

00-CV-202030CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR JUSTICE CUMMING)

WEDNESDAY, THE 23RD DAY

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)
)

OF MARCH, 2005

<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>Court File No. 00-CV-202080CP</p> <p>BETWEEN</p> <p>GLEN FORD VITAPHARM CANADA LTD FLEMING FEED MILL LTD and MARCY DAVID</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p>HOFFMANN LA ROCHE LTD HOFFMANN LA ROCHE LTD MERCK KGaA LONZA AG ALLSUISSE LONZA CANADA INC SUMITOMO CHEMICAL CO LTD SUMITOMO CANADA LIMITED/LIMITÉE and TANABE SEIYAKU CO LTD</p> <p style="text-align: right;">Defendants</p> <p>Proceeding under the <i>Class Proceedings Act 1997</i> (Biotin)</p>	<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>Court File No. 00-CV-200045CP</p> <p>BETWEEN</p> <p>GLEN FORD VITAPHARM CANADA LTD FLEMING FEED MILL LTD ALIMENTS BRETON INC ROGER AWAD and MARY HELEN AWAD</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p>HOFFMANN LA ROCHE LTD HOFFMANN LA ROCHE LIMITED/LIMITÉE RHÔNE-POULENC SA AVENTIS ANIMAL NUTRITION SA RHÔNE-POULENC CANADA INC RHÔNE-POULENC ANIMAL NUTRITION INC RHÔNE-POULENC INC BASF AKTIENGESELLSCHAFT BASF CORPORATION BASF CANADA INC EISAI CO LTD TAKEDA CHEMICAL INDUSTRIES LTD TAKEDA CANADA VITAMIN AND FOOD INC MERCK KGaA DAICHI PHARMACEUTICAL COMPANY LTD ROUSSEL CANADA INC REINHARD STEINMETZ DIETER SUTER HUGO STROTMANN ANDREAS HAURI KUNO SOMMER and ROLAND BRONNIMANN</p> <p style="text-align: right;">Defendants</p> <p>Proceeding under the <i>Class Proceedings Act 1997</i> (Bulk Vitamins)</p>
<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>Court File No. 00-CV-198647CP</p> <p>BETWEEN</p> <p>FLEMING FEED MILL LTD ALIMENTS BRETON INC GLEN FORD and MARCY DAVID</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p>BASF AKTIENGESELLSCHAFT BASF CORPORATION BASF CANADA INC CHINOOK GROUP LTD DCV INC DLCOA LP AKZO NOBEL NV AKZO NOBEL CHEMICALS BV BIOPRODUCTS INC RUSSELL COSBLRN JOHN KENNEDY ROBERT SAMUELSON LINDELL HILLING JOHN L (PÈTE) FISCHER and ANTONIO FELIX</p> <p style="text-align: right;">Defendants</p> <p>Proceeding under the <i>Class Proceedings Act 1997</i> (Choline Chloride)</p>	<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>Court File No. 00-CV-201723CP</p> <p>BETWEEN</p> <p>GLEN FORD FLEMING FEED MILL LTD ALIMENTS BRETON INC and KRISTI CAPP</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p>RHÔNE-POULENC SA RHÔNE-POULENC CANADA INC DEGUSSA HULLS AG DEGUSSA CORPORATION DEGUSSA CANADA INC NOVUS INTERNATIONAL, INC and AVENTIS ANIMAL NUTRITION SA</p> <p style="text-align: right;">Defendants</p> <p>Proceeding under the <i>Class Proceedings Act 1997</i> (Methionine)</p>
<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>Court File No. 00-CV-200044CP</p> <p>BETWEEN</p> <p>VITAPHARM CANADA LTD FLEMING FEED MILL LTD ALIMENTS BRETON INC and KRISTI CAPP</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p>DEGUSSA HULLS AG DEGUSSA CORPORATION DEGUSSA CANADA INC REILLY INDUSTRIES INC REILLY CHEMICALS SA VITACHEM COMPANY ALLSUISSE LONZA CANADA INC LONZA AG NEPERA INCORPORATED ROGER NOACK and DAVID PURI</p> <p style="text-align: right;">Defendants</p> <p>Proceeding under the <i>Class Proceedings Act 1992</i> (Niacin)</p>	

JUDGMENT

THIS MOTION, made by the Settling Plaintiffs for certification of the Ontario Actions as class proceedings and for judgment pursuant to subsection 29(2) of the *Class Proceedings Act, 1992* in accordance with the terms of the Settlement Agreement, was heard on March 8 and 9, 2005 at Toronto, Ontario (the "Ontario Approval Hearing")

ON READING the following

- (a) the notice of motion and record returnable March 8, 2005,
- (b) the Amended Settlement Agreement, the Akzo Settlement Agreement and the UCB/Reilly 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) Kristi Cappa, sworn February 15, 2005,
 - (vii) Christian Breton of Aliments Breton Ltd , sworn February 18, 2005,
 - (viii) Glen Ford, sworn February 15, 2005,
 - (ix) Bill Fleming of Fleming Feed Mill Ltd , sworn February 15, 2005,
 - (x) Roger Awad, sworn February 17, 2005,
 - (xi) Mary Helen Awad, sworn February 17, 2005,
 - (xii) Marcy David, sworn February 16, 2005,

- (xiii) Jannick Desforges, sworn February 7, 2005,
- (xiv) Margaret Woltz, sworn February 17, 2005,
- (xv) Craig Flinn, sworn February 18, 2005,
- (xvi) Jennifer Bald, sworn February 22, 2005,
- (xvii) Joe Fiorante, sworn March 3, 2005,
- (xviii) David Jones, sworn March 3, 2005,
- (xix) William Dermody, sworn March 7, 2005,
- (f) the written objections, and
- (g) the orders dated December 10, 2004 and February 22 , 2005

