* means Deloitte & Touche, LLP and its successor appointed, from time to time, by the Courts.
- (5) *Affiliated Defendants* means the entities listed and defined for the purposes of this Settlement Agreement in column 2 of Schedule C.

- (6) ***Biotin Actions*** means Ontario Court File No. 00-CV-202080CP and British Columbia Court File, Vancouver Registry, No. L003307.
- (7) ***British Columbia Counsel*** means Camp Fiorante Matthews.
- (8) ***British Columbia Court*** means the Supreme Court of British Columbia.
- (9) ***Bulk Vitamins Actions*** means Ontario Court File No. 00-CV-200045CP and British Columbia Court File, Vancouver Registry, No. L003292.
- (10) ***Choline Chloride Actions*** means Ontario Court File No. 00-CV-198647CP and British Columbia Court File, Vancouver Registry, No. L002690.
- (11) ***Choline Chloride Contribution*** means, for any Settling Defendant, the amount (if any) set out in column 2 of Schedule B.
- (12) ***Class Counsel*** means British Columbia Counsel, Ontario Counsel, Quebec Counsel and Desmeules.
- (13) ***Class Counsel Fees*** means the fees, disbursements, costs, GST and other applicable taxes or charges of Class Counsel, including any obligations for contributions that any Settling Plaintiff, Settlement Class or Class Counsel may have to the Fonds for any advances made to them in any Settling Proceeding.
- (14) ***Class Counsel Representative*** means Harvey T. Strosberg, Q.C..
- (15) ***Class Vitamins*** means, in respect of each Settlement Class, the Vitamin(s) listed in Schedule A and products that directly or indirectly contain or are derived from such Vitamins or from animals which had consumed such Vitamins, in respect of the Settling Proceeding to which the Settlement Class relates.
- (16) ***Common Issue*** in each Settling Proceeding means: Did the Settling Defendant(s) and its/their Affiliated Defendant(s) in the Settling Proceeding agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, the Vitamin(s) in Canada in the Purchase Period(s)?
- (17) ***Consumer*** means any natural person who purchased Vitamin Product(s) during the Purchase Period(s) for personal consumption or use.
- (18) ***Consumer Fund*** means a fund described in section 6.
- (19) ***Courts*** means the British Columbia Court, the Ontario Court and the Quebec Court.

- (20) **Defaulting Settling Defendant** means any Settling Defendant who fails to pay its Settlement Share to the Escrow Agent for deposit into the Account on or before the Deposit Date or to remedy such default to the sole satisfaction of the Settling Plaintiffs.
- (21) **Defendants** means, in respect of each Proceeding, the individuals and entities named as defendants in that Proceeding as set out in Schedule A.
- (22) **Deposit Date** means the date which is 30 days after the execution of this Settlement Agreement by or on behalf of all Parties other than Lonza AG and for Lonza AG means the date which is 2 business days after the execution of the January 6, 2005 amendment to this Settlement Agreement by or on behalf of all Parties.
- (23) **Desmeules** means Siskinds, Desmeules, counsel for the Settling Plaintiffs in Quebec Court (District of Montreal) Action No. 500-06-000233-045 (formerly Quebec Court (District of Quebec) Action No. 200-06-000011-000) (methionine).
- (24) **Direct Purchaser** means a person, other than a Distributor, who purchased Vitamins in Canada during the Purchase Periods directly from a Defendant or from a Distributor.
- (25) **Direct Purchaser Fund** means a fund described in section 6.
- (26) **Dismissed Actions** means Ontario Court File No. 99-GD-46719 (Windsor) and No. 771/99 (Chatham), British Columbia Court File, Vancouver Registry, No. C994010 and Quebec Court (District of Quebec) Action No. 200-06-000009-004, No. 200-06-000010-002, No. 200-06-000012-016, No. 200-06-000014-012 and No. 200-06-000015-019.
- (27) **Distributor** means a person who purchased Vitamins in Canada during the Purchase Periods directly from a Defendant and only resold all of the purchased Vitamins without either further processing them or including them in any other product.
- (28) **Escrow Agent** means Deloitte & Touche, LLP and its successor appointed, from time to time, by the Courts, which shall act as holder of the Account.
- (29) **Excluded Customer** means any person who is the beneficiary of a settlement of a claim, relating to some or all Vitamins, by a Direct Purchaser or Distributor with a Settling Defendant or its Affiliated Defendants prior to or separate from this Settlement Agreement.
- (30) **Excluded Person** means, in respect of each Proceeding, each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of any Excluded Person.
- (31) **Expense Fund** means a fund described in section 6.

