

Conformed copy

VITAMINS ANTITRUST LITIGATION
MULTISTATE SETTLEMENT AGREEMENT

October 30, 2009

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**VITAMINS ANTITRUST LITIGATION
MULTISTATE SETTLEMENT AGREEMENT**

THIS VITAMINS ANTITRUST LITIGATION MULTISTATE SETTLEMENT AGREEMENT (“Multistate Settlement Agreement”) is made and entered into as of the 30th day of October, 2009, by and among the Settling Defendants, the Settlement Classes, and the Settling States to settle and resolve with finality all Released Claims against the Released Parties as set forth herein.

WHEREAS, PLC, Plaintiffs’ Counsel and the Settling States, on behalf of purchasers of Indirect Vitamin Products in Arizona, the District of Columbia, Florida, Hawaii, Idaho, Illinois, Kansas, Maine, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, North Dakota, Puerto Rico, Rhode Island, South Dakota, Tennessee, Vermont, Washington, West Virginia, and Wisconsin, have alleged that the Settling Defendants have, among other things, unlawfully conspired to fix, raise, maintain or stabilize the prices of, and allocate volumes, markets or customers for, Vitamin Products, and that the Settlement Classes have suffered damages as a result; and,

WHEREAS, the Settling Defendants have asserted and would assert a number of defenses to the claims described above; and,

WHEREAS, as the result of extensive, arm’s-length settlement negotiations involving PLC, the Settling States and the Settling Defendants, this Multistate Settlement Agreement, including its schedules and exhibits, has been reached, subject to Final Approval as provided herein; and,

WHEREAS, PLC, Plaintiffs' Counsel and the Settling States have concluded, after extensive investigation and careful consideration of the relevant circumstances, including the claims asserted in the Class Actions, the legal and factual defenses thereto and the applicable law, that it would be in the best interests of the Settlement Classes and the Settling States to enter into this Multistate Settlement Agreement in order to avoid the uncertainties of complex litigation, and to ensure that the benefits reflected herein are obtained for the Settlement Classes and, further, that PLC, Plaintiffs' Counsel and the Settling States consider the settlement set forth herein to be fair, reasonable and adequate and in the best interests of plaintiffs, the Settlement Classes and the Settling States; and,

WHEREAS, the Settling Defendants, despite their belief that they have good defenses to the claims asserted, wish to enter into this Multistate Settlement Agreement solely to avoid the further expense, inconvenience and burden of protracted litigation and any other present or future litigation arising out of the facts that gave rise to this litigation and the distraction and diversion of their personnel and resources, and thereby to put to rest this controversy with the Settlement Classes and the Settling States, and to avoid the uncertainties of complex litigation; and,

WHEREAS, the Settling Defendants, the Settlement Classes, and the Settling States agree that this Multistate Settlement Agreement shall not be deemed or construed to be an admission or evidence of the truth of any of the claims or allegations in the Class Actions, the appropriateness of certifying litigation classes in the Class Actions, or the viability of any claims that might be asserted by or on behalf of any person or by or on behalf of the Settling States, or the appropriateness of exercising personal jurisdiction over any Settling Defendant (except as provided in paragraph X.D hereof),

NOW, THEREFORE, it is agreed by and among the undersigned, on behalf of each of the Settling Defendants, the Settlement Classes and the Settling States that the MDL Action be settled, compromised and dismissed on the merits and with prejudice as to the Settling Defendants and all other Released Parties and, except as provided herein, without costs against the Settlement Classes or the Settling Defendants, subject to Final Approval (with the Class Actions to be dismissed upon Final Approval), on the following terms and conditions:

I. DEFINITIONS

A. Class Definitions

1. Consumer Settlement Class

Subject to the approval of the MDL Court, and for the purposes of this Multistate Settlement Agreement only, the Parties agree and consent to the certification of a Consumer Settlement Class defined as follows:

All natural persons (excluding the Released Parties, and further excluding such persons who timely and properly request exclusion from this class) who (i) reside in a Settling State; and (ii) at any time during the Relevant Period purchased Indirect Vitamin Products in a Settling State for use or consumption by themselves and/or others and not for resale in any form.

References in this Multistate Settlement Agreement to the Consumer Settlement Class are also references, where the context requires, to *parens patriae* claims asserted by Settling States on behalf of natural persons residing in their respective jurisdictions.

2. **Commercial Settlement Class**

Subject to the approval of the MDL Court, and for the purposes of this Multistate Settlement Agreement only, the Parties agree and consent to the certification of a Commercial Settlement Class defined as follows:

All persons or entities (excluding Government Entities, the Settling State Releasing Parties, the Released Parties, defendants and other manufacturers of Vitamin Products along with their parents, subsidiaries and affiliates, and any judge, justice or judicial officer presiding over this matter and the members of his or her immediate family, and further excluding such persons or entities who or which timely and properly request exclusion from this class) who or which made Qualifying Purchases.

References in this Multistate Settlement Agreement to the Commercial Settlement Class are also references where the context requires to *parens patriae* claims asserted by Settling States on behalf of natural persons and others residing in their respective jurisdictions.

B. General Definitions

The following terms shall have the following meanings for purposes of this Multistate Settlement Agreement.

1. “*Alleged Conduct*” means the alleged participation of Settling Defendants and others in one or more conspiracies to fix, raise, maintain or stabilize the prices of, and/or allocate volumes, markets or customers for, certain Vitamin Products, and any other conduct alleged in the pleadings in the Class Actions to be illegal or to create a right of recovery.

2. “*Applicable State Consumer Fund Percentage*”, “*Applicable State Commercial Fund Percentage*” and “*Applicable State Attorneys’ Fee Fund Percentage*” all have, for each Settling State, the values assigned in Schedule 6.

3. “*Attorneys’ Fees Escrow Amount*” means \$5,006,645.40.

4. “*Balance*” means (a) for the Consumer Class Escrow Account and Commercial Class Escrow Account, the current balance of the account less accruals for taxes and also less amounts for Notice Costs or administrative expenses approved by the MDL Court as chargeable to that account but not yet paid out; and, (b) for the Attorneys’ Fees Escrow Account, the current balance of that account less accruals for taxes.

5. “*California Purchase*” means a purchase during the Relevant Period of Indirect Vitamin Products for resale, for incorporation into another product or products for resale, or for use in the manufacture, processing or development of another product (including the feeding of an animal) for resale, where such purchase was: (a) made by a purchaser in the State of California; or (b) made from a seller in the State of California; or (c) delivered by or on behalf of the seller to the purchaser in the State of California if the purchaser’s principal place of business was in the State of California.

6. “*Chinook*” means Chinook Global Limited (f/k/a Chinook Group Ltd.) and Chinook Group, Inc., jointly and severally.

7. “*Claim Date*” means the date 90 days after Preliminary Approval.

8. “*Class Actions*” means the lawsuits identified on Schedule 1 hereto (or, where context so requires, such of them as are pending at any given time).

9. “*Commercial Class Settlement Amount*” means \$12,516,613.50.

10. “*Commercial Opt-Out Plaintiff*” means any member of the Commercial Settlement Class that elects to exercise its right to opt out of this Multistate Settlement Agreement.

11. “*Commercial Plan of Distribution*” means the written plan to be prepared by PLC for the administration and distribution of the Commercial Class Settlement Amount (plus interest earned in the Commercial Class Escrow Account, less allowed costs and expenses) in accordance with paragraph IV.H.1 below.

12. “*Consumer Class Settlement Amount*” means \$12,516,613.50.

13. “*Consumer Plan of Distribution*” means the written plan to be prepared by the Settling States and PLC for the administration and distribution of the Consumer Class Settlement Amount (plus interest earned in the Consumer Class Escrow Account, less allowed costs and expenses) in accordance with paragraph IV.H.2 below.

14. “*Court of Appeals*” means the United States Court of Appeals for the District of Columbia Circuit.

15. “*Defense Challenge*” means a writing to be submitted to the Settlement Administrator by one or more Settling Defendants in accordance with paragraph III.E summarizing grounds to believe that a given Proof of Claim is not valid and instructing the Settlement Administrator to reject that Proof of Claim.

16. “*Degussa*” means Evonik Degussa GmbH, successor to Degussa AG f/k/a Degussa-Hüls AG, and Evonik Degussa Corporation f/k/a Degussa Corporation and f/k/a Degussa-Hüls Corporation, jointly and severally.

17. “*Disapproval Order*” means any order disapproving or refusing to grant Final Approval of this Multistate Settlement Agreement as to the Consumer Settlement Class, as to

the Commercial Settlement Class, or as to both the Consumer Settlement Class and the Commercial Settlement Class.

18. “*Escrow Account*” means the escrow accounts and subaccounts established pursuant to the Escrow Agreement for the purposes of this Multistate Settlement Agreement, which shall include the following three separate accounts and subaccounts: (a) a “Consumer Class Escrow Account” established for the purpose of receiving the Consumer Class Settlement Amount and carrying out the Consumer Class Settlement, which shall in turn be divided into 23 subaccounts, one for each Settling State, in accordance with that Settling State’s Applicable State Consumer Fund Percentage; (b) a “Commercial Class Escrow Account” established for the purposes of receiving the Commercial Class Settlement Amount and carrying out the Commercial Class Settlement, which shall in turn be divided into 22 subaccounts, one for each Settling State except Hawaii, in accordance with that Settling State’s Applicable State Commercial Fund Percentage; and (c) an “Attorneys’ Fees Escrow Account” established for the purposes of receiving the Settling Defendants’ payment of attorneys’ fees and carrying out the provisions of paragraph VI.B.2 of this Multistate Settlement Agreement, which shall in turn be divided into 23 subaccounts, one for each Settling State in proportion to its Applicable State Attorneys’ Fee Fund Percentage. The Escrow Account shall be established and administered under the MDL Court’s continuing supervision and control pursuant to the Escrow Agreement.

