

IN THE CHANCERY COURT OF RANKIN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI ex rel.
JIM HOOD, ATTORNEY GENERAL

FILED

DEC 14 2009

PLAINTIFF

v.

LARRY SWALES
Chancery Clerk, Rankin County
Rec. in Bk. _____ Pg. _____

CAUSE NO. 58571

F. HOFFMANN-LA ROCHE, et al.

DEFENDANTS

PLAINTIFF'S MOTION FOR AMENDED COMPLAINT

Comes now, the Plaintiff, Jim Hood, and moves this Court to allow him to amend his complaint and would show the Court the following:

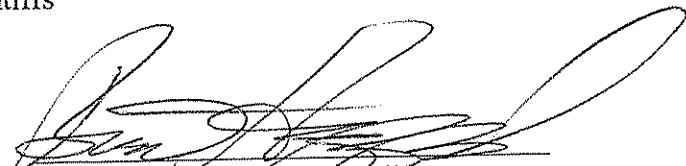
1. The Mississippi Rules of Civil Procedure state that leave to amend his pleading "shall be freely given when justice so requires." Miss. R. Civ. P. 15.
2. The proposed amended complaint is attached to this motion as Exhibit A. The Defendants received a copy of this proposed complaint on November 20, 2009.
3. This motion is unopposed and by agreement of all parties does not constitute a violation of the scheduling order.
4. For the above stated reason, the Court should allow the Plaintiff to amend his complaint.

RESPECTFULLY SUBMITTED this the 14th day of December, 2009.

Jim Hood, Attorney General, *ex rel* State of Mississippi

Plaintiffs

By:



Brent Hazzard (MB# 99721)

Attorney for the Plaintiff

Hazzard Law, LLC

P.O. Box 24382

Jackson, MS 39225

Tel: 601.977.5253
Fax: 601.977.5236

OF COUNSEL:

A. Lee Abraham, Jr.
Preston David Rideout, Jr.
Abraham & Rideout
305 West Market
P.O. Box 8407
Greenwood, MS 38935-8407
Tel: (662) 453-3000

Precious T. Martin
Attorney at Law
P.O. Box 373
Jackson, MS 39205
Tel: (601) 944-1447
Fax: (601) 944-1448

John Gadow
Blake Tyler
Attorney at Law
502 South President Street
Jackson, MS
Tel: (601) 948-4878
Fax: (601) 948-3549

Richard Schwartz
David G. Galyon
Schwartz & Associates, P.A.
162 East Amite Street
P.O. Box 3949
Jackson, MS 39207-3949
Tel: (601) 353-1215
Fax: (601) 353-0217

IN THE CHANCERY COURT OF RANKIN COUNTY, MISSISSIPPI

-----X
: Civil Action No. 58571
Jim Hood, Attorney General, ex rel. :
State of Mississippi, :
Plaintiff, :
v. :
F. Hoffman-La Roche, Ltd. : AMENDED COMPLAINT
Hoffman-La Roche, Inc. :
BASF SE :
Sanofi-Aventis :
Aventis, Inc. :
Eisai Co., Ltd. :
Eisai, Inc. :
Takeda Pharmaceutical Co., Ltd. :
Daiichi Sankyo Co., Ltd. :
Defendants :
-----X

AMENDED COMPLAINT

Plaintiff, by and through his undersigned attorneys, brings this action on behalf of the State of Mississippi, in its proprietary capacity and in its capacity as *parens patriae*, for damages, penalties and injunctive relief under the laws of the State of Mississippi against the above-named defendants.