- (32) **Final Order** means a final judgment entered by a Court in respect of the certification of a Settling Proceeding as a class proceeding and the approval of this Settlement Agreement, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been a final disposition of all appeals.
- (33) **Fonds** means the Fonds d'aide aux recours collectifs in Quebec.
- (34) **Intermediate Purchaser** means a person, other than a Direct Purchaser, a Distributor or a Consumer, who purchased Vitamin Products during the Purchase Periods.
- (35) **Intermediate Purchaser Fund** means a fund described in section 6.
- (36) **Investment Directive** means that such monies as are to be held pursuant to this Settlement Agreement shall be held in trust in an interest bearing account with one of the Schedule I banks and the interest earned thereon shall be equivalent to or greater than interest earned on Treasury Bills.
- (37) **Management Committee** means William L. Vanveen, appointed as the Settling Defendants' representative, and J.J. Camp, Q.C., Harvey T. Strosberg, Q.C. and Claude Desmeules, appointed on behalf of the Settlement Classes, and their successors appointed, from time to time, by the Courts.
- (38) **Methionine Actions** means Ontario Court File No. 00-CV-201723CP, British Columbia Court File, Vancouver Registry, No. L003124 and Quebec Court (District of Montreal) Action No. 500-06-000233-045 (formerly Quebec Court (District of Quebec) Action No. 200-06-000011-000).
- (39) **Methionine Fund** means a fund described in section 6.
- (40) **Niacin Actions** means Ontario Court File No. 00-CV-200044CP and British Columbia Court File, Vancouver Registry, No. L003045.
- (41) **Non-Refundable Expenses** means certain preliminary expenses to be paid from the Settlement Amount as provided in this Settlement Agreement.
- (42) **Non-Settling Defendant** means a Defendant who is not a Settling Defendant and who is not an Affiliated Defendant of a Settling Defendant and, for greater certainty, includes Degussa Canada Inc. and its Affiliated Defendants with respect to the Methionine Actions and any Defaulting Settling Defendant against whom this Settlement Agreement is terminated by the Settling Plaintiffs.
- (43) **Notice Plan** means the plan for notification outlined in Schedule J.

- (44) **Ontario Counsel** means Sutts, Strosberg LLP; Siskind, Cromarty, Ivey & Dowler LLP; and Allen Cooper.
- (45) **Ontario Court** means the Ontario Superior Court of Justice.
- (46) **Opt Out Date** means a date and time to be fixed by the Courts.
- (47) **Opt Out Refund** means a refund of part of the Settlement Amount in respect of Direct Purchasers or Distributors who purchased Vitamins in Canada from a Settling Defendant or its Affiliated Defendants and who validly opt out in accordance with this Settlement Agreement.
- (48) **Opt Out Threshold** means an amount agreed upon by the Parties in a separate document which will be executed by the Parties, delivered to the Courts under seal and kept confidential by the Parties and the Courts.
- (49) **Other Actions** means actions or proceedings (other than the Proceedings) relating to Released Claims commenced by a Settlement Class Member, including Ontario Court File No. 52492/99 (Newmarket), No. 52537/99 (Newmarket), No. 53736/99 (Newmarket), No. 99-CV-172401 (Toronto); Quebec Court (District of Montreal) Action No. 500-06-000090-999; and any other proposed class actions.
- (50) **Parties** means the Settling Plaintiffs and the Settling Defendants.
- (51) **Pre-Deposit Interest** means, for each Settling Defendant other than Merck KGaA, interest on its proportion of the Settlement Amount less its Settlement Credits as set out in Schedule B, if any, from and after March 1, 2003 at the rate of 3.86% per year calculated daily plus interest on those Settlement Credits, if any, from and after March 1, 2003 at the rate of 1.93% per year calculated daily and means, for Merck KGaA, the interest actually earned in its solicitors' trust account on the principal amount of \$700,000 from and after November 11, 2001.
- (52) **Premix** means any product containing one or more Vitamins in combination with any other substances (such as other active ingredients or dilution agents) sold as a premixed formulation.
- (53) **Proceeding** means any of the Settling Proceedings or Ontario Court File No. 40610/02 (London) or No. 42267CP (London) or British Columbia Court File, Vancouver Registry, No. L023727 or No. L032297.
- (54) **Purchase Price** means the aggregate amount paid by the Direct Purchaser or Distributor for Vitamins purchased and delivered in Canada during the Purchase Periods, excluding all other charges such as delivery charges and taxes except that, with respect to Premix, it means 35% of the

aggregate amount paid by the Direct Purchaser or Distributor for Premix purchased and delivered in Canada during the Purchase Period, excluding all other charges such as delivery charges and taxes and except that, with respect to an Excluded Customer, it means the unsettled portion, if any, of the aggregate amount paid for Vitamins (or 35% of the aggregate amount paid for Premix) purchased and delivered in Canada during the Purchase Periods, excluding all other charges such as delivery charges and taxes.

(55) **Purchase Period** means, in respect of each Vitamin, the period indicated for that Vitamin in Schedule A.

(56) **Quebec Action** means Quebec Court (District of Montreal) Action No. 500-06-000083-994, being an action on behalf of Consumers only.

(57) **Quebec Counsel** means Sylvestre Charbonneau Fafard and Unterberg Labelle LeBeau & Morgan.

(58) **Quebec Court** means the Quebec Superior Court.

(59) **Referee** means Reva E. Devins and her successor appointed, from time to time, by the Courts.

(60) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties and lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct from the beginning of time to the date hereof in respect of the purchase, sale, pricing, discounting, marketing or distributing of Vitamin Products in Canada, or relating to any conduct alleged (or which could have been alleged) in the Proceedings, including, without limitation, any such claims which have been asserted (whether by way of a Proceeding, Dismissed Action, Other Action or otherwise), would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase of Vitamin Products in Canada.

(61) **Releasees** means, jointly and severally, those Settling Defendants that make the contribution required of them under the terms of this Settlement Agreement, their Affiliated Defendants and all of the Settling Defendants' and Affiliated Defendants' respective present and

former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(62) **Releasors** means, jointly and severally, the Settling Plaintiffs and the Settlement Class Members and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(63) **Reporting Date** means a date to be fixed by the Courts.