19. “*Escrow Agent*” means the escrow agent appointed by the Escrow Account.

20. “*Escrow Agreement*” means an escrow agreement in substantially the form of Exhibit M hereto to be entered into among the Parties and the Escrow Agent to establish the Escrow Account.

21. “*Final Approval*” means (i) the entry of a final order and judgment by the MDL Court substantially in the form of Exhibit A, approving this Multistate Settlement Agreement and dismissing the MDL Action with prejudice against the Settling Defendants; and (ii) either (a) the time to appeal, or to seek permission to appeal, the MDL Court’s entry of an order of final judgment has expired with no appeal having been taken or permission to appeal having been sought; or (b) the MDL Court’s order of final judgment has been affirmed in its entirety by the court of last resort to which any appeal has been taken or petition for review has been presented and such affirmance has become no longer subject to the possibility of further appeal or review, or such appeal or petition has been denied, dismissed or otherwise disposed of.

22. “*Final Approval Motion*” means a motion in the MDL Court by PLC and the Settling States seeking the entry of a final order and judgment by the MDL Court substantially in the form of Exhibit A, approving this Multistate Settlement Agreement and dismissing the MDL Action with prejudice against the Settling Defendants.

23. “*Final Jurisdictional Order*” means an order or judgment of the MDL Court determining that the MDL Court lacks subject-matter jurisdiction over the claims asserted by the Consumer Settlement Class, or over the claims asserted by the Commercial Settlement Class, or both, that is either (a) a final decision (as that term is used in 28 U.S.C. § 1291) not subject to further review whether as of right or by petition; or (b) an interlocutory order which has been substantially affirmed by the Court of Appeals on review under 28 U.S.C. § 1292(b) and is not subject to further review whether as of right or by petition.

24. “*Final Opt-Out List*” means the complete and final list, prepared by the Settlement Administrator as contemplated in paragraph III.C hereof, of those persons or

entities who or which have timely and properly requested exclusion from the Consumer Settlement Class, the Commercial Settlement Class, or both.

25. “*Government Entity*” means a Settling State acting in its sovereign capacity, and any of its departments, agencies and political subdivisions as permitted by law.

26. “*Government Purchase*” means a purchase of Indirect Vitamin Products by or on behalf of a Government Entity for the Government Entity’s own use or for use by its citizens, and shall also include a Government Entity’s reimbursement, payment, or coverage for, or indemnification of, purchases of Indirect Vitamin Products made by any person or entity.

27. “*Indirect Vitamin Products*” means any one or more Vitamin Products, products containing Vitamin Products, and products constituted of (in whole or in part) or derived from animals that consumed Vitamin Products or products containing Vitamin Products and not purchased from a manufacturer of such products.

28. “*Long-Form Notice*” means notice in substantially the form of Exhibit G hereto.

29. “*Maximum Commercial Fee*” means the Non-Terminating Settlement Percentage of 50% of the Attorneys’ Fees Escrow Amount, plus whatever interest is earned on that amount while in the Attorneys’ Fees Escrow Account.

30. “*Maximum Consumer Fee*” means 50% of the Attorneys’ Fees Escrow Amount, plus whatever interest is earned on that amount while in the Attorneys’ Fees Escrow Account.

31. “*Maximum Fee Award*” means the sum of the Maximum Consumer Fee and the Maximum Commercial Fee.

32. “*MDL Action*” means the action to be filed in the MDL Court as provided in paragraph IV.B hereof.

33. “*MDL Court*” means the United States District Court for the District of Columbia.
34. “*Merck*” means Merck KGaA, E. Merck OHG and EM Industries, Inc. (n/k/a EMD Chemicals Inc.), jointly and severally.
35. “*Mitsui*” means Bioproducts Incorporated, Mitsui & Co., Ltd. and Mitsui & Co. (U.S.A.), Inc., jointly and severally.
36. “*Non-Terminating Settlement Percentage*” means the sum of the Settlement Percentages of all Settling Defendants other than Terminating Settling Defendants.
37. “*Notice Costs*” means costs and expenses associated with the provision of notice to the members of the Settlement Classes pursuant to paragraph III.A hereof.
38. “*Notice Plan*” means the plan for notice prepared by Kinsella Media, LLC and annexed as Exhibit L.
39. “*Opt-Out Date*” means the date 90 days after Preliminary Approval.
40. “*Other Vitamins*” means the vitamin D family, the vitamin K family, and apocarotenol, lutein, lycopene and other carotenoids.
41. “*Parties*” means the plaintiffs in the MDL Action, the Settlement Class Members, the Settling States and the Settling Defendants (each of which individually is a “Party”).
42. “*Plaintiffs’ Counsel*” means all counsel of record for plaintiffs in the Class Actions as of the date of this Multistate Settlement Agreement, including but not limited to the counsel listed in Schedule 2 hereto.
43. “*Plaintiffs’ Lead Counsel*” or “*PLC*” means Straus & Boies, LLP.

44. “*Preliminary Approval*” means an order by the MDL Court preliminarily approving this Multistate Settlement Agreement, and approving the form and method of notice to the Settlement Classes, pursuant to a motion as described in paragraph IV.D herein.

45. “*Preliminary Approval Motion*” means a motion in the MDL Court by PLC and the Settling States seeking Preliminary Approval.

46. “*Private Releasing Parties*” means all members of the Consumer Settlement Class and Commercial Settlement Class (on their own behalf and on behalf of their present and former officers, directors, agents, employees, legal representatives, trustees, parents, affiliates, subsidiaries, heirs, executors, administrators, purchasers, predecessors, successors, and assigns).

47. “*Proof of Claim*” means a sworn proof of Qualifying Purchases during the Relevant Period substantially in the form of the proof of claim annexed as Exhibit H hereto but not including the schedule to Exhibit H.

48. “*Proposed Initial Administrative Order*” means a proposed order of the MDL Court in substantially the form of the proposed order accompanying Exhibit E hereto.

49. “*Puerto Rico Action*” means the action filed in Puerto Rico, in the Tribunal de Primera Instancia, Centro Judicial De San Juan, Sala Superior, Case No. KAC00-1881, entitled *Rotger ex rel. Estado Libre Asociado v. F. Hoffman-La Roche, Ltd.*

50. “*Qualifying Purchase*” means a purchase during the Relevant Period of Indirect Vitamin Products for resale, for incorporation into another product or products for resale or other commercial use, or for use in the manufacture, processing, or development of another product (including the feeding of an animal) for resale or other commercial use, where such purchase was: (a) made by a purchaser in any Settling State (other than Hawaii); or (b) made

from a seller in any Settling State (other than Hawaii); or (c) delivered by or on behalf of the seller to the purchaser in any Settling State (other than Hawaii) if the purchaser's principal place of business was in that Settling State; and provided that such purchase was not a purchase of any Vitamin Products made directly from a manufacturer of the Vitamin Products indicated on Schedule 3; and further provided that such purchase was not a California Purchase; and further provided that any claims arising from such purchase are not already subject to settlement or res judicata with respect to any of the Settling Defendants.

51. “*Reilly*” means Vertellus Specialties Inc. (f/k/a Reilly Industries, Inc.) and Vertellus Chemicals SA (f/k/a Reilly Chemicals SA), jointly and severally.

52. “*Released Claims*” means all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including without limitation costs, expenses, penalties and attorneys’ fees, known or unknown, suspected or unsuspected, asserted or unasserted, in law or equity, that any Private Releasing Party or Settling State Releasing Party, whether directly, representatively, derivatively or in any other capacity, ever had, now has or hereafter can, shall or may have, arising from any conduct prior to the date hereof concerning the purchase, sale or pricing of Indirect Vitamin Products and any and all Other Vitamins or otherwise relating to the Alleged Conduct, including, without limitation, any claims under the common law of fraud, civil conspiracy, and negligent misrepresentation, and any such claims that have been asserted or could have been asserted in any of the Class Actions against the Released Parties or any one of them, except (a) that this release shall not affect the rights of any Party to pursue a claim under the Sherman Act (15 U.S.C. § 1 *et seq.*) based on sales directly invoiced from a manufacturer of a Vitamin Product listed on Schedule 3 to members

of the Settlement Classes; (b) that no claims alleging damages caused by the failure of any vitamin or vitamin premix to be safe and effective or alleging deceptive advertising unrelated to the Alleged Conduct, including, without limitation, personal injury claims or product defect claims, is a Released Claim; (c) that no claim arising from a California Purchase is a Released Claim; and, (d) that no claim that is already subject to settlement or res judicata with respect to any of the Settling Defendants is a Released Claim.

53. “*Released Parties*” means the Settling Defendants; the present and former direct and indirect parents, subsidiaries, divisions, affiliates or associates (as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934) of any of the above; the present and former officers, directors, members of any supervisory board or board of management, stockholders, employees, agents and legal representatives of any of the above entities (with respect to any conduct of any of the above entities); and the predecessors, heirs, executors, administrators, successors and assigns of any of the above persons or entities.