I. NATURE OF THIS ACTION

1. This case arises out of a massive and long-running international conspiracy among all defendants with the purpose and effect of fixing prices, allocating market share, and



committing other unlawful practices designed to inflate the prices of vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin and vitamin premixes sold to plaintiff and other purchasers in the United States, including Mississippi, and elsewhere. As a result of their illegal activities, certain defendants and have pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, by participating in a conspiracy to fix prices and allocate the volume of sales of vitamins and vitamin premixes in the United States and otherwise acting in violation of the law. Defendants' acts constituted *per se* violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. Defendants' conspiracy involved an astonishing array of illegal conduct by an international cartel that deliberately targeted, and severely burdened, purchasers in the United States, including Mississippi. The conspiracy existed at least during the period from 1990 to 1999, and affected billions of dollars of commerce in products. The conspiracy included hundreds of communications and meetings in which defendants agreed expressly and repeatedly to eliminate competition, to injure and destroy businesses that would have reduced defendants' illegal market control, and to fix the prices and allocate markets for vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin and vitamin premixes.

3. Defendants' actions comprise an overarching conspiracy and cartel which included the foregoing vitamins. In the alternative, Defendants' actions constitute a group of related and separate cartels for the foregoing vitamins.

II. JURISDICTION AND VENUE

4. Plaintiff brings this action under the Mississippi Antitrust Act, Miss. Code Ann. § 75-21, and the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24, to recover actual damages, injunctive relief, statutory penalties, and the costs of suit, including reasonable

attorneys' fees, against defendants for the injuries sustained by plaintiff by reason of defendants' violations of the Mississippi Antitrust Act and the Mississippi Consumer Protection Act.

5. No federal jurisdiction exists because no claim alleged in this Complaint arises under any federal law, treaty or the Constitution; nor is the Attorney General, as an alter ego of the state of Mississippi, a citizen for purposes of diversity jurisdiction. This action is also not brought to recover damages or other relief that may be owed by any particular individual.

6. Venue is proper in Rankin County pursuant to Miss. Code Ann. §§ 11-11-3 & 75-24-15.

7. Jurisdiction over all defendants comports with the United States Constitution and Miss. Code Ann. §§ 75-21-1 and 75-24-5 and the Mississippi long-arm statute, Miss. Code Ann. § 13-3-57.

III. PARTIES

8. Plaintiff Jim Hood is the Attorney General of the State of Mississippi. He brings this case on behalf of the State of Mississippi in its sovereign capacity for injuries the State has sustained as purchasers and in the State's capacity as *parens patriae*, for the adverse effect on Mississippi purchasers.

9. F. Hoffmann-La Roche, Ltd. ("Roche Ltd."), is a Swiss corporation with operations in the United States. Roche Ltd. is a subsidiary of Roche Holding Ltd., a Swiss pharmaceutical company based in Basel, Switzerland. During the applicable period, Roche Ltd., through its affiliates, was engaged in the business of the distribution and sale of vitamins A, C, E, B1, B2, B6, H, astaxanthin, beta carotene, calpan, canthaxanthin and folic acid, and vitamin premixes throughout the United States and elsewhere, including in the State of Mississippi.

10. Roche Ltd., directly and through affiliates that it dominates and controls, and

through actions in this country and outside the United States, set prices and allocated markets pursuant to illegal horizontal agreements and these horizontal practices were designed to have and did have a substantial and adverse impact within the United States, including in the State of Mississippi. As a result of its illegal activities, Roche Ltd has pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. §1, and has agreed to pay a \$500,000,000 criminal fine to the United States Department of Justice – the largest fine ever paid in an antitrust investigation – for conspiracy to fix the price and allocate the sales of vitamins sold in the United States.

11. Hoffmann-La Roche, Inc. (“Roche Inc.”), is a New Jersey corporation with its principal place of business in Nutley, New Jersey. Roche Inc. is an affiliate of Roche Ltd. Roche Inc. is wholly-controlled and dominated by Roche Ltd, both with respect to the conduct of its business within the United States generally and specifically with respect to its challenged horizontal conduct within the United States. During the applicable period, Roche Inc. was directly engaged in the business of the distribution and sale of vitamins A, C, E, B1, B2, B5, B6, B9, H, beta carotene, astaxanthin, canthaxanthin and vitamin premixes throughout the United States, including in the State of Mississippi, and elsewhere until at least 1997.