AND ON HEARING the submissions of counsel for the Settling 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 ON BEING ADVISED that while Degussa Canada Inc is a Settling Defendant in the Ontario Nicotin Action, it is a Non-Settling Defendant in the Ontario Methionine Action,

AND ON BEING ADVISED that counsel for all Parties consent to the language found in paragraph 19 of this judgment and agree that, to the extent that the language varies from paragraph 19 of Schedule E1 of the Amended Settlement Agreement, the Parties waive their right of termination as a result of this variation that is provided by s 15 1(1) of the Amended Settlement Agreement

AND ON BEING FURTHER ADVISED that

- (a) the Settling Plaintiffs in the Ontario Actions consent to this judgment,
- (b) *the Settling Defendants in the Ontario Actions consent to this judgment,*
- (c) Deloitte & Touche LLP consents to being appointed Administrator,
- (d) Reva E Devins consents to being appointed Referee, and
- (e) Harvey T Strosberg, Q C , J J Camp, Q C , Claude Desmeules and William L Vanveen consent to being appointed to the Management Committee

AND without any admission of liability on the part of any of the Settling Defendants, all Settling Defendants having denied liability,

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

- (a) ***“Amended Settlement Agreement”*** means the Settlement Agreement made as of November 1, 2004 and amended as of January 6, 2005 in the form attached as Appendix 1 to this judgment,
- (b) ***“Akzo Settlement Agreement”*** means the settlement agreement between the plaintiffs in the Choline Chloride Actions and Akzo Nobel Chemicals BV made as of the 6th day of January, 2005,

- (c) **“Ontario Actions”** means the Ontario Biotin Action, the Ontario Bulk Vitamins Action, the Ontario Choline Chloride Action, the Ontario Methionine Action and the Ontario Niacin Action,
- (d) **“Ontario Biotin Action”** means Ontario Court File No 00-CV-202080CP,
- (e) **“Ontario Bulk Vitamins Action”** means Ontario Court File No 00-CV-200045CP,
- (f) **“Ontario Choline Chloride Action”** means Ontario Court File No 00-CV-198657CP,
- (g) **“Ontario Methionine Action”** means Ontario Court File No 00-CV-201723CP,
- (h) **“Ontario Niacin Action”** means Ontario Court File No 00-CV-200044CP,
- (i) **“Ontario Releasers”** means, jointly and severally, the Settling Plaintiffs and the Settlement Class Members in the Ontario Actions and 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,
- (j) **“Released Ontario 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 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 Vitamins Products in Canada, or relating to any conduct alleged (or which could have been alleged) in the Ontario Actions, 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,
- (k) **“SCSD”** means Sutts, Strosberg LLP, Camp Fiorante Matthews, Siskind Cromarty Ivey & Dowler LLP and Siskinds, Desmeules,

- (l) **“Supplemental Choline Chloride Actions”** means Ontario Court File No 40610/02 (London) and British Columbia Court File, Vancouver Registry, No L023727,
- (m) **“Supplemental Methionine Actions”** means Ontario Court File No 42267/CP (London) and British Columbia Court File, Vancouver Registry, No L032297, and
- (n) **“UCB/Reilly Settlement Agreement”** means the settlement agreement between the plaintiffs in the Niacin Actions and the Supplemental Choline Chloride Actions and Reilly Industries Inc and UCB S A made as of the 23rd day of February, 2005

2 THIS COURT ORDERS that

- (a) the Ontario Biotin Action is hereby certified as a class proceeding against F Hoffmann-La Roche Ltd , Lonza AG, Merck KGaA, Sumitomo Chemical Co Ltd and Tanabe Seiyaku Co Ltd , the Settling Defendants therein,
- (b) the Settlement Class in the Ontario Biotin Action is defined as

All persons in Canada who purchased Class Vitamins in Canada from October 1, 1991 to September 30, 1995, except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No L003307 and in Quebec Court (District of Montreal) Action No 500-06-000083-994,
- (c) Marcy David, Fleming Feed Mill Ltd and Glen Ford are hereby appointed as the representative plaintiffs in the Ontario Biotin Action, and

- (d) the common issue in the Ontario Biotin Action is

Did the Settling Defendants and their Affiliated Defendants in the Ontario Biotin Action agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, biotin in Canada from October 1, 1991 to September 30, 1995?

3 THIS COURT ORDERS that

- (a) the Ontario Bulk Vitamins Action is hereby certified as a class proceeding against Aventis Animal Nutrition S A , BASF Aktiengesellschaft, Danchi Pharmaceutical Company, Ltd , Eisai Co Ltd , F Hoffmann-La Roche Ltd , Merck KGaA, Roussel Canada Inc and Takeda Pharmaceutical Company Limited (formerly Takeda Chemical Industries, Ltd), the Settling Defendants therein,

- (b) the Settlement Class in the Ontario Bulk Vitamins Action is defined as

All persons in Canada who purchased Class Vitamins in Canada in the relevant Purchase Periods indicated, except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No L003292 and in Quebec Court (District of Montreal) Action No 500-06-000083-994

Class Vitamin	Purchase Period	Class Vitamin	Purchase Period
A	01/01/90 – 28/02/99	B12	01/01/90 – 31/12/97
B1 (thiamine)	01/01/91 – 31/12/94	Beta carotene	01/10/91 – 31/12/98
B2 (riboflavin)	01/07/91 – 31/10/95	C	01/01/91 – 31/12/95
B5 (calpan)	01/01/91 – 31/12/98	Canthaxanthin	01/01/92 – 31/12/97
B6 (pyridoxine)	01/01/91 – 30/09/94	E	01/01/90 – 28/02/99
B9 (folic acid)	01/01/91 – 31/12/94	Premix	01/01/91 – 31/12/97