54. “*Relevant Period*” means January 1, 1990 through December 31, 1999, except that for Single Ingredient Vitamin Supplements, Straight Bulk Vitamins Products, or premix, Relevant Period means the period of time indicated in Schedule 4.

55. “*Roche Settlement*” means the settlement, initially approved by the Superior Court of the District of Columbia in an action entitled *Giral et al. v. Hoffmann-LaRoche, Ltd., et al.*, Case No. 98-CA-7467, among the Settling States, certain plaintiffs in Class Actions, Hoffmann-La Roche Inc. and others, together with the associated approval and implementation processes.

56. “*Satisfactory Initial Administrative Order*” means an order of the MDL Court that includes provisions equivalent to those of the fifth decretal paragraph of the Proposed Initial Administrative Order in respect of personal jurisdiction and venue defenses.

57. “*Settlement Administrator*” means such person or persons as may be appointed by the MDL Court to administer this settlement. The Preliminary Approval Motion will seek the appointment of The Garden City Group, Inc. as Settlement Administrator.

58. “*Settlement Class Members*” refers collectively to the members of the Consumer Settlement Class and the Commercial Settlement Class.

59. “*Settlement Classes*” refers collectively to the Consumer Settlement Class and the Commercial Settlement Class.

60. “*Settlement Percentage*” means, (i) for Akzo Nobel Inc., 9.95%; (ii) for Chinook, 0.64%; (iii) for Degussa, 6.34%; (iv) for Lonza AG, 24.45%; (v) for Merck, 13.88%; (vi) for Mitsui, 9.57%; (vii) for Nepera, Inc., 5.25%; (viii) for Reilly, 5.97%; (ix) for Sumitomo, 8.25%; (x) for Tanabe, 5.75%; and, (xi) for UCB Pharma, Inc., 9.95%.

61. “*Settling Defendant*” means each of Akzo Nobel Inc.; Chinook; Degussa; Lonza AG; Merck; Mitsui; Nepera, Inc.; Reilly; Sumitomo; Tanabe; and, UCB Pharma, Inc.; *provided, however*, that a Settling Defendant which becomes a Terminating Settling Defendant shall not be considered a Settling Defendant for the purposes of any portion of this Multistate Settlement Agreement pertaining to the Commercial Settlement Class.

62. “*Settling State Releasing Parties*” means (i) each Settling State; and (ii) any persons or entities (including Government Entities) acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer, or any other capacity, whether or not any of them participate in this settlement, to the extent that any such person or entity is

seeking relief on behalf of or generally applicable to the general public in such Settling State or the people of the Settling State as permitted by law.

63. “*Settling States*” means Arizona, the District of Columbia, Florida, Hawaii (with respect to only the Consumer Settlement Class), Idaho, Illinois, Kansas, Maine, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, North Dakota, Puerto Rico, Rhode Island, South Dakota, Tennessee, Vermont, Washington, West Virginia, and Wisconsin. Where an action is called for by a Settling State, it shall mean the Settling State as represented by its Attorney General in its *parens patriae* capacity.

64. “*Settling States’ Liaison Counsel*” means the Attorney General for the State of New York or his designee, unless the Settling States by notice or the MDL Court by order shall make a different appointment.

65. “*Single Ingredient Vitamin Supplements*” means any product that contains exactly one of the Vitamin Products listed on Schedule 4 in combination with other substances (such as inactive ingredients or dilution agents) and is sold under the name of that Vitamin Product as a dietary supplement.

66. “*Straight Bulk Vitamins Products*” means any product sold in bulk that solely contains exactly one of the Vitamin Products listed on Schedule 4.

67. “*Sumitomo*” means Sumitomo Chemical America, Inc. and Sumitomo Chemical Co., Ltd., jointly and severally.

68. “*Summary Notice*” means notice in substantially the form of Exhibit F hereto.

69. “*Tanabe*” means Mitsubishi Tanabe Pharma Corporation (f/k/a Tanabe Seiyaku Company Ltd.) and Tanabe U.S.A., Inc., jointly and severally.

70. “*Terminating Settling Defendant*” means a Settling Defendant which has terminated its participation in the Commercial Settlement Class portion of the Multistate Settlement Agreement in accordance with Section VIII hereof.

71. “*Total Non-Chinook Settlement Amount*” means \$24,873,227 (the total amount of the Consumer Class Settlement Amount and the Commercial Class Settlement Amount less amounts attributable to Chinook).

72. “*Vitamin Products*” means: (i) the following vitamins and carotenoids, individually and/or collectively: vitamin A, astaxanthin, vitamin B1 (thiamin), vitamin B2 (riboflavin), vitamin B3 (niacin and niacinamide), vitamin B4 (choline chloride or other choline-based products for human or animal consumption), vitamin B5 (calpan), vitamin B6, vitamin B9 (folic acid), vitamin B12 (cyanocobalamine pharma), beta-carotene, vitamin C, canthaxanthin, vitamin E and vitamin H (biotin), as well as all blends, derivatives and forms of the foregoing, and (ii) any product that contains one or more Vitamin Products listed in part (i) of this definition in combination with other substances (such as inactive ingredients or dilution agents) and was sold as a premixed formulation by any entity which is or has been a defendant in any of the Class Actions.

II. SETTLEMENT PAYMENTS

A. Consumer Settlement Consideration

Subject to the terms hereof, and in full, complete and final settlement of the Class Actions with respect to Consumer Settlement Class claims as provided herein, the Settling Defendants agree to pay the Consumer Class Settlement Amount.

B. Commercial Settlement Consideration

Subject to the terms hereof, and in full, complete and final settlement of the Class Actions with respect to Commercial Settlement Class claims as provided herein, the Settling Defendants agree to pay the Commercial Class Settlement Amount.

C. Attorneys' Fees

As an additional payment over and above the amounts set forth in paragraphs II.A and II.B above, the Settling Defendants agree to pay such attorneys' fees as may be finally awarded. The Settling Defendants shall not under any circumstances pay more than the Maximum Fee Award. By motion to be heard no sooner than the hearing on the Final Approval Motion, PLC may ask the MDL Court to award attorneys' fees to Plaintiffs' Counsel in an amount not exceeding the Maximum Fee Award; and Plaintiffs' Counsel and the Settling States shall not seek, demand or accept, and the Settling Defendants shall not make payment of attorneys' fees beyond the Maximum Fee Award. In the event of Final Approval of the Consumer Settlement but disapproval of the Commercial Settlement, as provided in paragraph V.C hereof, Plaintiffs' Counsel and the Settling States shall not seek, demand or accept, and the Settling Defendants shall not make payment of attorneys' fees exceeding the Maximum Consumer Fee. In the event of Final Approval of the Commercial Settlement but disapproval of the Consumer Settlement, as provided in paragraph V.C hereof, Plaintiffs' Counsel and the Settling States shall not seek, demand or accept, and the Settling Defendants shall not make, payment of attorneys' fees exceeding the Maximum Commercial Fee. The Settling Defendants agree not to object to any attorneys' fee application consistent with this paragraph, and not to argue for a reduction in attorneys' fees based on any requests for exclusion from the settlement which may be received from members of the Settlement Classes. To reflect the fact that payment by the Settling Defendants of such attorneys' fees as

the MDL Court may award will fully satisfy and discharge all claims by all Plaintiffs' Counsel to attorneys' fees, costs and the like in connection with the MDL Action, the Class Actions or the Alleged Conduct, the proposed Final Order and Judgment annexed as Exhibit A provides (a) that any attorneys' liens asserted by any Plaintiffs' Counsel in the MDL Action or elsewhere be discharged; and (b) that Plaintiffs' Counsel be permanently restrained and enjoined from seeking to enforce any such liens.

III. NOTICE, OPT-OUT, AND CLAIM PROCEDURES

A. Notice Plan

Beginning within fourteen days of Preliminary Approval, PLC, with the assistance of Kinsella Media, LLC, shall provide notice to the Consumer Settlement Class and the Commercial Settlement Class in accordance with the Notice Plan using the Summary Notice and the Long-Form Notice. In no event shall the Settling Defendants be responsible for giving notice of this settlement to members of the Consumer Settlement Class or the Commercial Settlement Class, nor for handling inquiries related to the notice or to the Commercial Plan of Distribution or the Consumer Plan of Distribution.

B. Opt-Out Procedure

Any Settlement Class Member shall have the right to be excluded from the Settlement Classes, provided that any such person or entity complies with the following procedures (subject to the approval of such procedures by the MDL Court).

1. On or before the Opt-Out Date, each individual electing to opt out of the Consumer Settlement Class must deposit in the U.S. mail via first class delivery or an overnight delivery service an opt-out notice addressed to the Settlement Administrator which indicates his or her name and address and that he or she desires to be excluded from the

Consumer Settlement Class. The Consumer Class Settlement Amount shall not be reduced as a result of any requests for exclusion from the Consumer Settlement Class.

2. On or before the Opt-Out Date, each individual and entity electing to opt out of the Commercial Settlement Class must deposit in the U.S. mail via first class delivery or an overnight delivery service an opt-out notice addressed to the Settlement Administrator. Such opt-out notice must indicate the Commercial Opt-Out Plaintiff's name and address, and that he, she or it desires to be excluded from the Commercial Settlement Class. The Commercial Class Settlement Amount shall not be reduced as a result of any requests for exclusion from the Commercial Settlement Class.