12. BASF SE (Societas Europaea) is a German corporation with operations in the United States. During the applicable period, BASF SE, through its affiliates, was engaged in the business of the distribution and sale of vitamins A, C, E, B1, B2, B5, beta carotene, astaxanthin and canthaxanthin, and vitamin premixes throughout the United States, including in the State of Mississippi, and elsewhere. BASF SE is the successor to BASF Aktiengesellschaft (BASF AG).

13. BASF SE, directly and through affiliates that it dominates and controls, and through actions in this country and outside the United States, has set prices and allocated markets pursuant to illegal horizontal agreements, and these horizontal practices were designed to have

and did have a substantial and adverse impact within the United States, including in the State of Mississippi. As a result of its illegal activities, BASF SE has agreed to plead guilty to violating Section 1 of the Sherman Act, 15 U.S.C. §1, and has agreed to pay a \$225,000,000 fine to the United States Department of Justice – the second largest fine ever paid in an antitrust investigation.

14. Sanofi-Aventis (“Aventis”) is a French holding corporation with operations in the United States. It is the successor to Rhone-Poulenc S.A. (“RP S.A.”). During the applicable period, RP S.A., through its affiliates, was engaged in the business of the distribution and sale of vitamins A, E and B12, and vitamin premixes throughout the world and elsewhere during the period covered by this complaint. RP S.A., directly and through affiliates that it dominated and controlled, and through actions in this country and outside the United States, set prices and allocated markets pursuant to illegal horizontal agreements, and these horizontal practices were designed to have and did have a substantial and adverse impact in the United States, including in the State of Mississippi. During the conspiracy, RP S.A. wholly controlled and dominated a company called Rhone-Poulenc Animal Nutrition, Inc. (“RP Animal Nutrition”), which was a Delaware corporation with its principal place of business in Atlanta, Georgia, both with respect to the conduct of its business within the United States generally and specifically with respect to its challenged horizontal conduct within the United States. RP Animal Nutrition was a successor to defendant Rhone-Poulenc, Inc. (“RP Inc.”), a New York corporation with operations in the United States. From at least 1998, RP Animal Nutrition was directly engaged in the business of the distribution and sale of vitamins A, E and B12, and vitamin premixes throughout the United States, including in the State of Mississippi, and elsewhere.

15. Sanofi-Aventis U.S., Inc. (“Aventis U.S.”) is a Delaware corporation with its

principle place of business in Bridgewater, New Jersey. Aventis U.S. is a wholly owned subsidiary of Aventis. Aventis U.S. is the successor to Aventis Pharmaceuticals, Inc., which was itself the successor to RP Inc., a New York corporation which also had its principal place of business in Bridgewater, New Jersey. During the applicable period, RP Inc. was engaged in the business of the distribution and sale of vitamins A, E and B12, and vitamin premixes throughout the United States, including in the State of Mississippi, and elsewhere until at least 1998. RP Inc. was wholly-controlled and dominated by RP S.A., both with respect to the conduct of its business in the United States generally and specifically with respect to its challenged horizontal conduct within the United States. Aventis, Aventis U.S., RP S.A., RP Inc., and RP Animal Nutrition are hereinafter referred to as "Aventis."

16. Eisai Co., Ltd. ("Eisai Ltd.") is a Japanese corporation with operations in the United States. During the applicable period, Eisai Ltd., through its affiliates, was engaged in the business of the distribution and sale of vitamins, including vitamin E, throughout the United States, including in the State of Mississippi, and elsewhere. Eisai Ltd., directly and through affiliates that it dominates and controls, and through actions in this country and outside the United States, set prices and allocated markets for vitamins, including vitamin E, pursuant to illegal horizontal agreements, and these horizontal practices were designed to have and in fact did have a substantial and adverse impact in the United States, including in the State of Mississippi. As a result of its illegal activities, Eisai Ltd. has pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, and has agreed to pay a \$40 million criminal fine for conspiring to fix the price and allocate the sales of vitamin E sold in the United States.