- (c) Aliments Breton Inc , Mary Helen Awad, Roger Awad, Fleming Feed Mill Ltd and Glen Ford are hereby appointed as the representative plaintiffs in the Ontario Bulk Vitamins Action, and

- (d) the common issue in the Ontario Bulk Vitamins Action is

Did the Settling Defendants and their Affiliated Defendants in the Ontario Bulk Vitamins Action agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, any of the following Vitamins in Canada in the relevant Purchase Periods indicated

Vitamin	Purchase Period	Vitamin	Purchase Period
A	01/01/90 – 28/02/99	B12	01/01/90 – 31/12/97
B1 (thiamine)	01/01/91 – 31/12/94	Beta carotene	01/10/91 – 31/12/98
B2 (riboflavin)	01/07/91 – 31/10/95	C	01/01/91 – 31/12/95
B5 (calpan)	01/01/91 – 31/12/98	Canthaxanthin	01/01/92 – 31/12/97
B6 (pyridoxine)	01/01/91 – 30/09/94	E	01/01/90 – 28/02/99
B9 (folic acid)	01/01/91 – 31/12/94	Premix	01/01/91 – 31/12/97

4 THIS COURT ORDERS that

- (a) the Ontario Choline Chloride Action is hereby certified against Chinook Group Limited (incorrectly named Chinook Group, Ltd), BASF Aktiengesellschaft and Bioproducts, Incorporated (incorrectly named Bioproducts, Inc), the Settling Defendants therein,
- (b) the Settlement Class in the Ontario Choline Chloride Action is defined as
All persons in Canada who purchased Class Vitamins in Canada 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 in the Ontario Choline Chloride Action, and

- (d) the common issue in the Ontario Choline Chloride Action is

Did the Settling Defendants and their Affiliated Defendants in the Ontario Choline Chloride Action agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, choline chloride in Canada from January 1, 1988 to December 31, 1998?

5 THIS COURT ORDERS that

- (a) the Ontario Methionine Action is hereby certified against Aventis Animal Nutrition S A , the Settling Defendant therein,

- (b) the Settlement Class in the Ontario Methionine Action is defined as

All persons in Canada who purchased Class Vitamins in Canada from January 1, 1986 to December 31, 1998 except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No L003124 and in Quebec Court (District of Montreal) No 500-06-000233-045 (formerly Quebec Court (District of Quebec) No 200-06-000011-000),

- (c) Aliments Breton Inc , Kristi Cappa, Glen Ford and Fleming Feed Mill Ltd are hereby appointed as the representative plaintiffs in the Ontario Methionine Action, and

- (d) the common issue in the Ontario Methionine Action is

Did the Settling Defendant and its Affiliated Defendants in the Ontario Methionine Action agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, methionine in Canada from January 1, 1986 to December 1, 1998?

6 THIS COURT ORDERS that

(a) the Ontario Niacin Action is hereby certified against Degussa Canada Inc , Lonza AG and Nepera, Inc (incorrectly named Nepera, Incorporated), the Settling Defendants therein,

(b) the Settlement Class in the Ontario Niacin Action is defined as

All persons in Canada who purchased Class Vitamins in Canada from January 1, 1992 to March 31, 1998 except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No L003045 and in Quebec Court (District of Montreal) Action No 500-06-000083-994,

(c) Aliments Breton Inc , Kristi Cappa and Fleming Feed Mill Ltd are hereby appointed as the representative plaintiffs in the Ontario Niacin Action, and

(d) the common issue in the Ontario Niacin Action is

Did the Settling Defendants and their Affiliated Defendants in the Ontario Niacin Action agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for niacin and/or niacinamide in Canada from January 1, 1992 to March 31, 1998?

7 THIS COURT DECLARES, for greater certainty, that a person may be a member of the Settlement Class in one, some or all of the Ontario Actions

8 THIS COURT ORDERS AND ADJUDGES that the proposed settlement of the Ontario Actions as particularized in this judgment and the Amended Settlement

Agreement is fair, reasonable, adequate, and in the best interests of the members of the Settlement Class in each of the Ontario Actions

9 THIS COURT ORDERS that the Amended 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

10 THIS COURT ORDERS that

- (a) Deloitte & Touche LLP be and is hereby appointed as the Administrator of the Amended Settlement Agreement, until further order of this court, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Amended Settlement Agreement,
- (b) in the event the Amended Settlement Agreement is terminated in accordance with any of the provisions therein, the total amount payable to the Administrator shall not exceed \$125,000 for fees, disbursements and GST,
- (c) the total amount payable to the Administrator for the administration of the Amended Settlement Agreement in its entirety is hereby fixed at \$725,000 for fees, disbursements and GST, and
- (d) if the Courts issue the orders contemplated by s 16 1 of the Amended Settlement Agreement, then, in addition to its fixed fee, the Administrator

shall pay to Deloitte & Touche LLP, \$27,000 for the supplementary work that it has done as Escrow Agent in relation to the Amended Settlement Agreement, the Akzo Settlement Agreement and the UCB/Reilly Settlement Agreement, such payment to be allocated as a charge of \$9,000 to each of the Direct Purchaser Fund, Intermediate Purchaser Fund and Consumer Fund

11 THIS COURT ORDERS that

- (a) Reva E Devins be and is hereby appointed as Referee, until further order of this court, with the duties and responsibilities set out in the Amended Settlement Agreement,
- (b) the fees, disbursements and GST of the Referee for her services shall be fixed by the judge hearing the Ontario Approval Hearing on notice to the Settling Plaintiffs and Settling Defendants, and
- (c) the total amount payable to the Referee for her services shall not exceed \$150,000 for fees, disbursements and GST