3. Settlement Class Members may not exclude themselves by filing opt-out notices as a group, but must in each instance individually execute such notices and transmit them to the Settlement Administrator.

C. Opt-Out Notification

On the 28th, 21st, fourteenth and seventh days before the Opt-Out Date and on the Opt-Out Date itself, the Settlement Administrator shall provide updates to PLC, the Settling States' Liaison Counsel and the Settling Defendants setting forth the names of any persons or entities requesting exclusion from either the Consumer Settlement Class or Commercial Settlement Class or both, along with any information provided by such persons or entities in their opt-out notices. Within seven days after the Opt-Out Date, the Settlement Administrator shall send the Final Opt-Out List, along with copies of all opt-out notices received, to PLC, to Settling States' Liaison Counsel and to the Settling Defendants, via electronic mail or other method approved by the Parties (through their counsel).

D. Submission of Commercial Proofs of Claim

On or before the Claim Date, each member of the Commercial Settlement Class that wishes to claim against the Commercial Class Settlement Amount shall be required to file a timely Proof of Claim, except that any claim validated in the Roche Settlement is considered a filed Proof of Claim under this Multistate Settlement Agreement as well and it need not be resubmitted unless the concerned member of the Commercial Settlement Class either (a) wishes to exclude itself from this Multistate Settlement Agreement or (b) wishes to prepare a new Proof of Claim. Any member of the Commercial Settlement Class failing to file a proper Proof of Claim on or before the Claim Date shall be forever barred from receiving any distribution from the Commercial Class Settlement Amount (unless a late-filed proof of claim is approved by an order of the MDL Court) but will in all other respects be bound by all the terms and provisions of this Multistate Settlement Agreement, including but not limited to the releases, waivers and covenants described in Section V hereof.

E. Settling Defendants' Review of Commercial Proofs of Claim; Defense Challenges

Not later than 30 days after the Claim Date, the Settlement Administrator shall provide the Settling Defendants with a schedule of received Proofs of Claim, identifying the claimant, its address and the size of its claim. The Settlement Administrator shall comply to the extent within its means with any Settling Defendant's request for additional information. If a Settling Defendant thereupon forms the good faith view that a Proof of Claim is invalid for reasons such as res judicata or private settlement, it shall deliver to the Settlement Administrator a Defense Challenge in respect of that Proof of Claim. Upon receipt of a Defense Challenge, the Settlement Administrator shall forward the Defense Challenge to the filer of the affected Proof of Claim with notice that in light of the Defense Challenge the

claim will be rejected unless the MDL Court orders otherwise. PLC and the Settling States, and (except as provided in this paragraph) the Settlement Administrator have no responsibility for determining whether a submitted Proof of Claim is invalid for reasons such as res judicata or private settlement.

IV. COURT APPROVAL

The Settling Defendants, PLC and the Settling States will cooperate in seeking approval of this Multistate Settlement Agreement by the MDL Court and the entry of orders dismissing each of the Class Actions with prejudice as against the Released Parties, in accordance with the procedures set forth in this section.

A. Stay of Class Actions

At any time after the execution of this Multistate Settlement Agreement, PLC and the relevant Settling State, upon reasonable request by a Released Party, shall take whatever steps are reasonably necessary to secure a stay of proceedings in any Class Action pending Final Approval in the MDL Court.

B. Filing of the MDL Action

Within 20 days of the execution of this Multistate Settlement Agreement, or on such other date as may be agreed upon by the Parties, PLC and the Settling States shall file the MDL Action with the MDL Court. The complaint in the MDL Action will be in substantially the form of Exhibit C hereto. (The Settling Defendants do not agree that the complaint's factual allegations are accurate or that they would support the species of relief described therein.) When filing the complaint in the MDL Action, in accordance with the MDL Court's Local Civil R. 40.5(b)(2), PLC will also submit the MDL Court's "Notice of Designation of Related Civil Cases Pending in This or Any Other United States Court" in substantially the form of Exhibit D hereto.

C. Motion for Initial Administrative Order; Service of Process

As soon as practical after the clerk of the MDL Court has opened the MDL Action on the MDL Court's electronic case filing system, or at such other time as may be agreed by the Parties, PLC and the Settling States, by motion in substantially the form of Exhibit E hereto, will ask the MDL Court to enter the Proposed Initial Administrative Order. No effort shall be made to serve process in the MDL Action on any Settling Defendant unless (a) PLC has given notice that the MDL Court has refused to enter a Satisfactory Initial Administrative Order or (b) that Settling Defendant has failed to appear by counsel in the MDL Action within 30 days of the entry of a Satisfactory Initial Administrative Order and more than ten days have elapsed from notice to that Settling Defendant that it has failed to appear.

D. Preliminary Approval Motion

Within 20 days of entry of a Satisfactory Initial Administrative Order, or such other date as may be agreed upon by the Parties or established by the MDL Court, PLC and the Settling States shall file the Preliminary Approval Motion. The papers on the Preliminary Approval Motion shall include this Multistate Settlement Agreement and (1) the proposed form of order finally approving this Multistate Settlement Agreement and directing the entry of final judgment annexed hereto as Exhibit A; (2) the proposed forms of notice to members of the Settlement Classes annexed hereto as Exhibits F and G; and, (3) the proposed form of order, annexed hereto as Exhibit B, preliminarily approving this Multistate Settlement Agreement and scheduling additional proceedings. The Parties shall request that a decision be made promptly on the papers or that a hearing on the Preliminary Approval Motion be held at the earliest date convenient to the MDL Court. The Parties shall also request that the MDL

Court schedule a hearing on the Final Approval Motion, with that hearing to be held no less than 150 days after Preliminary Approval.

E. CAFA Notices

1. **Attorneys General as “Appropriate State Officials” for CAFA Notice; Service Addresses**

The Attorney General of each Settling State confirms (a) that he or she is, in his or her respective jurisdiction, the “appropriate State official,” as that term is defined in the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(a)(2), to receive service under 28 U.S.C. § 1715(b) of notice of the proposed settlements contemplated by this Multistate Settlement Agreement; and (b) that the address appearing by his or her name in Exhibit K hereto is the correct address for the service of that notice. The Attorney General of each Settling State agrees to advise the Settling Defendants by notice under paragraph X.G of this Multistate Settlement Agreement should the address at which he or she is to be served change before the tenth day after the filing of the Preliminary Approval Motion.

2. **Compliance with CAFA Notice Requirements**

Within ten days of the filing of the Preliminary Approval Motion, the Settling Defendants shall comply with the notice requirement of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b). Within 20 days of the filing of the Preliminary Approval Motion, the Settling Defendants shall file proof of that compliance with the MDL Court.

3. **Advice by Settling States in the Event of Perceived Deficiencies in CAFA Notice**

The Settling States undertake to advise the Settling Defendants in the event that perceived deficiencies in the Settling Defendants’ compliance with 28 U.S.C. § 1715(b) will make it impossible, as otherwise contemplated in paragraph IV.F below, for the Settling

States to include in the papers on the Final Approval Motion a report that the Settling States have no objection to the manner in which the notice to the Settling States was effected.

F. Final Approval Motion

The papers on the Final Approval Motion will be filed with the MDL Court and posted to the Web site maintained by the Settlement Administrator no less than 30 days prior to the date scheduled, as of such filing and posting, for the hearing on Final Approval. The papers on the Final Approval Motion shall report to the MDL Court, if possible, that the Settling States have no objection to the manner in which the Settling Defendants have complied with the state notice provision of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b). The Settling Defendants may ask the MDL Court to pass on the adequacy of their compliance with 28 U.S.C. § 1715(b); the papers on any such request are to be posted promptly after filing with the MDL Court to the Web site maintained by the Settlement Administrator.

G. Hearing on Final Approval

At the hearing on Final Approval, the PLC and the Settling States shall request that the MDL Court:

1. Find that the proposed Settlement Classes satisfy the requirements of a class action under Fed. R. Civ. P. 23 for settlement purposes only;
2. Fully and finally approve the settlement contemplated by this Multistate Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement for each of the members of the Settlement Classes, and direct consummation of the Multistate Settlement Agreement pursuant to its terms and conditions;
3. Find that the form and manner of notice implemented pursuant to Section III of this Multistate Settlement Agreement (i) constituted reasonable and the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to

apprise the members of the Settlement Classes of the pendency of the Class Actions, the terms of the proposed settlement, the right to object to or exclude themselves from the proposed settlement, and the right to appear at the settlement hearing; (iii) constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met the requirements of due process, the Federal Rules of Civil Procedure, and any other applicable law or rules;

4. Direct that judgment be entered dismissing the MDL Action with prejudice as against the Settling Defendants and, except as provided for herein, without costs, but with jurisdiction retained to enforce and to administer the settlement and if not already accomplished to consider the award of attorneys' fees;

5. Provide that, to the extent that parties or claims remain pending in the MDL Action, there is no just reason for delay and that final judgment should be entered forthwith pursuant to Rule 54(b) of the Federal Rules of Civil Procedure;

6. Approve the release of the Released Claims by the Private Releasing Parties and the Settling State Releasing Parties;

7. Discharge and release the Released Parties from all Released Claims;

8. Direct that, for a period of five years, the Clerk of the MDL Court shall maintain the records of those members of the Settlement Classes that timely and properly exclude themselves from the Settlement Classes and that a certified copy of such records shall be provided to the Settling Defendants, at their expense; and

9. Incorporate in the final judgments of dismissal the releases set forth below in paragraph V.A of this Multistate Settlement Agreement, and forever bar any claims or liabilities relating to the MDL Action, the Class Actions, or any Released Claims, including

but not limited to claims by any alleged joint tortfeasor or co-obligor for equitable comparative contribution or partial or comparative indemnity, against the Released Parties.