(64) **Settlement Agreement** means this agreement, including the Recitals and Schedules.

(65) **Settlement Amount** means ~~\$132.2~~132.45 million, including an amount of \$10 million on account of Class Counsel Fees and Administration Expenses.

(66) **Settlement Class** means, in respect of each Settling Proceeding, the class described for that Settling Proceeding in Schedule A.

(67) **Settlement Class Member** means a member of a Settlement Class who does not validly opt out of that Settlement Class under this Settlement Agreement.

(68) **Settlement Credit** means a credit in respect of a settlement with an Excluded Customer.

(69) **Settlement Share** means, for each Settling Defendant, the amount set out in column 1 of Schedule B, less any applicable Settlement Credits, plus Pre-Deposit Interest.

(70) **Settling Defendants** means the Defendants listed and defined for the purposes of this Settlement Agreement in column 1 of Schedule C but, for greater certainty, does not include Degussa Canada Inc. with respect to the Methionine Actions and any Defaulting Settling Defendant against whom this Settlement Agreement is terminated by the Settling Plaintiffs.

(71) **Settling Plaintiffs** means the plaintiffs in the Settling Proceedings, except for VitaPharm Canada Ltd., in Ontario Court File No. 00-CV-202080CP (biotin), No. 00-CV-200045CP (bulk vitamins) and No. 00-CV-200044CP (niacin); and except for Ritchie Smith Feeds Inc. in British Columbia Court File, Vancouver Registry, No. L003124 (methionine).

(72) **Settling Proceedings** means the Biotin Actions, Bulk Vitamins Actions, Choline Chloride Actions, Methionine Actions, Niacin Actions and the Quebec Action.

(73) **Vitamin Products** means Vitamins and products that directly or indirectly contain or are derived from Vitamins or from animals which had consumed Vitamins.

(74) **Vitamins** means any and all products of the Defendants listed in Schedule A, as well as all blends and forms of these products, and includes Premix.

## **SECTION 2 – CONDITION PRECEDENT: ONTARIO COURT APPROVAL**

Except as provided in section 15, this Settlement Agreement shall be null and void and of no force and effect unless the Ontario Court approves this Settlement Agreement in each of the Settling Proceedings commenced in Ontario and the order so given becomes a Final Order.

## **SECTION 3 – SETTLEMENT APPROVAL**

### **3.1 Motions for Approval**

As soon as practicable after execution of this Settlement Agreement, the Settling Plaintiffs shall bring motions before the Courts:

- (d) for orders substantially in the form set out in Schedules D1, D2, D3 and D4 scheduling an approval hearing in each of the Settling Proceedings commenced in their respective jurisdictions; and
- (e) for orders in the forms set out in Schedules E1, E2, E3 and E4 certifying each of the Settling Proceedings commenced in their respective jurisdictions as a class proceeding and approving this Settlement Agreement provided, however, that the clauses set out below need only be substantially in the form set out at the relevant schedule:
  - (i) Schedule E1—clauses 8, 10, 11, 12, 22, 23, 26, 27, 28, 29, 30(b), 30(c), 31, 33, 34, 35 and 37;
  - (ii) Schedule E2—clauses 8, 10, 11, 12, 19, 20, 23, 24, 25, 26, 27(b), 27(c), 28, 30, 31, 32 and 34;
  - (iii) Schedule E3—clauses 3, 5, 6, 7, 12, 13, 16, 17(b), 17(c), 18 and 20; and
  - (iv) Schedule E4—clauses 3, 5, 6, 7, 12, 13, 16, 17, 18(b), 18(c), 19, 21; 22 and 23.

### **3.2 Sequence of Motions**

The Settling Plaintiffs in British Columbia and Quebec shall not proceed with motions to approve this Settlement Agreement in the Settling Proceedings commenced in their respective jurisdictions unless and until the Ontario Court approves this Settlement Agreement. The approval motions may be filed in British Columbia and Quebec, but British Columbia Counsel, Quebec Counsel and Desmeules agree to seek an adjournment of their approval hearings until after the Ontario Court renders its decisions on the motions for approval brought before it.

### **3.3 Effect of Non-Approval**

Notwithstanding any other terms of this Settlement Agreement, the Settling Defendants may, in their sole and unfettered discretion, elect to terminate this Settlement Agreement in accordance with section 15 if either the British Columbia Court or the Quebec Court fails to approve this Settlement Agreement or any part thereof.

## **SECTION 4 – SETTLEMENT PAYMENT**

### **4.1 Payment of Settlement Amount**

(1) The Settling Defendants agree to pay the Settlement Amount plus Pre-Deposit Interest less any Settlement Credits in accordance with this Settlement Agreement, in full satisfaction of all of the Released Claims against the Releasees.

(2) Each Settling Defendant shall pay Pre-Deposit Interest on its proportion of the Settlement Amount to the date of deposit of its Settlement Share with the Escrow Agent.

### **4.2 Payment of Settlement Shares**

Each Settling Defendant shall pay its Settlement Share to the Escrow Agent for deposit into the Account on or before the Deposit Date. The Escrow Agent shall advise Class Counsel and the Settling Defendants within 7 days after the Deposit Date of the Settlement Shares deposited by each Settling Defendant.