12 THIS COURT ORDERS that

- (a) Harvey T Strosberg, Q C , J J Camp, Q C and Claude Desmeules are appointed to the Management Committee on behalf of the Settlement Classes and William L Vanveen is appointed to the Management

Committee as the Settling Defendants' representative, until further order of this court, with the duties and responsibilities of overseeing the implementation and administration of the Amended Settlement Agreement,

- (b) *the fees, disbursements and GST of the members of the Management Committee for their services shall be fixed by the judge hearing the Ontario Approval Hearing on notice to the Settling Plaintiffs and Settling Defendants, and*
- (c) *the total amount payable to the members of the Management Committee for their services shall not exceed \$150,000 for fees, disbursements and GST*

13 THIS COURT ORDERS AND DECLARES that each Ontario Releasor in any of the Ontario Actions has released and shall be conclusively deemed to have fully, finally and forever released the Releasees in the Ontario Actions 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 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 Claims

14 THIS COURT ORDERS that each Ontario Releasor in any of the Ontario Actions shall not commence or continue any action or take any proceeding relating in any way to the Released Ontario Claims against any person or persons who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any one of the Releasees in any of the Ontario Actions, provided that nothing in this judgment affects the rights of a member of a Settlement Class in any of the Ontario Actions to claim or continue to claim against any Non-Settling Defendant in any of the Proceedings

15 THIS COURT ORDERS AND DECLARES that the Releasees in any of the Ontario Actions have released and shall be conclusively deemed to have fully, finally and forever released each other from any and all claims for contribution and indemnity that said Releasees, 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 Claims

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

17 THIS COURT ORDERS AND DECLARES that each member of a Settlement Class in the Ontario Actions 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 Releasees in respect of or in relation to the Released Ontario Claims

18 THIS COURT ORDERS AND DECLARES that each member of a Settlement Class in the Ontario Actions who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors shall not commence or continue any action or take any proceeding relating in any way to the Released Ontario Claims against any person or persons who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any one of the Releasees in any of the Ontario Actions, provided that nothing in this judgment affects the rights of a member of a Settlement Class in any of the Ontario Actions to claim or continue to claim against any Non-Settling Defendant in any of the Proceedings

19 THIS COURT ORDERS that

- (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 Ontario 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 paragraph (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 claims against the Non-Settling Defendants such that the Settling Plaintiffs shall only be entitled to claim and to seek to recover from the Non-Settling Defendants, on a joint and several basis
 - (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) no part of this order is intended to prejudice nor does it prejudice the right and ability of any Non-Settling Defendant to assert in these or any other future proceedings related hereto that its liability, if any, is several only,
- (d) the Settling Plaintiffs shall not claim from any Non-Settling Defendant that portion of any damages arising from the sales of or allocable to the conduct of an insolvent Non-Settling Defendant which any solvent Non-Settling Defendant would but for this order be able to claim contribution for from one or more of the Settling Defendants,

- (e) a Non-Settling Defendant may seek an order from the court providing for discovery from some or all of the Settling Defendants and/or their Affiliated Defendants as deemed appropriate by the court, and
- (f) a Non-Settling Defendant may effect service of the motion(s) referred to in subparagraph (e) on a Settling Defendant by service on counsel of record for the Settling Defendant in the Settling Proceeding

20 THIS COURT ORDERS AND DECLARES that each member of a Settlement Class in any of the Ontario Actions who does not opt out in accordance with the terms of this judgment shall consent and shall be deemed to have consented to the dismissal of any Other Actions he, she or it has commenced against the Releasees in the Ontario Actions, without costs and with prejudice

21 THIS COURT ORDERS AND DECLARES that each Other Action commenced in Ontario by any member of a Settlement Class in any of the Ontario Actions who does not opt out in accordance with the terms of this judgment shall be and is hereby dismissed against the Releasees in the Ontario Actions, without costs and with prejudice

22 THIS COURT ORDERS that the members of the Settlement Classes in the Ontario Actions shall be given notice of this judgment, substantially in the form of the notice attached as Appendix 2 to this judgment instead of the notice at Schedule K of the Amended Settlement Agreement and substantially in the manner set out in Schedule J of the Amended Settlement Agreement within 30 days after the last of the Final Orders

23 THIS COURT ORDERS AND DECLARES that the notice at Appendix 2 of this judgment and its distribution as provided for in this judgment satisfies the requirements of section 17(6) of the *Class Proceedings Act, 1992* and is the best notice practicable under the circumstances

24 THIS COURT ORDERS that each member of a Settlement Class who elects to opt out of the Ontario Actions 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

25 THIS COURT ORDERS AND DECLARES that this judgment, including the Amended Settlement Agreement, is binding upon each member of a Settlement Class who does not opt out of the Ontario Actions 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 the Ontario Actions. And, for greater certainty, this judgment, including the Amended Settlement Agreement, is binding upon each Direct Purchaser and each Distributor of Vitamins (other than methionine) who does not opt out in accordance with the terms of this judgment whether or not such person submits a claim to the Administrator in accordance with the terms of this judgment, whether or not such person is determined to be eligible to receive a distribution or whether the claim is accepted in whole or in part.