H. Plans of Distribution

1. Commercial Plan of Distribution

The Commercial Plan of Distribution shall provide that each validated Proof of Claim will entitle the submitting member of the Commercial Settlement Class to a distribution from the Commercial Class Settlement Amount in an amount reflecting that Proof of Claim's percentage share of all validated Proofs of Claim received from all members of Commercial Settlement Class or such amount as approved by the MDL Court. Upon approval of the Commercial Plan of Distribution, the Escrow Agent will consolidate the Commercial Class Escrow Account subaccounts and transfer the Balance of the Commercial Class Settlement Amount to the Settlement Administrator for distribution to the Commercial Settlement Class claimants. Any residual amounts which the Settlement Administrator is unable to distribute in accordance with the Commercial Plan of Distribution shall be allocated among the Settling States, on the basis of the Applicable State Consumer Fund Percentage, for the benefit of the Consumer Settlement Class under the same terms and conditions as set forth in the Consumer Plan of Distribution, or, at the election of the Settling States, to be distributed to one or more designees consistent with the principles of this Multistate Settlement Agreement.

2. Consumer Plan of Distribution

The Consumer Plan of Distribution will provide that the Consumer Class Settlement Amount (plus interest earned in the Consumer Class Escrow Account, less allowed costs and expenses) shall be allocated among the Settling States based upon the Applicable State Consumer Fund Percentage. The Parties recognize the impracticability of identifying consumers of Indirect Vitamin Products during the Relevant Period that were injured as a

result of the violations alleged. Moreover, because of the difficulty in identifying these purchasers and the high cost of administering a direct cash distribution to them, the amounts allocated to each Settling State will be distributed cy pres in accordance with the Consumer Plan of Distribution to eligible organizations. Each Settling State, through its Attorney General (acting in consultation with PLC in Settling States where Class Actions were filed), or as otherwise authorized by state law, shall direct that the portion of the Consumer Class Settlement Amount allocable to that particular state be distributed to one or more Government Entities, not for profit enterprises and/or charitable organizations with the express purpose of ensuring that the funds be used for the improvement of the health and/or nutrition of the citizens of that State and/or the advancement of nutritional, dietary or agricultural science. Recipients of cy pres distributions in the Roche Settlement are acceptable for the Consumer Plan of Distribution. Unless applicable state law forbids it, no more than 10% (except where state law requires the application of a higher percentage) of the funds allocated to a given Settling State may be used, at the discretion of that Settling State and subject to the approval of the MDL Court, for any of the following purposes:

- (a) costs and expenses incurred in connection with administering the Consumer Class Settlement and ensuring the proper distribution to recipients pursuant to the plan of distribution, with any expenditures for this purpose subject to consultation with PLC; and/or,
- (b) antitrust or consumer protection enforcement by the Attorney General of such State; and/or,

- (c) deposit into a state antitrust or consumer protection account (e.g., a revolving trust account), for use in accordance with the state laws governing that account.

3. **Publication of the Settlement Administrator's Procedures for Proof of Claim Review and Validation**

Not later than 30 days after Preliminary Approval, PLC shall cause to be published on the Web site maintained by the Settlement Administrator a description of the Settlement Administrator's plans for the review and validation of Proofs of Claim submitted by members of the Commercial Settlement Class.

4. **Approval of the Plans of Distribution**

With the papers on the motion for Final Approval, PLC shall submit the proposed Commercial Plan of Distribution, and PLC and the Settling States shall submit the proposed Consumer Plan of Distribution, both for the approval of the MDL Court. The approval of the proposed Commercial Plan of Distribution and the proposed Consumer Plan of Distribution shall not be a condition to the approval of the Multistate Settlement Agreement; the Multistate Settlement Agreement may be approved even if the MDL Court enters an order directing that one or both of the plans be revised. Settling Defendants shall have no responsibility for the content, administration or costs of the Commercial Plan of Distribution or the Consumer Plan of Distribution.

V. RELEASES

A. Releases and Covenants Not to Sue

In addition to the effect of any final judgments entered in accordance with this Multistate Settlement Agreement, on and as of the date of Final Approval:

1. The Released Parties shall be released and forever discharged from all Released Claims by each Private Releasing Party. In addition, each Private Releasing Party hereby covenants and agrees that he, she, or it shall not, hereafter, assert any claim, demand, action, suit, or cause of action whether directly, representatively, derivatively or in any other capacity, against any Released Party based in whole or in part, upon the Alleged Conduct and/or the Released Claims, provided however, that it is expressly acknowledged that any release of claims in this Multistate Settlement Agreement is not intended to, and shall not, affect the rights of any Party to pursue: (1) a claim for damages under the Sherman Act (15 U.S.C. § 1 *et seq.*) based on purchases by members of the Settlement Classes of any Vitamin Product directly invoiced from a manufacturer of the Vitamin Product listed on Schedule 3, or (2) a claim by a member of the Commercial Settlement Class arising from a California Purchase.

2. The Released Parties shall be released and forever discharged by the Settling State Releasing Parties from all manner of claims, demands, actions, suits, causes of action, administrative actions, whether class, *parens patriae*, representative, individual or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties, and attorneys' fees, known or unknown, suspected or unsuspected, asserted or unasserted, in law or equity, statutory or common law, that any Settling State Releasing Party, whether directly, representatively, derivatively, or in any other capacity, ever had, now has, or hereafter can, shall, or may have, arising from the Alleged Conduct and/or the Released Claims for the benefit of, or on behalf of, any or all members of the Settlement Classes; *provided, however*, that it is expressly acknowledged that any release of claims in this Multistate Settlement Agreement is not intended to, and shall not, release any claims

(including the costs, expenses and fees associated therewith) that a Settling State has or may have in the future against the Released Party regarding any or all of the following:

- (a) Government Purchases; or,
- (b) claims that a Settling State Releasing Party may rightfully assert against a Released Party or an assignor by virtue of an assignment of antitrust rights by a direct or indirect purchaser; or,
- (c) actions for civil or criminal penalties or forfeiture under the respective laws of the Settling States for breaches of antitrust and/or consumer protection laws in each respective Settling State arising from the Alleged Conduct during the Relevant Period.

B. Waiver of Claims

Each Private Releasing Party and each Settling State Releasing Party hereby expressly agrees that, as of the Final Approval, he, she or it waives and releases, with respect to the Released Claims that such Private Releasing Party or Settling State Releasing Party has released pursuant to Section V.A hereto, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which provides in substance that “a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.” Each Private Releasing Party and each Settling State Releasing Party acknowledges that he, she or it may hereafter discover facts other than or different from those that it knows or believes to be true with respect to the subject matter of the Released Claims that such Private Releasing Party or Settling State Releasing Party has released pursuant to Section V.A hereof, but each Private Releasing Party and each Settling State Releasing Party hereby expressly agrees that, as of

Final Approval, it shall have waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim with respect to the Released Claims that such Private Releasing Party or Settling State Releasing Party has released pursuant to Section V.A hereof, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

C. Effect of Disapproval or Non-Approval

1. If (i) the MDL Court disapproves or refuses to grant Final Approval of this Multistate Settlement Agreement as to both the Consumer Settlement Class and the Commercial Settlement Class and that decision is not overturned on appeal or (ii) if an appellate court denies or refuses to grant Final Approval of this Multistate Settlement Agreement as to both the Consumer Settlement Class and the Commercial Settlement Class and no further appeals or other review regarding Final Approval of this Multistate Settlement Agreement is possible, the releases, covenants not to sue, and waivers set forth in this Section shall not apply to any Released Claims; the Balance of the Escrow Accounts shall be returned to the Settling Defendants according to their respective Settlement Percentages; and, unless PLC and the Settling Defendants agree in writing, the MDL Action will be dismissed without prejudice and any stay in the Class Actions may be lifted.

2. If the MDL Court grants Final Approval as to the Consumer Settlement Class but (i) the MDL Court disapproves or refuses to grant Final Approval of this Multistate Settlement Agreement as to the Commercial Settlement Class or (ii) if an appellate court denies or refuses to grant Final Approval of this Multistate Settlement Agreement as to the Commercial Settlement Class and no further appeals or other review regarding Final Approval of the Commercial Settlement Class is possible:

- (a) implementation of this Multistate Settlement Agreement shall proceed as to the Consumer Settlement Class (including, for example, the release from the Consumer Settlement Class and the Settling State Releasing Parties, the distribution of funds to the Consumer Settlement Class, and the distribution of finally approved attorneys' fees and costs in respect of the Consumer Settlement Class); and,
- (b) the PLC and the Settling Defendants will negotiate in good faith for a period of no less than 45 days in an effort to address whatever issues led to the failure to obtain Final Approval as to the Commercial Settlement Class. If those negotiations are not successful, PLC or any Settling Defendant may terminate them by notice under paragraph X.G of this Multistate Settlement Agreement, in which event this Multistate Settlement Agreement shall terminate as to the Commercial Settlement Class; the releases, covenants not to sue, and waivers set forth in this Section shall not apply to any Released Claims of the Commercial Settlement Class; there shall be returned to each Settling Defendant its Settlement Percentage of (i) the Balance of the Commercial Class Escrow Account and (ii) 50% of the Balance of the Attorneys' Fees Escrow Account; and, unless PLC and the Settling Defendants agree otherwise in writing, the commercial claims asserted in the MDL Action shall be dismissed without prejudice and any stay of commercial claims in a Class Action may be lifted.