17. Eisai, Inc. ("Eisai Inc.") is a Delaware corporation with operations in the United States and its principal place of business in Woodcliff Lake, New Jersey. During the relevant

period, Eisai Inc. was engaged in the business of the distribution and sale of vitamins, including vitamin E, throughout the United States and elsewhere. Eisai Inc. is a wholly-owned affiliate of defendant Eisai Ltd. Eisai Inc. is wholly-controlled and dominated by Eisai Ltd, both with respect to the conduct of its business within the United States generally and specifically with respect to its challenged horizontal conduct within the United States. Eisai Inc. is the successor to Eisai Corporation of North America. Defendants Eisai Ltd. and Eisai Inc. are hereinafter referred to as "Eisai."

18. Takeda Pharmaceutical Co., Ltd. ("Takeda Ltd.") is a Japanese corporation with operations in the United States. During the applicable period, Takeda Ltd., through its affiliates, was engaged in the business of the distribution and sale of vitamins, including vitamins C, B1, B2, B6, and folic acid, throughout the world and elsewhere during the period of this complaint. Takeda Ltd., directly and through affiliates that it dominates and controls, and through actions in this country and outside the United States, set prices and allocated markets for vitamins, including vitamins C, B1, B2, B6, and folic acid, pursuant to illegal horizontal agreements, and these horizontal practices were designed to have and did have a substantial and adverse impact within the United States, including in the State of Mississippi. As a result of its illegal activities, Takeda Ltd. has pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, and has agreed to pay a \$72 million criminal fine for conspiring to fix the price and allocate the sales of vitamin B2 and vitamin C sold in the United States.

19. Daiichi Sankyo Co., Ltd. ("Daiichi Sankyo"), successor through merger to Daiichi Pharmaceutical Company, Ltd. ("Daiichi Ltd."), is a Japanese corporation with operations in the United States. During the applicable period, Daiichi Ltd., through its affiliates, was engaged in the business of the distribution and sale of vitamins, including vitamin B5 (calpan) and vitamin

B6, throughout the United States, including in the State of Mississippi, and elsewhere. Daiichi Ltd., directly and through affiliates that it dominates and controls, and through actions in this country and outside the United States, set prices and allocated markets for vitamins, including vitamin B5 (calpan) and vitamin B6, pursuant to illegal horizontal agreements, and these horizontal practices were designed to have and in fact did have a substantial and adverse impact within the United States, including in the State of Mississippi. As a result of its illegal activities, Daiichi Ltd. has pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, and has agreed to pay \$25 million for conspiring to fix the price and allocate the sales of vitamin B5 sold in the United States.

20. The acts charged in this Complaint as having been done by defendants were authorized, ordered or done by their officers, agents, employees, or representatives, while actively engaged in the management of defendants' business or affairs.

IV. PARENS PATRIAE ALLEGATIONS

21. The State of Mississippi, acting through its Attorney General, brings this action by virtue of its duty to protect its quasi-sovereign interests, specifically the general welfare and economic condition of the State and its citizens, acting herein as *parens patriae*, trustee, guardian and representative of its citizens, to recover damages for, and secure injunctive relief against, the violations of the laws herein alleged.

22. The Attorney General is a constitutional officer possessed of all the power and authority inherited from the common law as well as that specifically conferred upon him by statute. This includes the right to institute, conduct and maintain all suits necessary for the enforcement of the laws of the State, preservation of order, and the protection of public rights. The Attorney General is authorized to bring this action on behalf of the State of Mississippi as

parens patriae.

23. Mississippi has a sovereign interest in protecting its consumers and its economy and ensuring that participants in its economy do not engage in anticompetitive behavior. This interest is evidenced by the Legislature's decision to pass Acts prohibiting anticompetitive and unfair competition.

24. Mississippi has a sovereign interest in enforcing Acts violations of which the Attorney General is granted authority to prosecute.