26 THIS COURT ORDERS that the Administrator shall, on or before August 17, 2005, report to Mr Justice Cumming by motion and advise as to the names of those persons, if any, who have opted out of the Ontario Actions

27 THIS COURT ORDERS that each member of a Settlement Class in any one or more of the Ontario Actions who is a Direct Purchaser or a Distributor of Vitamins (other than methionine) 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

28 THIS COURT ORDERS AND DECLARES that any report by a Referee in respect of the claim of a member of a Settlement Class in an Ontario Action shall be confirmed on the expiration of 15 days after a copy of the report with proof of service on every party who appeared on the reference has been filed with this court unless confirmation of the Referee's report is opposed, by motion made to the judge hearing the Ontario Approval Hearing

29 THIS COURT ORDERS AND DECLARES that any report by the Referee in respect of Opt Out Refunds shall be confirmed on the expiration of 15 days after a copy of the report with proof of service on the parties who appeared on the reference has been filed with this court

30 THIS COURT ORDERS that the Administrator shall

- (a) distribute the Direct Purchaser Fund, Methionine Fund and Expense Fund in accordance with the Amended Settlement Agreement,
- (b) following payment of Class Counsel Fees and Administration Expenses from the Intermediate Purchaser Fund in accordance with the Amended Settlement Agreement, distribute the monies available for distribution in the Intermediate Purchaser Fund, cy-pres, substantially in accordance with Schedule F of the Amended Settlement Agreement, except that the Canadian Cervid Council shall not receive a cy-près distribution and the Canadian Goat Society and the Canadian Boer Goat Association shall equally share the cy-pres distribution allocated for the Canadian Goat Society at Schedule F, and
- (c) following payment of Class Counsel Fees and Administration Expenses from the Consumer Fund in accordance with the Amended Settlement Agreement, distribute the monies available for distribution in the Consumer Fund, cy-pres, substantially in accordance with Schedule G of the Amended Settlement Agreement

31 THIS COURT ORDERS AND DECLARES that any one or more of the representative plaintiffs in the Ontario Actions, the Settling Defendants in the Ontario Actions, the members of the Management Committee, the Escrow Agent, the Class

Counsel Representative or the Administrator may apply to the judge hearing the Ontario Approval Hearing for directions in respect of the implementation or administration of the Amended Settlement Agreement

32 THIS COURT ORDERS AND DECLARES that no person may bring any action or take any proceedings against the Administrator, the members of the Management Committee, the Referee, the Escrow Agent, the Class Counsel Representative or the friend of the court, their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Amended Settlement Agreement, the administration of the Amended Settlement Agreement or the implementation of this judgment except with leave of the judge hearing the Ontario Approval Hearing

33 THIS COURT ORDERS AND DECLARES that

- (a) \$18,000,000 for Class Counsel Fees and Administration Expenses relating to the Amended 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 SCSD their fees, disbursements and all applicable taxes in an amount equal to \$18,000,000 minus Administration Expenses minus Quebec Counsel Fees and minus disbursements and applicable taxes, as provided in subparagraph (c), provided that, if the Administrator pays Opt Out

Refunds to the Settling Defendants, then, SCSD's fees shall not exceed 15% of \$100,000,000 minus the Opt Out Refunds,

- (c) SCSD's disbursements are fixed in the amount of \$901,011 plus applicable taxes,
- (d) in addition to the fees, disbursements and applicable taxes, particularized above, SCSD shall be paid and shall retain for their own benefit
 - (i) all costs and interest, if any, recovered from Perry Borden, James W Curran, Mary P Webster and/or Lars Soderstrom, and
 - (ii) costs and interest if any are determined to be owing to a plaintiff in the Ontario Methionine Action by Degussa-Hulls A G or Degussa Corporation as defendants in the Ontario Methionine Action with respect to the jurisdiction motion brought by them in that action, provided that no part of this judgment is intended to prejudice nor does it prejudice the right and ability of Degussa-Hulls A G or Degussa Corporation to assert that it has no liability for costs as a result of the terms of this judgment and the terms of the Amended Settlement Agreement, or otherwise, and

any member of SCSD is authorized to receive any such costs and interest and to sign any release or such other document on behalf of the classes in relation to these costs and interest, and
- (e) if there is a future recovery in the Methionine Actions and/or Supplemental Methionine Actions, then, when determining Class Counsel Fees, the court will consider all of the work done for the classes in all of the Proceedings and the awards of Class Counsel Fees made in the Proceedings

34 THIS COURT ORDERS that the amounts particularized in subparagraphs 33(b) and (c) shall be paid to Sutts, Strosberg LLP, in trust, for SCSD, by the Administrator from the monies it receives from the Escrow Agent in accordance with the provisions of the Amended Settlement Agreement forthwith after receiving such monies

35 THIS COURT ORDERS that, save as aforesaid, this judgment does not affect any claims or causes of action that any member of a Settlement Class in any of the Ontario Actions has or may have against the Non-Settling Defendants in the Proceedings

36 THIS COURT ORDERS AND ADJUDGES that, save as aforesaid, the Ontario Actions be and are hereby dismissed against the Settling Defendants and their Affiliated Defendants in the Ontario Actions and, without limiting the foregoing, the Defendants listed in Appendix 3 attached, without costs and with prejudice

37 THIS COURT ORDERS that a copy of this judgment be filed in Ontario Court File No 00-CV-198647CP (choline chloride), No 00-CV-200044CP (niacin), No 00-CV-200045CP (bulk vitamins), No 00-CV-201723CP (methionine) and No 00-CV-202080CP (biotin)

April 5, 2005

[Signature]
JUSTICE

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APPENDIX 1

amended January 6, 2005

AMENDED
CANADIAN
VITAMINS CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT

Made as of the 1st day of November, 2004

Amended as of the 6th 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 \$~~132-2132~~ 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

- (a) 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
- (b) 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-pres, 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-pres, 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 Releasers 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 Releasers 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

14.2 Excluded Customers

- (1) An Excluded Customer shall not be required to comply with the provisions of section 14 1 An Excluded Customer shall be deemed to have opted out of the Settlement Class of each Settlement Proceeding in fulfillment of its earlier settlement(s) with a Settling Defendant(s) or its Affiliated Defendants
- (2) Notwithstanding section 14 2(1), an Excluded Customer may remain in any Settlement Class of any Settling Proceeding to the extent permitted by its earlier settlement(s) with a Settling Defendant or its Affiliated Defendants