### **4.3 Obligations Several Only**

The Settling Defendants' obligations to pay their respective Settlement Shares are several only, and not joint and several, and no Settling Defendant shall for any reason be responsible for or the subject of a claim regarding any deficiency by another Settling Defendant in paying that other Settling Defendant's Settlement Share.

#### **4.4 Directions, Termination, Waiver or Motion for Judgment**

- (1) The Settling Plaintiffs may, in their sole and unfettered discretion, bring a motion to the Courts for directions, unilaterally terminate this Settlement Agreement as against any Defaulting Settling Defendant, agree to waive the default, or move for judgment against any Defaulting Settling Defendant.
- (2) Notwithstanding any other terms of this Settlement Agreement, the Settling Plaintiffs may, in their sole and unfettered discretion, elect to terminate this Settlement Agreement as against all Settling Defendants if the monies owing by all Defaulting Defendants pursuant to Schedule B amount in the aggregate to more than \$5 million.
- (3) If the Settling Plaintiffs elect to exercise their right to terminate this Settlement Agreement, then Class Counsel shall give written notice of termination to the Settling Defendants and the Escrow Agent no later than 21 days after Class Counsel are provided with the information required pursuant to section 4.2.

#### **4.5 Investment of Account**

Subject to the payment of Non-Refundable Expenses as authorized by this Settlement Agreement, the Escrow Agent shall maintain the balance of the monies paid into the Account and shall invest the monies in accordance with the Investment Directive. The Escrow Agent shall not pay out any of the monies in the Account, except in accordance with the provisions of this Settlement Agreement, without an order of the Ontario Court made on notice to or on consent of the Parties. Provided however, that the Escrow Agent shall pay out of the monies in the Account any overpayments plus post-deposit interest.

#### **4.6 Timing of Payment**

The Escrow Agent shall, within 10 days after the date by which the Settling Defendants may terminate this Settlement Agreement without a termination having occurred, pay the principal amount and all accrued interest in the Account and/or transfer any assets in the Account to the Administrator and such payment or transfer shall constitute payment by the Settling Defendants of the Settlement Amount. The Escrow Agent shall give at least 7 days prior written notice to the Settling Defendants of any such payment or transfer.

#### **4.7 Taxes on Interest**

- (1) Subject to section 4.7(3), all taxes payable on any interest which accrues in the Account or otherwise in relation to the Settlement Amount, including any interest that accrued in Merck KGaA's solicitors' trust account on amounts held in respect of its proportion of the Settlement

Amount, shall be the responsibility of the Settlement Classes and shall be paid by the Escrow Agent or the Administrator from the Settlement Amount or by the Settlement Class Members as the Administrator shall deem appropriate.

(2) If, following the transfer of the monies in the Account to the Administrator, the Escrow Agent becomes liable to pay any tax on any interest earned on the Settlement Shares while deposited in the Account, the Administrator shall pay such taxes.

(3) If the Escrow Agent pays any portion of a Settlement Share to a Settling Defendant from the Account, the taxes payable on any interest on that portion that is returned to a Settling Defendant shall be the responsibility of that Settling Defendant.

## **SECTION 5 – NON-REFUNDABLE EXPENSES**

### **5.1 Payments**

(1) On behalf of the Settling Defendants, the Escrow Agent shall pay, out of the Account, the following Non-Refundable Expenses which shall constitute non-refundable advances against the Settlement Amount, net of Settlement Credits:

- (a) the cost of the first notice given in accordance with section 13.1 to a maximum of \$150,000;
- (b) the cost of the second notice given in accordance with section 13.2 to a maximum of \$150,000;
- (c) if necessary, the cost of the termination notice given in accordance with section 13.3 to a maximum of \$50,000;
- (d) the reasonable costs for the appointment of a friend of the Court in each jurisdiction to act as objectors' counsel to a maximum of \$15,000;
- (e) if the Courts appoint an Administrator and, thereafter, declare this Settlement Agreement null and void, the reasonable costs for the fees, disbursements and GST of the Administrator, as fixed by the Courts, to a maximum of \$125,000;
- (f) the reasonable costs for the creation of and software support for a settlement website for Settlement Class Members by Class Counsel and the Administrator to a maximum of \$50,000. For greater certainty any amount the Administrator may become eligible for under this section shall be in addition to the fees provided for in sections 5.1(1)(e) or 17.1(3);

- (g) the fees and expenses of economists retained as experts by Class Counsel to assess the fairness of this Settlement Agreement for the purposes of the approval hearings before the Courts to a maximum of \$250,000, as and when invoices are rendered by the economists, provided however that the economists shall not be paid more than \$50,000 for fees and expenses incurred from December 1, 2002, being the date the economists began working on the fairness of the draft Settlement Agreement, to the date this Settlement Agreement is executed by or on behalf of all Parties; and
  - (h) the costs to translate this Settlement Agreement into French to a maximum of ~~\$15,000~~20,000.
- (2) The Escrow Agent shall give 7 days prior written notice to the Settling Defendants of any proposed payment pursuant to section 5.1(1), together with any document or other material available to support such payment. The Escrow Agent shall then make such payment unless F. Hoffmann-LaRoche Ltd., together with either one of Aventis Animal Nutrition S.A. or BASF Aktiengesellschaft, objects in writing within 7 days.
- (3) If there is a dispute concerning any payment proposed pursuant to section 5.1(1), the Class Counsel Representative may apply to Reva E. Devins as arbitrator for a determination of the dispute, in a summary manner pursuant to a procedure to be determined by the arbitrator without a right of appeal, on notice to the Settling Defendants.
- (4) In no event shall the Escrow Agent or the Settling Defendants be required to pay more than the maximum amounts set out in section 5.1(1) on account of Non-Refundable Expenses prior to the transfer of the Account to the Administrator.