V. TRADE AND COMMERCE

25. Defendants are manufacturers of raw vitamins (of various kinds and in various forms including synthetic and natural and dry and liquid form) and vitamin premixes for bulk sales to customers. During the relevant period, they sold vitamins to food and pharmaceutical manufacturers for human consumption. The vitamins manufactured by defendants and their co-conspirators were commonly used as an ingredient in the production of vitamins packaged for consumer use under major brand names. Defendants also sold vitamins and vitamin premixes to manufacturers and users of animal feed and nutrition products. The vitamin premixes and other bulk vitamin products manufactured by defendants were commonly used as an ingredient in animal nutrition products and animal feed premixes.

26. The manufacture of vitamins and vitamin premixes is a multi-billion dollar a year industry worldwide. The North American market for animal nutrition alone was an over \$500 million per year industry in 2000. The worldwide conspiracy involving vitamins affected billions of dollars of commerce in products found in nearly every American household.

27. During the period described in this Complaint, the world markets for vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin and vitamin

premises were dominated by defendants.

28. During the period described in this Complaint, the conduct of defendants took place in and affected the commerce of the State of Mississippi.

29. During the period described in the Complaint, defendants entered and performed illegal agreements and contracts to fix prices that included prices in the State of Mississippi. Defendants also entered and performed illegal agreements and contracts to allocate markets and sales volumes that included the State of Mississippi.

30. The conduct of defendants has directly, substantially and foreseeably restrained such trade and commerce in Mississippi, increased the price of vitamins in Mississippi, harmed consumers in Mississippi, and hindered competition in the production, importation, and sale of vitamins in Mississippi.

VI. FACTUAL BACKGROUND

A. Violation of Antitrust Laws

31. Beginning no later than 1990, defendants entered into and engaged in a combination and conspiracy to suppress competition by fixing the price and allocating the markets and sales volumes of vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin and vitamin premixes offered for sale to customers in the United States, Mississippi and elsewhere. The combination and conspiracy engaged in by the defendants was an unreasonable restraint of trade and commerce in violation of the Mississippi Antitrust Act, Miss. Code Ann. § 75-21-1.

32. The combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the conspirators, the substantial terms of which were:

- (a) to agree to fix and maintain prices and/or to coordinate price increases for

the sale of vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin, and vitamin premixes in Mississippi and elsewhere;

(b) to agree to allocate the volumes of sales of, and markets for vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin, and vitamin premixes among the corporate conspirators in Mississippi and elsewhere; and

(c) to control the markets for vitamin premixes in Mississippi and elsewhere.

33. As a result of these illegal acts, certain defendants enumerated above have pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1 and paid substantial fines in connection with such guilty pleas.

1. Horizontal Agreements to Fix Prices and Allocate Markets

34. For purposes of forming and carrying out the charged combination and conspiracy, defendants, including their executives from both United States and foreign affiliates, participated in covert meetings and conversations beginning in or before the 1990s and continuing throughout the 1990s, in the United States, Canada, Mexico, Europe and elsewhere, in which the prices, volume of sales, and markets for vitamins and vitamin premixes were discussed and agreed. Executives and co-conspirators participating in these meetings and discussions included Roland Bronnimann, Andreas Hauri, Wilhelm Tell, Edmund McDonald, Kuno Sommers, and Oscar Mendoza of Roche; Lloyd Curtis, Werner Schaefer, Peter Haag, Dr. Reinhard Steinmetz, Dietz Kaminski, Dr. Dieter Suter, and Hugo Strotmann of BASF; and others. Further, for purpose of carrying out the charged combination and conspiracy, defendants issued price announcements in publications and coordinated price quotations to customers in accordance with the agreements reached.

35. At the above-described meetings and during the period of the conspiracy,

defendants agreed to and did eliminate, suppress, and limit competition, including by:

- (a) discussing the prices and volumes of vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, astaxanthin, beta carotene, canthaxanthin and vitamin premixes;
- (b) agreeing to increase and maintain prices of vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin and vitamin premixes;
- (c) agreeing to allocate markets for vitamin premixes and vitamin ingredients for such premixes; and
- (d) discussing and agreeing on methods to conceal their agreements and concerted conduct.