14.3 Notification of Number of Opt Outs

On or before the Reporting Date, the Administrator shall report to the Settling Defendants and the Class Counsel Representative and advise as to the names of those persons, if any, who have opted out of the Settling Proceedings, the reasons for the opt out, if known, its best estimate of the total Purchase Price of Vitamins purchased by each person who opted out and a summary of information delivered by each of them pursuant to section 14 1(4)

14.4 Effect of Exceeding Opt Out Threshold

- (1) Notwithstanding anything else in this Settlement Agreement, the Settling Defendants may, in their sole and unfettered discretion, subject to section 15 1(1), terminate this Settlement Agreement if the Opt Out Threshold is exceeded
- (2) The following shall not be included in the determination of whether the Opt Out Threshold is exceeded
 - (a) the Purchase Price of Vitamins sales from a Non-Settling Defendant to a person who opts out, and
 - (b) the Purchase Price of Vitamins sales from a Settling Defendant to an Excluded Customer deemed to opt out in accordance with section 14 2

SECTION 15 – TERMINATION OF SETTLEMENT AGREEMENT

15.1 Exercise of Termination Right

- (1) Any right of the Settling Defendants to terminate this Settlement Agreement shall be exercised, and any determination of whether any order complies with (or is deemed to comply with) section 3 shall be made, on behalf of all Settling Defendants, only by F Hoffmann-

LaRoche Ltd together with either one of Aventis Animal Nutrition S A or BASF Aktiengesellschaft

(2) No Releasee shall make or advance any claim of any kind against F Hoffmann-LaRoche Ltd , Aventis Animal Nutrition S A or BASF Aktiengesellschaft in connection with or arising out of

- (a) any decision they make or fail to make to exercise or not to exercise a right to terminate this Settlement Agreement, or
- (b) any determination they make or fail to make as to whether any order is or is not in compliance or in deemed compliance with section 3

15.2 Manner of Termination

(1) If either the British Columbia Court or the Quebec Court fails to approve this Settlement Agreement, and if the Settling Defendants elect to exercise their right to terminate this Settlement Agreement, then F Hoffmann-LaRoche Ltd on behalf of the Settling Defendants shall give written notice of termination to the Class Counsel Representative and the Escrow Agent no later than 21 days after such Court's judgment failing to approve this Settlement Agreement and the disposal of all appeals (if any) therefrom or the expiry of the time for taking such appeals

(2) If the total Purchase Price of Vitamins by Direct Purchasers and Distributors who opt out of the Settling Proceedings exceeds the Opt Out Threshold, and if the Settling Defendants elect to exercise their right to terminate this Settlement Agreement, then F Hoffmann-LaRoche Ltd on behalf of the Settling Defendants shall give written notice of termination to the Class Counsel Representative and the Escrow Agent no later than 21 days after the Settling Defendants are provided with the information required pursuant to section 14 3

15.3 Effect of Termination Generally

(1) Except as provided in sections 15 6 and 16 3, if this Settlement Agreement is terminated for any reason, it shall have no further force and effect, shall not be binding on the Parties and shall not be used as evidence or otherwise in any litigation

(2) If this Settlement Agreement is terminated for any reason

- (a) no motion to certify any of the Settling Proceedings as a class action on the basis of this Settlement Agreement or to approve this Settlement Agreement shall proceed, and

- (b) any order certifying a Settling Proceeding as a class action on the basis of the Settlement Agreement and approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise

15.4 Payment of Non-Refundable Expenses Following Termination

- (1) If this Settlement Agreement is terminated for any reason, the Escrow Agent shall hold back in the Account an amount equal to the maximum total Non-Refundable Expenses less all Non-Refundable Expenses already paid
- (2) The Escrow Agent shall thereafter pay all remaining Non-Refundable Expenses that are not in dispute from the monies held back in the Account
- (3) Any dispute concerning Non-Refundable Expenses shall be dealt with as provided in section 16.3

15.5 Allocation of Monies in the Account Following Termination

- (1) If the Settlement Agreement is terminated for any reason, the Escrow Agent shall
 - (a) retain the holdback in the Account for Non-Refundable Expenses,
 - (b) give the Class Counsel Representative and the Settling Defendants 14 days' written notice of its intention to return the monies in the Account, less the holdback for Non-Refundable Expenses, and
 - (c) provide to the Class Counsel Representative and the Settling Defendants a list of all Non-Refundable Expenses paid and any invoices received by the Escrow Agent but not paid
- (2) If the Settlement Agreement is terminated by the Settling Defendants or is null and void pursuant to section 2, the Escrow Agent shall return to the contributing Settling Defendants, in the proportions they contributed, all monies in the Account other than the holdback for Non-Refundable Expenses
- (3) If the Settlement Agreement is terminated by the Settling Plaintiffs, then
 - (a) as among the Settling Defendants, the Defaulting Settling Defendant(s) shall be solely liable for all Non-Refundable Expenses,
 - (b) if the Defaulting Settling Defendant(s) made a partial payment into the Account sufficient to pay the full amount of all Non-Refundable Expenses, the Escrow Agent shall