## **SECTION 6 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST**

### **6.1 Division Into Five Funds**

- (1) Subject to the adjustments specified below, the Settlement Amount will be notionally allocated into five funds as follows:
- (a) a Direct Purchaser Fund of \$94.245 million;
  - (b) a Methionine Fund of \$6 million;
  - (c) an Intermediate Purchaser Fund of \$11 million;

- (d) a Consumer Fund of \$11 million; and
- (e) an Expense Fund of \$10 million.

(2) The Settlement Amount allocated to the Direct Purchaser Fund and the Methionine Fund shall be reduced by the amount of the Settlement Credits and the Opt Out Refunds applicable to each. The Intermediate Purchaser Fund, the Consumer Fund and the Expense Fund shall not be reduced by reason of any Settlement Credits or Opt Out Refunds.

(3) The Non-Refundable Expenses shall be charged and allocated to the Expense Fund.

(4) The Administration Expenses and Class Counsel Fees shall be charged and allocated as provided in sections 6.6 and 18.

## **6.2 Direct Purchaser Fund**

(1) Settlement Class Members who are Direct Purchasers or Distributors of Vitamins (other than methionine) may claim compensation from the Direct Purchaser Fund.

(2) Direct Purchasers and Distributors of Vitamins (other than methionine) shall apply to the Administrator for compensation in accordance with the process set out at Schedule M.

(3) After 90 days from the date fixed by the Courts for persons to opt out of the Settling Proceedings, no Direct Purchaser or Distributor of Vitamins (other than methionine) may apply for compensation from the Direct Purchaser Fund without leave of the Court in the Settling Proceeding in which the Direct Purchaser or Distributor is a Settlement Class Member.

(4) A Direct Purchaser or Distributor of Vitamins (other than methionine) may, within 30 days after receiving the Administrator's rejection of eligibility or the Administrator's calculation of the Purchase Price of Vitamins (other than methionine), refer that decision for review by the Referee in accordance with the provisions at Schedule H.

(5) Subject to section 6.2(6), a Settlement Class Member:

- (a) who is a Direct Purchaser shall be paid 12% of the Purchase Price of Vitamins (other than methionine) purchased directly from a Defendant;
- (b) who is a Direct Purchaser shall be paid 10% of the Purchase Price of Vitamins (other than methionine) purchased directly from a Distributor; and
- (c) who is a Distributor shall be paid 1% of the Purchase Price of Vitamins (other than methionine) purchased directly from a Defendant.

(6) If the total amount of valid claims on the Direct Purchaser Fund exceeds the amount available for distribution from the Direct Purchaser Fund, the payments to eligible Direct Purchasers and Distributors shall be reduced pro rata.

(7) If there remains a balance in the Direct Purchaser Fund, after payment of Class Counsel Fees, Administration Expenses, Opt Out Refunds and all valid claims in accordance with this section, the balance, less the Administration Expenses Reserve, shall be transferred to and become part of the Consumer Fund to be distributed in accordance with the provisions of this Settlement Agreement.

### **6.3 Methionine Fund**

(1) The balance of the Methionine Fund, after payment of Class Counsel Fees and Administration Expenses, shall be held for the benefit of the Settlement Class Members in the Methionine Actions who are Direct Purchasers or Distributors of methionine and shall be paid as the Courts direct, on motions brought by Class Counsel.

(2) The procedure for applying for compensation from the Methionine Fund shall be determined in such manner and at such time as the Courts direct, on motions brought by Class Counsel.

(3) After such payments as are ordered by the Courts in the Methionine Actions, any remaining balance of the Methionine Fund shall be transferred to and become part of the Consumer Fund to be distributed in accordance with the provisions of this Settlement Agreement.

### **6.4 Intermediate Purchaser Fund**

The balance of the Intermediate Purchaser Fund, after payment of Class Counsel Fees and Administration Expenses, shall be allocated and distributed for the benefit of the Intermediate Purchasers who are Settlement Class Members, cy-près, to the recipients and in the proportions or amounts set out in Schedule F.

### **6.5 Consumer Fund**

The balance of the Consumer Fund, after payment of Class Counsel Fees and Administration Expenses, including any amounts that are transferred to it from the Direct Purchaser Fund, the Methionine Fund or the Expense Fund, shall be allocated and distributed for the benefit of the Consumers who are Settlement Class Members, cy-près, to the recipients and in the proportions or amounts set out in Schedule G.

## **6.6 Expense Fund**

- (1) The Expense Fund shall be used to pay Class Counsel Fees and Administration Expenses.
- (2) If the Expense Fund is insufficient to pay Class Counsel Fees and Administration Expenses, they shall be paid from the other funds in the manner provided in section 18.
- (3) If a balance remains in the Expense Fund after payment of Class Counsel Fees and Administration Expenses, the balance shall be transferred to and become part of the Consumer Fund to be distributed in accordance with the provisions of this Settlement Agreement.