36. For purposes of forming and carrying out the charged combination and conspiracy, defendants, including their executives from both United States and foreign affiliates, have participated in meetings and conversations in the United States and elsewhere in which it was agreed to allocate among the corporate conspirators the volumes of sales of, and markets for, vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin and vitamin premixes to be sold by each corporate conspirator in the United States and elsewhere. The conspiracy divided and allocated such markets by region and by vitamin and was implemented by defendants' executives, including United States marketing managers acting under instructions from foreign executives.

37. Further, for purposes of carrying out the charged international combination and conspiracy,

- (a) Defendants held annual meetings in Europe to fix prices and allocate markets in the United States. The meetings generally took place in August or September over a few days at a hotel in Europe or at the home of an executive;

(b) Defendants communicated in secret following such meetings on at least a quarterly basis to fix prices and allocate markets.

38. Defendants issued price announcements in accordance with the agreements, and participated in meetings and conversations to monitor and enforce adherence to the agreed-upon prices and sales volumes.

39. Prices for vitamins A and E fell dramatically during the late 1980s as a result of competition and because of aggressive pricing by defendant Eisai in 1989. Roche, BASF and Rhone-Poulenc held meetings during the summer and fall of 1989, including June 7 1989 and September 1989 to set up a cartel to include vitamins A and E. The companies agree to an allocation of world and regional market shares. The underlying objective of the meeting was to stabilize the world market share of each producer with market shares frozen at 1988 levels and increases in shares with market expansion based on agreed quotas. Specific pricing levels were also discussed. The Chairman of the Fine Chemicals Division and heads of Vitamins Marketing or the equivalent approved the agreements at the meeting.

40. During the fall of 1989, the three producers held a followup meeting in which they agreed to market share quotas broken down country by country, including the United States and therefore Mississippi. The parties to this agreement estimated 1990 market shares and agreed to sales allocations on a tonnage basis for each national market, including the United States. Sales in Mississippi counted towards the sales allocations for the United States.

41. After a meeting with Roche, in October 1990, Eisai executives confirmed that their company was prepared to join the cartel, called the "Club." Eisai was thereafter included in the scheme for allocation of sales volumes and price increases for vitamin E Roche, BASF and

Rhone-Poulenc also met with Eisai in Japan in January 1991 and after to agree on worldwide volume allocations and quotas for vitamin E.

42. The cartel members also referred to themselves as Vitamins, Inc.

As the cartel developed, a structure of regular meetings evolved. There were four levels.

a. Top level meetings took place annually (usually in August), and included the most senior corporate officers with responsibility for the vitamins business, to set quotas and agree on pricing levels.

b. The second level meetings took place two to three times a year and included the heads of vitamins marketing (who might also attend the top level meetings) who made decisions on the operation of the agreements and finalized budgets.

c. The third level consisted of managers who met quarterly to monitor the implementation of quotas.

d. The fourth level consisted of meetings of regional heads of marketing held about four times a year which included discussions pricing for individual customers, including customers in the United States and Mississippi. The regional heads of market exchanged information each month and had weekly telephone contact to monitor the agreements on pricing and sales volumes and to discuss individual customers.

43. The cartel prepared an annual budget in which prices and price increases were decided, including prices for the United States, including Mississippi. Budgets were agreed upon at top level meetings and finalized in the second half of each year.

44. Once the cartel structure was in place for key vitamins, Defendants went about taking control of the rest of the vitamins industry. As set forth in the criminal information, to which Roche and BASF pleaded guilty, the conspiracy "involved a changing group of

conspirators and effected . . . a changing group of vitamins at various points in time . . . its cope adjusting over time to the manufacturers producing certain vitamins.”

45. Roche and BASF were the joint leaders and instigators of the collusive arrangements affecting the range of vitamin products at issue in this Complaint. A key result of the anticompetitive agreements in each of the vitamin product markets was to combine the market power that each participant held in each of the individual markets.