- (i) return to each contributing Settling Defendant the monies it contributed plus any post-deposit accrued interest, and
 - (ii) return to the Defaulting Settling Defendant(s) who made a partial payment into the Account any monies it (they) contributed that remain after payment of Non-Refundable Expenses plus any post-deposit accrued interest,
- (c) if the Defaulting Settling Defendant(s) has not made a partial payment into the Account sufficient to pay all Non-Refundable Expenses, the Escrow Agent shall return to the contributing Settling Defendants, in the proportions they contributed, all monies in the Account other than the holdback for Non-Refundable Expenses, and
- (d) the contributing Settling Defendants may move for judgment against the Defaulting Settling Defendant(s) for the full amount of any Non-Refundable Expenses paid by the contributing Settling Defendants
- (4) Once all Non-Refundable Expenses have been paid in full, the Escrow Agent shall give the Class Counsel Representative and the Settling Defendants 14 days' written notice of its intention to return any remaining holdback for Non-Refundable Expenses in the Account and, at the same time, provide to the Class Counsel Representative and the Settling Defendants a list of the additional Non-Refundable Expenses paid since the prior payment pursuant to section 15 5(1)
- (5) The Escrow Agent shall return the balance of the holdback for Non-Refundable Expenses to the contributing Settling Defendants, in the proportions they contributed, if the Class Counsel Representative does not object in writing within 14 days of Class Counsel Representative's receipt of the Escrow Agent's written notice pursuant to section 15 5(4)
- (6) The Escrow Agent shall give the Settling Defendants 14 days written notice of the amounts of any payments it proposes to make under section 15 5
- (7) If there is any dispute concerning any Non-Refundable Expense or any other payment under section 15 5, the Escrow Agent or any Party 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 make any payment necessitated by the arbitrator's decision

15.6 Survival of Provisions After Termination

If this Settlement Agreement is terminated for any reason, the provisions of sections 4 5, 4 7, 5 1, 11 1, 11 2, 11 3, 12 2, 13 3, 13 4, 15, 16 3, 17 2(9), 19 and the recitals, definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect

SECTION 16 – SUMMARY ORDERS AND CONSEQUENCES

16.1 If Settlement Agreement is Not Terminated

If all periods within which the Settling Defendants may terminate this Settlement Agreement expire, with no notice of termination having been delivered, the Settling Plaintiffs shall bring motions before each of their respective Courts which shall issue orders declaring that the Final Orders are operative and binding upon the Parties according to their terms

16.2 Consequences of a Decision not to Terminate following a Refusal to Approve the Settlement Agreement

If the Settling Defendants do not exercise their election to terminate this Settlement Agreement following the British Columbia Court or the Quebec Court's failure to approve the Settlement Agreement, then, each definition, section and Schedule shall be deemed to be herewith amended so as to delete all references and provisions relating to such jurisdiction(s) which declines to approve this Settlement Agreement. No Class Counsel Fees shall be payable from the Settlement Amount in any jurisdiction which declines to approve this Settlement Agreement

16.3 If Settlement Agreement is Terminated

(1) If the Settlement Agreement is terminated for any reason, the Parties who delivered the notice of termination shall bring motions before each of the Courts which shall issue orders in accordance with section 15 3

- (a) declaring the Settlement Agreement to be null and void and of no force or effect (except for the provisions set out in section 15 6),
- (b) setting aside any order certifying a Settling Proceeding as a class action on the basis of the Settlement Agreement, and

- (c) determining any dispute relating to unpaid Non-Refundable Expenses and directing that any balance thereafter in the Account be returned to the contributing Settling Defendants

(2) If there is any dispute about whether the Parties who delivered the notice of termination have given a valid notice of termination in accordance with the provisions of this Settlement Agreement, then the Courts shall determine that dispute on the motions brought pursuant to section 16 3(1)

SECTION 17 – ADMINISTRATION AND IMPLEMENTATION

17.1 Appointment of Administrator

(1) The Courts shall appoint the Administrator, to serve until further orders of the Courts, to implement this Settlement Agreement in accordance with its terms, including Schedule M

(2) If the Settlement Agreement is terminated for any reason, the Administrator's fees, disbursements and GST for the costs particularized in section 5 1(1)(e) shall not exceed \$125,000

(3) If the Courts make a declaration that the Final Orders are operative and binding upon the Parties, the Administrator may pay to itself an amount on account of fees, disbursements and GST not to exceed \$50,000 per month until such time as it has been paid a fixed fee in the amount of \$725,000 (inclusive of the payment it received from the Escrow Agent on account of the section 5 1(1)(e) Non-Refundable Expenses) on account of the administration of this Settlement Agreement in its entirety

17.2 Information and Assistance

(1) Each Settling Defendant will make reasonable efforts to compile a list of the names and addresses of Direct Purchasers and Distributors in Canada who purchased Vitamins in Canada from it or its Affiliated Defendants during the Purchase Periods

(2) The information required by section 17 2(1) shall be delivered to the Class Counsel Representative within 10 days of the execution of this Settlement Agreement by the Parties

(3) The Class Counsel Representative shall use the information provided under section 17 2(2) to advise Direct Purchasers and Distributors of this Settlement Agreement and the date of the approval hearings before the Courts. The Class Counsel Representative shall also provide this information to the Administrator following its appointment by the Courts

(4) Each Settling Defendant shall make reasonable efforts to also provide the Purchase Price for each Direct Purchaser or Distributor (other than Excluded Customers) whose total purchases from it or its Affiliated Defendants during the Purchase Periods exceeded \$50,000

(5) The information required by section 17.2(4) shall be delivered to the Administrator following its appointment by the Courts

(6) Each Settling Defendant shall appoint a person to whom the Administrator may address any requests for information. The Settling Defendants agree to make reasonable efforts to answer any reasonable inquiry from the Administrator

(7) Any information obtained or created in the administration of this Settlement Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of administering the Settlement Agreement

(8) The Administrator may use the information provided under this section to advise Direct Purchasers and Distributors of the approval of the Settlement Agreement, the Opt Out Date and, where available, to provide the Settling Defendants' information on the Purchase Price paid by each Direct Purchaser or Distributor and an estimate of the compensation those Direct Purchasers and Distributors might receive from the Direct Purchaser Fund