3. If the MDL Court grants Final Approval as to the Commercial Settlement Class but (i) the MDL Court disapproves or refuses to grant Final Approval of this Multistate Settlement Agreement as to the Consumer Settlement Class or (ii) if an appellate court denies or refuses to grant Final Approval of this Multistate Settlement Agreement as to the Consumer Settlement Class and no further appeals or other review regarding Final Approval of the Consumer Settlement Class is possible:

- (a) implementation of this Multistate Settlement Agreement shall proceed as to the Commercial Settlement Class (including, for example, the release from the Commercial Settlement Class, the distribution of funds to the Commercial Settlement Class, and the distribution of finally approved attorneys' fees and costs in respect of the Commercial Settlement Class); and,
- (b) the Parties will negotiate in good faith for a period of no less than 45 days in an effort to address whatever issues led to the failure to obtain Final Approval as to the Consumer Settlement Class. If those negotiations are not successful, any Party may terminate them by notice under paragraph X.G of this Multistate Settlement Agreement, in which event this Multistate Settlement Agreement shall terminate as to the Consumer Settlement Class; the releases, covenants not to sue, and waivers set forth in this Section shall not apply to any Released Claims of the Consumer Settlement Class or the Settling State Releasing Parties; there shall be returned to each Settling Defendant its Settlement Percentage of (i) the Balance of the Consumer Class Escrow Account

and (ii) 50% of the Balance of the Attorneys' Fees Escrow Account; and, unless PLC and the Settling Defendants agree otherwise in writing, the consumer claims asserted in the MDL Action shall be dismissed without prejudice and any stay of consumer claims in a Class Action may be lifted.

4. Notwithstanding the foregoing, the award of attorneys' fees by the MDL Court in an amount less than the Maximum Fee Award shall not be deemed a disapproval, refusal to approve, or modification of this Multistate Settlement Agreement or any part hereof, and a modification or reversal on appeal of any award of attorneys' fees by the MDL Court shall likewise not be deemed a disapproval, refusal to approve, or modification of this Multistate Settlement Agreement.

5. Notwithstanding the foregoing it shall not be deemed a disapproval, refusal to approve or modification of this Multistate Settlement Agreement should the MDL Court require modification or supplementation of the Notice Plan; *provided, however*, that modification or supplementation of the Notice Plan which requires any Settling Defendant to make any additional payment beyond the payment already required under this Multistate Settlement Agreement or otherwise to bear the incremental costs of any new or additional notice shall be deemed a refusal to approve for purposes of this section, subject to waiver of this provision by the Settling Defendants.

6. Notwithstanding the foregoing, modification or disapproval of a plan of distribution by the MDL Court shall not be deemed a disapproval, refusal to approve or modification of this Multistate Settlement Agreement or any part hereof, and a modification

or reversal on appeal of a plan of distribution shall likewise not be deemed a disapproval, refusal to approve or modification of this Multistate Settlement Agreement.

7. This Multistate Settlement Agreement does not obligate any party to appeal from or to seek further review of a Disapproval Order. Appeals from a Disapproval Order or applications for further review of a Disapproval Order may be taken only in good faith and must be prosecuted expeditiously.

8. If at any time the MDL Court should indicate that it lacks subject-matter jurisdiction to hear the MDL Action, PLC and the Settling States, after consulting with the Settling Defendants, will file amended pleadings to address to the extent possible the jurisdictional concerns of the MDL Court. If a Final Jurisdictional Order determines that the MDL Court can exercise jurisdiction neither over the claims asserted on behalf of the Commercial Settlement Class nor over the claims asserted on behalf of the Consumer Settlement Class, then the Parties are to proceed as in the case of a Disapproval Order as to both classes (paragraph V.C.1 above). In the event that the MDL Court is prepared to hear the claims of one class but not the other, then procedural devices such as severance into separate actions, partial final judgment under Fed. R. Civ. P. 54(b), and interlocutory appeal under 28 U.S.C. § 1292(b) are to be employed to prepare the question for prompt appellate review. If the claims asserted on behalf of the Consumer Settlement Class are proceeding in the MDL Court but a Final Jurisdictional Order determines that the MDL Court cannot exercise jurisdiction over the claims asserted on behalf of the Commercial Settlement Class, then the Parties are to proceed as in the case of a Disapproval Order as to the Commercial Settlement Class (paragraph V.C.2 above). If the claims asserted on behalf of the Commercial Settlement Class are proceeding in the MDL Court but a Final Jurisdictional

Order determines that the MDL Court cannot exercise jurisdiction over the claims asserted on behalf of the Consumer Settlement Class, then the Parties are to proceed as in the case of a Disapproval Order as to the Consumer Settlement Class (paragraph V.C.3 above).

VI. PAYMENT AND DISTRIBUTION

A. No Distribution Until Final Approval

No distribution to any member of the Consumer Settlement Class or to any member of the Commercial Settlement Class, nor any distribution of attorneys' fees, nor any disbursement of any kind, except as approved by the MDL Court in accordance with subparagraph VI.B.1 hereof, or for the payment of taxes on the Escrow Account, may be made from the Consumer Class Escrow Account, the Commercial Class Escrow Account or the Attorneys' Fees Escrow Account until after Final Approval.

B. Funding and Distribution of the Settlement Payments

1. Payment of Settlement Amounts, Notice Costs Advance

Within five business days of the execution of this Multistate Settlement Agreement, from funds presently held in escrow, the Settling Defendants shall pay the Consumer Class Settlement Amount into the Consumer Class Escrow Account, and the Commercial Class Settlement Amount into the Commercial Class Escrow Account. The Escrow Agent shall thereupon divide (a) the Consumer Class Escrow Account into subaccounts according to the Applicable State Consumer Fund Percentages; and, (b) the Commercial Class Escrow Account into subaccounts according to the Applicable State Commercial Fund Percentages. Up to \$1,450,000 (\$725,000 from the Consumer Class Escrow Account, drawn from its subaccounts in accordance with the Applicable State Consumer Fund Percentage; and \$725,000 from the Commercial Class Escrow Account, drawn from its subaccounts in

accordance with the Applicable State Commercial Fund Percentage) shall be available immediately upon Preliminary Approval to pay such Notice Costs and administrative expenses as may be approved by the MDL Court.

2. **Attorneys' Fees**

Within five business days of the execution of this Multistate Settlement Agreement, from funds presently held in escrow, the Settling Defendants shall pay the Attorneys' Fees Escrow Amount into the Attorneys' Fees Escrow Account. The Escrow Agent shall thereupon divide the Attorneys' Fees Escrow Account into subaccounts according to the Applicable State Attorneys' Fee Fund Percentages as specified in Schedule 6. Payments from the Attorneys' Fees Escrow Account shall be made solely as authorized by the MDL Court. If the MDL Court awards attorneys' fees in an amount less than the Maximum Fee Award, then the Balance of the Attorneys' Fees Escrow Account shall be returned to the Settling Defendants according to their respective Settlement Percentages within ten days after of the payment of the award. If an award of attorneys' fees is overturned on appeal, then the amount awarded shall be returned to the Settling Defendants according to their respective Settlement Percentages within ten business days of the conclusion of appellate proceedings and any remand proceedings. If the award of attorneys' fees is reduced on appeal, the amount of the reduction shall be returned to the Settling Defendants according to their respective Settlement Percentages within ten business days of the conclusion of appellate proceedings and any remand proceedings.

3. **Costs**

PLC shall be entitled to apply to the MDL Court for an order authorizing the reimbursement of Plaintiffs' Counsel's costs. The Settling Defendants agree not to object to such requests as long as they are not unreasonable and are not inconsistent with this Multistate

Settlement Agreement. Costs and administrative expenses associated solely with the Consumer Settlement Class shall be borne solely by the Consumer Class Escrow Account. Costs and administrative expenses associated solely with the Commercial Settlement Class shall be borne solely by the Commercial Class Escrow Account. In all other respects, including in respect of costs and administrative expenses of notice published or sent to members of both the Consumer Settlement Class and the Commercial Settlement Class, costs shall be borne 50% by the Consumer Class Escrow Account and 50% by the Commercial Class Escrow Account.

4. **Distribution of Class Settlement Amounts**

As soon as practicable after Final Approval, the Consumer Class Settlement Amount shall be distributed pursuant to the Consumer Plan of Distribution and the Commercial Class Settlement Amount shall be distributed pursuant to the Commercial Plan of Distribution. The Settling Defendants shall have no responsibility for the distribution of any funds.

VII. ESCROW ACCOUNT

1. Subject to the provisions hereof, and in full, complete and final settlement of the claims asserted in the Class Actions and the claims to be asserted in the MDL Action, the Settling Defendants shall pay the amounts required by this Multistate Settlement Agreement into the Escrow Account held and administered by the Escrow Agent, pursuant to the terms of the Escrow Agreement.