## **6.7 Holding and Investment of the Settlement Amount**

The Administrator shall hold the monies received from the Account in one fund and invest the monies in accordance with the Investment Directive as if they were one fund but keep accounting records and account as if the monies were five separate funds.

## **6.8 Interest**

- (1) Immediately upon the Administrator receiving the monies in the Account, the Administrator shall allocate any Pre-Deposit Interest and any interest that had accrued in the Account pro rata to the amounts allocated to each fund after the reductions for Settlement Credits and Non-Refundable Expenses provided in sections 6.1(2) and (3).
- (2) Any interest accruing on the monies in the hands of the Administrator shall be allocated by the Administrator monthly to each of the five funds pro rata to the balance notionally held in each fund on the last business day of each month.

## **SECTION 7 – SETTLEMENT CREDITS**

### **7.1 Entitlement**

Each Settling Defendant who, up to 30 days prior to the commencement of the approval hearing in Ontario, settles or is the beneficiary of the settlement of Released Claims by an Excluded Customer is entitled to a Settlement Credit. A Settling Defendant is not entitled to a Settlement Credit for a settlement reached less than 30 days before the commencement of the approval hearing in Ontario but may instead claim an Opt Out Refund. For greater certainty, Degussa Canada Inc. is not entitled to a Settlement Credit in respect of any methionine sales made by it or its Affiliated Defendants.

## **7.2 Calculation**

A Settlement Credit shall be calculated as follows:

- (a) 12% of the Purchase Price of Vitamins purchased by a Direct Purchaser directly from the Settling Defendant or its Affiliated Defendants;
- (b) 10% of the Purchase Price of Vitamins purchased by a Direct Purchaser from a Distributor who purchased such Vitamins directly from the Settling Defendant or its Affiliated Defendants;
- (c) 1% of the Purchase Price of Vitamins purchased by a Distributor directly from the Settling Defendant or its Affiliated Defendants;
- (d) if there is a settlement in respect of both the Vitamins purchased by a Distributor and the same Vitamins purchased by a Direct Purchaser from that Distributor, 12% of the Purchase Price of those Vitamins as purchased by the Distributor from the Settling Defendant or its Affiliated Defendants; and
- (e) a Settlement Credit pursuant to section 7.2(c) in respect of Vitamins purchased by a Distributor, together with a Settlement Credit pursuant to section 7.2(b) in respect of the same Vitamins purchased by a Direct Purchaser from that Distributor, shall not exceed 12% of the Purchase Price of those Vitamins as purchased by the Distributor from the Settling Defendant or its Affiliated Defendants.

## **7.3 Application and Verification**

- (1) Each Settling Defendant is entitled to a Settlement Credit in the amount set out for it in column 3 of Schedule B.
- (2) Each Settling Defendant who claims any additional Settlement Credit in the period up to 30 days before the commencement of the approval hearing in Ontario shall, through its counsel, advise the Class Counsel Representative, in confidence, in writing, of the name and address of each Excluded Customer whose settled claim(s) is the basis for the additional Settlement Credit, the date of the settlement with the Excluded Customer and the Purchase Price of the Vitamins for which there was a settlement.

- (3) The information required by section 7.3(2) shall be delivered to the Class Counsel Representative no later than 20 days before the commencement of the approval hearing in Ontario.
- (4) If a Settling Defendant is in any way prohibited from disclosing the information in respect of a Settlement Credit required by this Settlement Agreement by virtue of the terms of the settlement with its Excluded Customer, then it may make an application to one of the Courts on notice to the Excluded Customer for an order authorizing the release of the information.
- (5) If a Settling Defendant claims an additional Settlement Credit in the period up to 30 days before the commencement of the approval hearing in Ontario, and if the Settling Defendant has deposited its full Settlement Share, the Settling Defendant may in writing, with a copy to the Class Counsel Representative, direct the Escrow Agent to pay to it the Settlement Credit plus post-deposit accrued interest, if any. The Escrow Agent shall make the payment if the Class Counsel Representative does not object in writing within 14 days of Class Counsel Representative's receipt of the Settling Defendant's direction to the Escrow Agent.
- (6) If there is a dispute concerning any Settlement Credit which is not listed in Schedule B, the Settling Defendant may apply to Reva E. Devins as arbitrator for:
  - (a) a determination of the dispute, in a summary manner, pursuant to a procedure to be determined by the arbitrator, without a right of appeal, on notice to the Class Counsel Representative; and
  - (b) an order directing the Escrow Agent to pay to it the Settlement Credit plus post-deposit accrued interest, if any. For the purposes of any dispute about the Purchase Price, the types of records listed in section 8.4 shall constitute sufficient proof of the Purchase Price.

#### **7.4 Information to Administrator**

- (1) Each Settling Defendant who claims a Settlement Credit shall, through its counsel, advise the Administrator, in confidence, in writing, of the name and address of each Excluded Customer whose settled claim(s) was the basis for the Settlement Credit and the Purchase Price of the Vitamins for which there was a settlement.
- (2) The information required by section 7.4(1) shall be delivered to the Administrator forthwith following its appointment by the Courts.