(9) If this Settlement Agreement is terminated for any reason, all information provided by the Settling Defendants pursuant to this Settlement Agreement shall be returned to them forthwith and no record of the information so provided shall be retained by the Administrator and the Class Counsel Representative in any form whatsoever. Moreover, Class Counsel, and anyone currently or hereafter employed by, associated with or a partner with Class Counsel, may not divulge to anyone for any purpose any information obtained in the course of the negotiations and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a court

17.3 Conclusion of Administration

(1) Once all of the payments of Administration Expenses contemplated in this Settlement Agreement have been made, the Administrator shall distribute any balance remaining in the Administration Expenses Reserve as the Courts have directed in any order as to Class Counsel Fees or, in the absence of the Courts' direction, to the recipients and in the proportions set out in Schedule G

(2) Upon the conclusion of the administration, the Administrator shall report by motion to the Courts on the administration and accounting and obtain a discharge from the Courts

**SECTION 18 – CLASS COUNSEL FEES AND DISBURSEMENTS AND
ADMINISTRATION EXPENSES**

18.1 Class Counsel Fees and Administration Expenses

- (1) The \$10 million allocated to the Expense Fund is a payment by the Settling Defendants on account of Class Counsel Fees and Administration Expenses
- (2) The maximum amount the Courts shall allocate for Class Counsel Fees and Administration Expenses is \$18 million
- (3) The maximum amount which Quebec Counsel may seek for their share of Class Counsel Fees is \$2 18 million, inclusive of disbursements and taxes and any advances to them or their Settling Plaintiffs from the Fonds
- (4) Class Counsel Fees and Administration Expenses shall first be paid from the Expense Fund
- (5) If the Courts approve Class Counsel Fees and Administration Expenses which, in total, exceed the \$10 million in the Expense Fund, the excess to a maximum of \$8 million shall be paid from the following funds in the proportions indicated
 - (a) the Direct Purchaser Fund – 80%,
 - (b) the Methionine Fund – 4%,
 - (c) the Intermediate Purchaser Fund – 8%, and
 - (d) the Consumer Fund – 8%
- (6) Class Counsel Fees and Administration Expenses shall constitute a first charge upon and shall be paid as the first payments from each fund
- (7) The payment of Class Counsel Fees and Administration Expenses from the Direct Purchaser Fund shall not be reduced pro rata in the event that valid claims on the Direct Purchaser Fund exceed the amounts available for distribution and are therefore paid on a pro rata basis as provided in section 6 2(6)

- (8) Class Counsel Fees for British Columbia Counsel, Ontario Counsel, and Quebec Counsel shall be paid out of the Settlement Amount, as provided in sections 18.1(4) – (7), after approval by the Court with jurisdiction in each Settling Proceeding. The Class Counsel Fees of Desmeules, an affiliate of Siskind, Cromarty, Ivey & Dowler LLP – one of the Ontario Counsel, shall be included in the request for approval of Class Counsel Fees filed with the Ontario Court and paid out of the Settlement Amount, as provided in sections 18.1(4) – (7), after approval by the Ontario Court.
- (9) Class Counsel’s motions for approval of their Class Counsel Fees to their respective Courts shall be returnable together with the motions for approval of this Settlement Agreement. Any subsequent motions for approval of any further disbursements incurred by Class Counsel shall be made as each respective Court directs.
- (10) As Class Counsel have agreed not to seek an amount in excess of \$18 million for Class Counsel Fees and Administration Expenses, the Settling Defendants will not oppose the approval of Class Counsel Fees and Administration Expenses.
- (11) Sections 18.1(9) and (10) are not acknowledgements by Class Counsel that the Settling Defendants have standing on the issue of the reasonableness of Class Counsel Fees and Administration Expenses.

SECTION 19 – MISCELLANEOUS

19.1 Motions for Directions

(1) Any one or more of Class Counsel, a Settling Defendant, the Administrator, the Escrow Agent, the Management Committee or the Class Counsel Representative may apply to the Courts for directions in respect of the implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

19.2 Releasees Have No Liability for Administration

Except as provided in sections 17.2 (4) and (6), the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement, including the processing and payment of claims by the Administrator and the acts or omissions of the Escrow Agent.

19.3 Headings, etc.

In this Settlement Agreement

- (a) the division of the 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 Settlement Agreement,
- (b) the terms “this Settlement Agreement”, “hereof”, “hereunder” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this 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

19.4 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over each Settling Proceeding commenced in its jurisdiction, the parties thereto and, except as provided in section 18 1(8), the Class Counsel Fees in those Settling Proceedings
- (2) The Courts shall retain joint jurisdiction over the Methionine Fund and the Expense Fund
- (3) The British Columbia Court and Ontario Court shall retain joint exclusive jurisdiction over the distribution of the Direct Purchaser Fund, the Intermediate Purchaser Fund and that portion of the Consumer Fund allocated by this Settlement Agreement to all provinces and territories except Quebec. The Quebec Court shall retain exclusive jurisdiction over the distribution of that portion of the Consumer Fund allocated by this Settlement Agreement to Quebec
- (4) Each Court shall not make any order or give any direction in respect of any matter of joint jurisdiction unless that order or direction is conditional upon a complimentary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter

19.5 Governing Law

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

19.6 Entire Agreement

This 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 Settlement Agreement, unless expressly incorporated herein. This 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

19.7 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Settling Plaintiffs, the Settling Defendants and their Affiliated Defendants, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Settling Plaintiffs shall be binding upon all Releasees and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees

19.8 Survival

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

19.9 Counterparts

This 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 Settlement Agreement

19.10 Negotiated Agreement

This 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 Settlement Agreement shall have no force

and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

19.11 Recitals

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

19.12 Schedules

The Schedules annexed hereto form part of this Settlement Agreement.

19.13 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 the Settlement Agreement,
- (b) the terms of this 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 the 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 Settlement Agreement.

19.14 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 Settlement Agreement.

19.15 Notice

Where this 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.

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