2. The Escrow Account is intended by the Parties hereto to be treated as a “qualified settlement fund” for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1, and to that end the Parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of

the Settling Defendants, a “relation back election” as described in Treas. Reg. § 1.468B-1(j) shall be made so as to enable the Escrow Account to be treated as a qualified settlement fund from the earliest date possible, and the Escrow Agent shall take all actions as may be necessary or appropriate to this end. In accordance with the Escrow Agreement, the Escrow Agent shall use funds in the Escrow Account to pay taxes or estimated taxes on any income earned on the funds in the Escrow Account and to pay all related costs and expenses. In the event federal or state income tax liability is finally assessed against and paid by any Settling Defendant as a result of any income earned on the funds in the Escrow Account, such Settling Defendant shall be entitled to reimbursement of such payment from the funds in the Escrow Account, in accordance with the Escrow Agreement, after approval by the MDL Court and whether or not Final Approval has occurred. The Settling Defendants will use their best efforts to resist any such assessment or payment.

3. Interest earned by the Consumer Class Escrow Account, Commercial Class Escrow Account and the Attorneys’ Fees Escrow Account, as the case may be, shall be credited not less than monthly.

VIII. OPT-OUT TERMINATION RIGHTS

Notwithstanding any other provision of this Multistate Settlement Agreement, if any Settling Defendant concludes in good faith that there is a risk that it will be forced to defend itself in substantial future litigation with respect to claims by Commercial Opt-Out Plaintiffs arising out of the Alleged Conduct, each Settling Defendant, in its discretion, acting in good faith, and after reasonable inquiry, has the right to terminate its participation in the Commercial Settlement Class portion of the Multistate Settlement Agreement, solely with regard to that Settling Defendant.

A. No Effect on Consumer Settlement Class

The exercise of this option to terminate will have no effect upon the settlement of the claims of the Consumer Settlement Class or upon a Terminating Settling Defendant's participation in that settlement.

B. Termination Deadline

To be effective, a Settling Defendant's right to terminate pursuant to this section must be exercised by written notice of its termination filed with the MDL Court no later than ten days after receipt by counsel for the Settling Defendants of the Final Opt-Out List.

C. Effect on Settlement Fund

The Commercial Class Settlement Amount shall be reduced to the extent of the Settlement Percentage of the Terminating Settling Defendant. There shall be returned to the Terminating Settling Defendant (i) its Settlement Percentage of the Balance of the Commercial Class Escrow Account; and (ii) its Settlement Percentage of 50% of the Balance of the Attorneys' Fees Escrow Account. The rights and obligations of Settling Defendants other than a Terminating Settling Defendant are unaffected by the latter's exercise of its termination rights.

D. Effect on Releases

In the event that a Settling Defendant becomes a Terminating Settling Defendant, with respect to that Terminating Settling Defendant all aspects of this Multistate Settlement Agreement relating to the Commercial Settlement Class, including any releases by Commercial Settlement Class members, shall be null and void, and all litigation by members of the Commercial Settlement Class relating to the Alleged Conduct, including the Class Actions, may proceed with respect to that Terminating Settling Defendant as if the Terminating Settling Defendant had never been party to this Multistate Settlement

Agreement. Any order certifying the Commercial Settlement Class shall be vacated as to each Terminating Settling Defendant and the Terminating Settling Defendant's position that the Class Actions may not properly be maintained as class actions for litigation purposes shall not be prejudiced or compromised by its participation in efforts to seek approval of the Multistate Settlement Agreement.

E. Dismissal of Commercial Claims Against Terminating Defendant; Conclusion of Stay

Unless PLC and a Terminating Settling Defendant agree otherwise in writing, commercial claims asserted against that Terminating Settling Defendant in the MDL Action shall be dismissed without prejudice, and any stay of commercial claims in a Class Action as against that Terminating Settling Defendant may be lifted.

IX. DISMISSAL OF REMAINING CLASS ACTIONS

Upon Final Approval, PLC shall act promptly to seek the dismissal of those Class Actions then still pending as against any Released Party. In consultation with the Settling Defendants' attorneys and local advice, PLC shall seek dismissal of the claims asserted in each Class Action against those Released Parties which are party thereto, by notice, by stipulation, by consent motion or by such other procedure as appears reasonable in the circumstances in view of local law and practice, on the grounds of release, settlement and res judicata and on such other or additional grounds as may appear expedient in a given case. If a given Class Action will continue against other defendants, PLC must if possible seek partial final judgment in respect of the Released Parties party thereto under applicable law, such as analogs to Fed. R. Civ. P. 54(b). The Secretary of Justice of the Commonwealth of Puerto Rico will seek the dismissal of the Puerto Rico Action by a written motion in substantially the form of the Spanish-language document appearing in Exhibit I hereto. (The

English-language document included in Exhibit I is a courtesy translation for information only.) Exhibit J hereto is a template dismissal motion designed to provide guidance and suggestions to counsel in respect of Class Actions in which a simpler procedural device, such as a notice or stipulation, is unavailable or is deemed inexpedient.

X. MISCELLANEOUS PROVISIONS

A. Best Efforts

The Settling Defendants, PLC, Plaintiffs' Counsel and the Settling States agree to undertake their reasonable best efforts, including all steps and efforts contemplated by this Multistate Settlement Agreement and any other steps and efforts that may be necessary or appropriate, by court order or otherwise, to carry out the terms and objectives of this Multistate Settlement Agreement.

B. Solvency, Bankruptcy

Each Settling Defendant (except Chinook) warrants individually (but not jointly or collectively) that, as of the date of this Multistate Settlement Agreement, it is not insolvent, nor will funding its share of the payments under this Multistate Settlement Agreement render it insolvent within the meaning of and/or for the purposes of the United States Bankruptcy Code. If a case is commenced with respect to any Settling Defendants under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any similar law, and in the event any payment by that Settling Defendant should be voided as a preference or fraudulent transfer, or for similar reasons, and if pursuant to an order of a court of competent jurisdiction monies paid by a Settling Defendant pursuant to this Multistate Settlement Agreement are either not delivered or are returned to the Settling Defendant or to the trustee, receiver, or conservator appointed by a court in any bankruptcy proceedings with

respect to that Settling Defendant, the releases given and judgment entered in favor of that Settling Defendant pursuant to this Multistate Settlement Agreement shall be null and void.

**C. Protection Against Duplicative Liability
for Contribution or Indemnity**

The parties recognize that, upon Final Approval, any claim for contribution and/or indemnification against any Released Party would likely be barred as a matter of law. However, if for any reason such claims are not barred, then notwithstanding anything to the contrary contained in this Multistate Settlement Agreement, in consideration of the terms hereof and in order to induce the Settling Defendants to enter into this Multistate Settlement Agreement, members of the Settlement Classes and the Settling State Releasing Parties shall exclude from the dollar amount of any judgment collectible against any person in the Class Actions or any other action or proceeding on any claim comparable to the Released Claims, an amount equal to the percentage or amount of such judgment for which any Released Party would be responsible pursuant to a valid and enforceable claim for contribution and/or indemnification (other than any such claim that arises out of any voluntarily assumed contribution and/or indemnification obligation of such Released Party). Settlement Class Members and the Settling State Releasing Parties agree that the undertaking set forth in this paragraph is not only for the benefit of the Released Parties but also for the benefit of any person against whom any such judgment is entered and that this undertaking may be enforced by any such person as third-party beneficiary of this paragraph of this Multistate Settlement Agreement. This paragraph provides for a judgment reduction only, and in no event shall this paragraph or the contribution bar provision of Exhibit A hereto or in any final judgment in the MDL Action in substantially the form of Exhibit A hereto create a separate liability requiring

the repayment by any Settlement Class Members or Settling State of any funds distributed pursuant to this Multistate Settlement Agreement.

D. Resolution of Disputes; Retention of Jurisdiction

The MDL Court shall be asked to retain jurisdiction over the implementation and enforcement of this Multistate Settlement Agreement and its schedules and exhibits. Any disputes concerning matters contained in this Multistate Settlement Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the MDL Court, unless the parties agree that the matter should be submitted to a special master for decision.

E. Authorization to Enter Multistate Settlement Agreement

Each undersigned representative of the Settling Defendants covenants and represents that such representative is fully authorized to enter into and to execute this Multistate Settlement Agreement on behalf of the Settling Defendant(s) he or she represents. PLC represents that it is fully authorized to conduct settlement negotiations with defense counsel on behalf of Settlement Class Members and Plaintiffs' Counsel and to enter into, and to execute, this Multistate Settlement Agreement on behalf of the Settlement Classes and Plaintiffs' Counsel, subject to the MDL Court's approval. Each Settling State covenants and represents that it is fully authorized to enter into and execute this Multistate Settlement Agreement on behalf of all Settling State Releasing Parties from that state to the fullest extent of the law.

F. Confidentiality of Documents

PLC, for itself and for Plaintiffs' Counsel, acknowledges that discovery in the Class Actions and related litigation in the MDL Court and elsewhere has involved disclosures of trade secrets and other confidential and proprietary business, technical and financial

information. PLC, for itself and for Plaintiffs' Counsel, agrees that, except as otherwise required by law, within 30 days after termination of the Class Actions against all defendants, all materials produced to, and all information discovered, that is in the possession of Plaintiffs' Counsel, or experts retained by or on behalf of any Settlement Class Member, shall be destroyed or returned to the producing Party, except to the extent that continued retention of any of the Settling Defendants' material and information is governed by a protective order in another action; provided, however, that the Settling Defendants, PLC and the Settling States may retain a set of pleadings, briefs, affidavits, and any other papers filed with the MDL Court or any court in the pending Class Actions notwithstanding that such material may contain or refer to information that otherwise is subject to this paragraph, but subject to any applicable protective order (except any provision therein requiring the return or destruction of such materials upon the conclusion of litigation), and provided further that this paragraph does not impose an obligation on any Party to conduct an unreasonably extensive purge of its computer systems. In addition to any protections provided by court orders or other confidentiality agreements, all such materials subject to this paragraph shall be used solely for the purpose of prosecuting the Class Actions. Upon request, counsel for each Party shall provide the producing Party with a written declaration under penalty of perjury certifying that any documents required to be returned or destroyed have been returned or destroyed.