## **SECTION 8 – OPT OUT REFUNDS**

### **8.1 Entitlement**

A Settling Defendant shall be entitled to an Opt Out Refund to a maximum of its Settlement Share for any of its or its Affiliated Defendants' Direct Purchaser or Distributor customers who opt out in accordance with this Settlement Agreement, provided that no Settling Defendant shall be entitled to an Opt Out Refund in addition to a Settlement Credit for any Excluded Customer. For greater certainty, Degussa Canada Inc. is not entitled to an Opt Out Refund in respect of any methionine sales made by it or its Affiliated Defendants.

### **8.2 Calculation**

- (1) An Opt Out Refund in respect of Vitamins (other than choline chloride) shall be calculated in the same manner as a Settlement Credit under section 7.2.
- (2) An Opt Out Refund in respect of the Purchase Price of choline chloride shall be discounted by multiplying the amount calculated according to section 7.2 by the fraction that has the total of all Choline Chloride Contributions as its numerator and 11 million as its denominator. The Settling Defendants shall be entitled to share the aggregate of all such discounted Opt Out Refunds in respect of the Purchase Price of choline chloride pro rata to their respective Choline Chloride Contributions without regard to their actual choline chloride sales (if any) and shall be paid in accordance with section 8.3 below.

### **8.3 Application and Payment**

- (1) A Settling Defendant may in writing, with a copy to the Class Counsel Representative, direct the Administrator to pay to it the Opt Out Refund in respect of Vitamins plus post-deposit accrued interest, if any. The Administrator shall pay the Opt Out Refund in respect of Vitamins from the Direct Purchaser Fund within 60 days of receiving an application for an Opt Out Refund if the Class Counsel Representative does not object in writing within 14 days of Class Counsel Representative's receipt of the Settling Defendant's direction to the Administrator.
- (2) If there is any dispute concerning any Opt Out Refund, the Settling Defendant may apply to the Referee for:
  - (a) a determination of the dispute, in a summary manner, pursuant to a procedure to be determined by the Referee, without a right of appeal, on notice to the Class Counsel Representative; and

- (b) an order directing the Administrator to pay to it the Opt Out Refund plus post deposit accrued interest, if any. For the purposes of any dispute about the Purchase Price, the types of records listed in section 8.4 shall constitute sufficient proof of the Purchase Price.

#### **8.4 Verification**

(1) The following types of records shall constitute sufficient proof of the Purchase Price for the purpose of the calculation of the Opt Out Refund:

- (a) the Settling Defendant's or its Affiliated Defendants' summary of sales to the Direct Purchaser or Distributor who has opted out (as opposed to original documents);
- (b) the Settling Defendant's or its Affiliated Defendants' original records of sales to the Direct Purchaser or Distributor who opts out, maintained in the usual and ordinary course of business;
- (c) if there are no business records of purchases available from the Settling Defendant or its Affiliated Defendants, the records of the Direct Purchaser or Distributor who has opted out, maintained in the usual and ordinary course of business; or
- (d) such other records from which the required information may be determined.

### **SECTION 9 – RELEASES AND DISMISSALS**

#### **9.1 Release of Releasees**

Upon receipt by the Administrator of the monies in the Account, the Releasors forever and absolutely release the Releasees from the Released Claims.

#### **9.2 Release by Releasees**

Upon receipt by the Administrator of the monies in the Account, each Releasee forever and absolutely releases each of the other Releasees from any and all claims for contribution or indemnity with respect to the Released Claims.

#### **9.3 Covenant Not To Sue**

Notwithstanding section 9.1, for the purposes of the Settling Proceedings commenced in the British Columbia Court and for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any claim in any way

or to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

#### **9.4 No Further Claims**

The Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasees or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants.

#### **9.5 Dismissal of Settling Proceedings**

Except as otherwise provided in this Settlement Agreement, the Settling Proceedings shall be dismissed as against the Releasees, without costs and with prejudice.

#### **9.6 Dismissal of Other Actions**

- (1) Each Settlement Class Member shall be deemed to consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.
- (2) All Other Actions commenced by any Settlement Class Member in British Columbia, Ontario or Quebec relating to the Released Claims shall be dismissed against the Releasees, without costs and with prejudice.
- (3) Each Direct Purchaser or Distributor who has commenced any Other Actions in Canada other than in British Columbia, Ontario and Quebec must expressly consent to a dismissal of its Other Actions against the Releasees, without costs and with prejudice, and execute a release of the Released Claims against the Releasees before receiving a payment pursuant to this Settlement Agreement.

### **SECTION 10 – BAR ORDER AND OTHER CLAIMS**

#### **10.1 Bar Order**

A bar order shall be granted by each of the Courts providing for the following:

- (a) all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought against a Releasee by any Non-Settling Defendant or any other person or party, or

- by any Releasee against a Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this section (unless such claim is made in respect of a claim by a person who has validly opted out of a Settlement Class);
- (b) the Settling Plaintiffs shall restrict their joint and several claims against the Non-Settling Defendants such that the Settling Plaintiffs shall be entitled to claim and recover from the Non-Settling Defendants, on a joint and several basis, only:
- (i) those damages, if any, arising from the sales of the Non-Settling Defendants; or
  - (ii) those damages, if any, allocable to the conduct (but not necessarily the sales) of the Non-Settling Defendants in the Choline Chloride Actions, the Quebec Action (insofar as it relates to choline chloride), Ontario Court File. No. 40610/02 (London) and British Columbia Court File, Vancouver Registry, No. L023727; and
  - (iii) those punitive damages, if any, allocable to the conduct of any of the Non-Settling Defendants;
- (c) a Non-Settling Defendant may seek an order from a Court providing for discovery from some or all of the Settling Defendants and/or their Affiliated Defendants as deemed appropriate by the Court; and
- (d) a Non-Settling Defendant may effect service of the motion(s) referred to in section 10.1(c) on a Settling Defendant by service on counsel of record for the Settling Defendant in the Settling Proceeding.