G. Notices

All notices under this Multistate Settlement Agreement shall be in writing. Unless otherwise provided, each such notice shall be given either by (i) hand delivery; (ii) registered or certified mail, return receipt requested, postage pre-paid; or (iii) Federal Express or similar overnight courier, and shall be addressed to the notice addressees set forth on Schedule 5 hereto or to such other addressee as PLC, a Settling State or a Settling Defendant may

designate, from time to time, by giving notice to all parties hereto in the manner described in this paragraph. Except for the notice (discussed in paragraph IV.E.1 above) required by 28 U.S.C. § 1715(b), notices to any Settling State are to be addressed to the Settling States' Liaison Counsel unless a given Settling State by notice designates a different addressee for notice to that Settling State.

H. No Admission

Whether or not this Multistate Settlement Agreement becomes final or is terminated for any reason, the Parties expressly agree that this Multistate Settlement Agreement and its contents, including its exhibits and schedules, and any and all statements, negotiations, documents and discussions associated with it, shall not be deemed or construed to be an admission or evidence: (a) of any violation of any statute or law or of any liability or wrongdoing or of the truth of any of the claims or allegations contained in the complaints in the Class Actions, or any other pleading, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, whether in the Class Actions, or in any other action or proceeding; or (b) that the Class Actions, or any similar litigation may properly be maintained as class actions for litigation purposes; *provided, however*, this paragraph shall not apply in proceedings to interpret or to enforce this Multistate Settlement Agreement.

I. Intended Beneficiaries

Except as expressly provided in this Multistate Settlement Agreement, no provision of this Multistate Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Party, a Settlement Class Member, a Released Party, a Settling State, or PLC. No Settlement Class Member or Plaintiffs' Counsel may assign or otherwise convey any right to enforce any provision of this Multistate Settlement Agreement.

J. Headings; Plurals and Singulars of Defined Terms

The headings used in this Multistate Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Multistate Settlement Agreement. Where in the text a term is defined in plural and used in singular, it means one such; where in the text a term is defined in singular is used in plural, it means more than one such.

K. Agreement Negotiated in Conjunction with California Settlement

In addition to the Class Actions, most of the Settling Defendants were defendants in similar litigation in California. Representatives of PLC and the Settling States worked with representatives of private plaintiffs in California and the Attorney General of California to negotiate overall settlement figures for the Settling Defendants (other than Chinook) which in the aggregate totaled \$33.7 million. The Total Non-Chinook Settlement Amount in this Multistate Settlement Agreement is approximately 73.79% of that overall settlement amount, a proportion resulting from negotiations between representatives of PLC and the Settling States, on the one hand, and, on the other hand, representatives of the private plaintiffs in California and the Attorney General of California. The California aspects of the overall settlement have already been effectuated in the California courts.

L. No Party is the Drafter

None of the Parties hereto shall be considered to be the drafter of this Multistate Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

M. Choice of Law

All terms of this Multistate Settlement Agreement and the exhibits and schedules hereto shall be governed by and interpreted according to the substantive laws of the District of Columbia without regard to its choice of law or conflict of laws principles.

N. Amendment, Waiver

This Multistate Settlement Agreement shall not be modified in any respect except by a writing executed by PLC, the Settling States and the Settling Defendants. The waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving Party. The waiver by any Party of any breach of this Multistate Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Multistate Settlement Agreement.

O. Execution in Counterparts

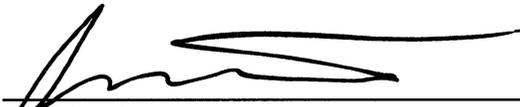
This Multistate Settlement Agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date thereof, although the original signature pages shall thereafter be appended to this Multistate Settlement Agreement and filed with the MDL Court.

P. Integrated Agreement

This Multistate Settlement Agreement contains an entire, complete and integrated statement of each and every term and provision agreed to by and among the Parties hereto, supersedes any prior agreement written or oral, and is not subject to any condition not provided for herein.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives have agreed to this Multistate Settlement Agreement as of the date first herein above written.

STRAUS & BOIES, LLP

By: 

David Boies III
Timothy D. Battin
Ian Otto

*Plaintiffs' Lead Counsel, on behalf of the
Settlement Classes and Plaintiffs' Counsel*

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Attorney General of the District of Columbia

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Civil Litigation Division
Ellen Efras
Assistant Deputy Attorney General,
Civil Litigation Division
Paul T. Gallagher (D.C. Bar # 0439701),
Chief, Public Advocacy Section
Craig S. Farringer (D.C. Bar # 980917)
Katherine E. Britton (D.C. Bar # pending)
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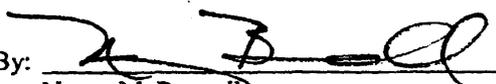
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*Plaintiffs' Lead Counsel, on behalf of the
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Public Advocacy Division
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Lizabeth A. Leeds
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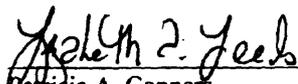
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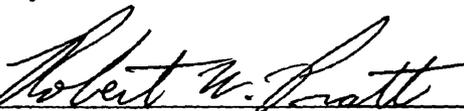
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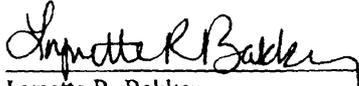
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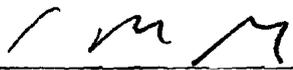
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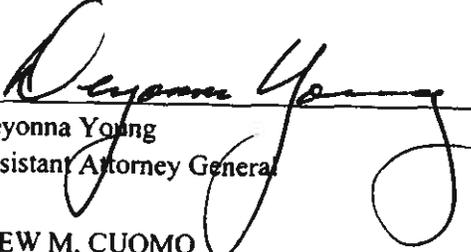
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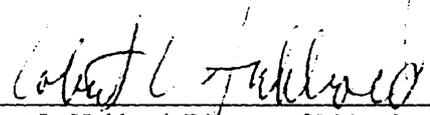
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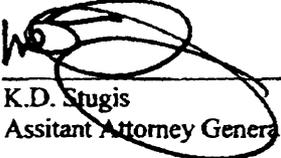
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Secretary of Justice of the Commonwealth
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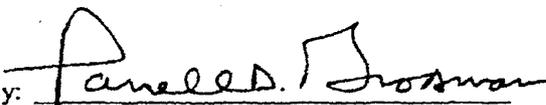
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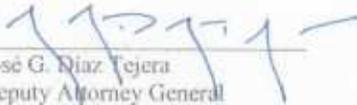
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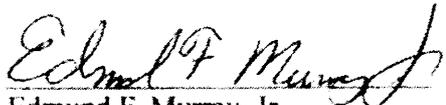
By:



José G. Díaz Tejera
Deputy Attorney General
Office of Monopolistic Affairs

**Re: Vitamins Antitrust Litigation
Multistate Settlement Agreement**

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Jeffrey P. Hallem
Assistant Attorney General

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Senior Counsel, Antitrust Division

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Attorney General of the State of Vermont

By: _____
Sarah E.B. London
Assistant Attorney General
Public Protection Division

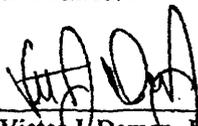
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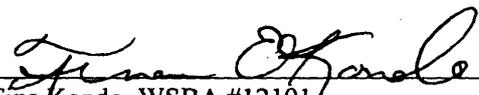
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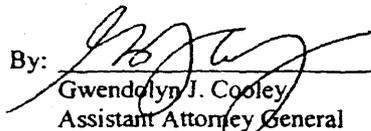
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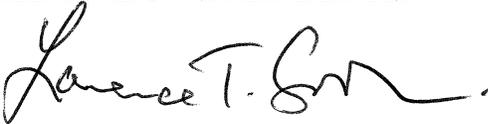
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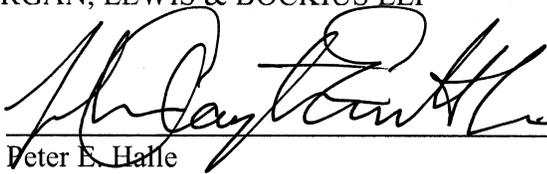
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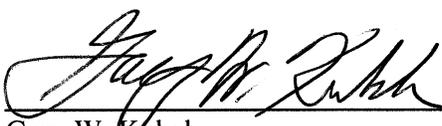
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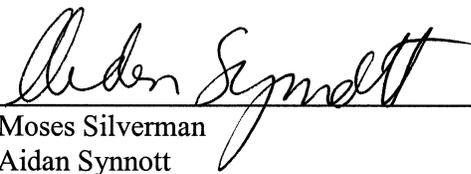
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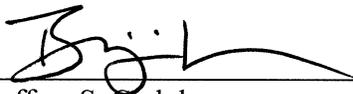
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