## **10.2 Claims Against Other Entities Reserved**

Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any person other than the Releasees.

## **SECTION 11 – EFFECT OF SETTLEMENT**

### **11.1 No Admission of Liability**

Neither this Settlement Agreement, nor anything contained herein, shall be interpreted as concessions or admissions of wrongdoing or liability, or as concessions or admissions of the truthfulness of any claim or allegation asserted in the Proceedings. Neither this Settlement

Agreement, nor anything contained herein, shall be used or construed as an admission of any fault, omission, liability or wrongdoing in any statement, release or written document or financial report.

**11.2 Agreement Not Evidence**

Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out this Settlement Agreement shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

**11.3 Purchase Period Not Admission**

Each Settling Defendant accepts the Purchase Period asserted in respect of its Vitamins in the Settling Proceedings in which it or its Affiliated Defendants is a party solely for the purpose of this Settlement Agreement and without any admission that the Purchase Period is correct or that, in fact, any conspiracy occurred in respect of any Vitamin at any time.

**11.4 No Further Litigation**

- (1) Except as provided in this section, no Class Counsel, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any person which relates to or arises from the Released Claims.
- (2) Section 11.4(1) does not apply to the involvement of any person in the continued prosecution of the Proceedings against any Non-Settling Defendants.
- (3) The information that the Parties disclose or disseminate in connection with the administration of the Settlement Agreement shall not contradict or be inconsistent with the terms of this Settlement Agreement.

**SECTION 12 – CERTIFICATION FOR SETTLEMENT ONLY**

**12.1 Settlement Class and Common Issue**

- (1) The Parties agree that the Settling Proceedings shall be certified as class proceedings solely for purposes of settlement of the Settling Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Settling Plaintiffs agree that, in the motions for certification of the Settling Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes.

**12.2 Certification Without Prejudice**

In the event this Settlement Agreement is not approved or is terminated in accordance with its terms, the Parties agree that any prior certification of a Settling Proceeding as a class proceeding, including the definition of the Settlement Class and the statement of the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation.

**SECTION 13 – NOTICE TO SETTLEMENT CLASSES**

**13.1 First Notice**

The proposed Settlement Classes shall be notified of hearings at which the Courts will be asked to approve the Settlement Agreement, by way of a notice substantially in the form set out in Schedule I. Class Counsel shall cause the notice to be published and distributed, substantially in accordance with the Notice Plan set out in Schedule J, by a date to be set by the Courts.

**13.2 Second Notice**

The Settlement Classes shall be notified of the certification of each of the Settling Proceedings as a class proceeding and the approval of this Settlement Agreement by a notice, substantially in the form set out in Schedule K. The Administrator shall cause the notice to be published and distributed, substantially in accordance with the Notice Plan set out in Schedule J. In the event this Settlement Agreement is approved by the Courts, the notice shall be published and distributed no later than 30 days after the last such order becomes a Final Order.

**13.3 Termination Notice**

If this Settlement Agreement is terminated for any reason after the second notice provided for in this section has been published and distributed, a notice of the termination shall be given to the Settlement Classes. The Administrator shall cause the notice, substantially in the form set out in Schedule L, to be published and distributed, substantially in accordance with the Notice Plan set out in Schedule J, by a date to be set by the Courts.

### **13.4 Advising the Courts**

Forthwith after publication and distribution of the notices required by sections 13.1, 13.2 and 13.3, if applicable, the Class Counsel Representative and the Administrator shall file with the Courts affidavits confirming publication and distribution of the notices.

## **SECTION 14 – OPTING OUT**

### **14.1 Opt Out Mechanism**

- (1) A person who wishes to opt out of the Settlement Class in one of the Settling Proceedings must opt out of the Settlement Class in all Settling Proceedings.
- (2) A person may only opt out of the Settling Proceedings by sending a written election to opt out, signed by the person or that person's designee, by prepaid mail, courier or fax to the Administrator at an address to be identified in the Final Orders and the notice set out in Schedule K.
- (3) An election to opt out will only be effective if it is actually received by the Administrator on or before the Opt Out Date.
- (4) A Direct Purchaser's or a Distributor's written election to opt out will have no force and effect unless and until the Direct Purchaser or Distributor also provides to the Administrator, on or before the Opt Out Date:
  - (a) its full name, current address and telephone number;
  - (b) to the extent applicable, the previous name(s) under which it purchased Vitamins from the Settling Defendants, their Affiliated Defendants or from Distributors;
  - (c) the name(s) of each entity from whom it purchased Vitamins;
  - (d) if the Direct Purchaser or Distributor agrees with any Purchase Price information that the Administrator has provided, its written confirmation of agreement; and
  - (e) if the Direct Purchaser or Distributor does not agree with any Purchase Price information that the Administrator has provided, or if no Purchase Price information has been provided by the Administrator:
    - (i) the Purchase Price and the names of all Vitamins it purchased; and
    - (ii) documentation evidencing its Purchase Price of Vitamins, or, if such documentation is unavailable, its written certification to that effect.