46. Roche and BASF and others expanded the cartel and the four level meetings during and after 1991 vitamins A and E, to include vitamin H (biotin) astaxanthin, beta carotene, and canthaxanthin.

47. Roche and BASF and others expanded the cartel and the four level meetings during and after 1991 vitamins A and E, to include vitamin premixes.

48. The modus operandi for different vitamins products was essential same if not identical -- (budgets, market share agreements, compensation arrangements, target and minimum prices, meeting structures. etc. The effective starting point for the cartel arrangements was the same for the other vitamins named in this Complaint as vitamins A and E. The price increases for the great majority of different vitamins were usually announced and made on the same occasion.

49. Efforts to expand the cartel required the participants of other companies. Eisai did not attend multilateral meetings and instead participated in the cartel through separate communications with Roche. Following multilateral meetings of European manufacturers, Roche would meet one to two weeks later with Eisai. Eisai and Roche exchanged sales information on a worldwide basis, including the United States and Mississippi. Through these meetings, Eisai acted to respect the position and status of the other cartel members. One Eisai executive wrote in 1994: “We have never deviated from the fundamental agreements and understanding.”

50. In January 1991, Roche, BASF and Takeda initiated cartel meetings for vitamins including vitamins E, B1 (thiamin), B6 and C. The purpose of the agreement to increase prices by stabilizing market shares and allocating sales volumes. Roche also put forward a plan for sales quotas and minimum prices for folic acid, to which Takeda agreed, and asked Takeda to coordinate with other Japanese producers of folic acid.

51. After the first meeting, Roche and Takeda executives met regularly at both the top level and the operational level to monitor agreed quotas and to fix prices for vitamins B1, B2, B6, C, and folic acid.

52. Roche was delegated by BASF to speak on its behalf at the Takeda meetings. BASF was then given quotas discussing during the meetings. According to BASF records, "Pursuant to this arrangement with Takeda, Hoffmann La Roche instructed BASF as to the prices and volumes of vitamin B1 that BASF could resell on a region by region basis." Takeda agreed to target prices and lowest prices for a range of vitamins on a U.S. dollar basis for the United States and elsewhere. On occasion, Takeda and BASF also had bilateral meetings which included discussions on vitamin B1.

53. In July 1991, representatives of Roche and BASF met to agree on a cartel framework for vitamin B2. The companies agreed on global market shares and quotas. Roche and BASF executives thereafter separately traveled to meet with Takeda to convince Takeda to agree to the market allocations and "the new price policy to increase the price continuously."

54. Meetings concerning vitamin B2 were held on a quarterly basis to implement the cartel consistent with the above described cartel conduct. Meetings were held usually first between Roche and Takeda and then between Roche and BASF. A Takeda minute of a meeting with Roche in May 1993 headed "Destroy after reading" states "Prices are rising smoothly." A

Takeda minute of November 1992 meeting with Roche similarly states: "With regards to price, we will support R's policy fully and work towards obtaining the lowest price of US \$69.00 CIF."

55. Takeda regularly agreed with Roche and BASF on price increases for "list" and "lowest" prices by region, including North America, for different vitamins

56. A representative of Roche visited Daiichi in December 1990 to insist that Daiichi restrict its output of vitamin B5 (calpan). Meetings were thereafter held between Roche, BASF and Daiichi in the first quarter of 1991 and again later in mid 1991 in which the parties exchanged sales information by region, including North America, for vitamin B5 and vitamin B6. The parties agreed on an allocation of the world market for vitamins B5 and B6 and to quotas on a worldwide and regional basis, including North America.

57. Meetings were also held between Roche, Takeda and Daiichi for the purpose of reaching the agreements on vitamin B6. Daiichi and Takeda also were in regular contact concerning the vitamins they produced.

58. The agreements with Daiichi were implemented by global meetings held on a quarterly basis. Top level and operational meetings, including Daiichi, took place regularly. To enforce the quotas, sales information was exchanged on a quarterly and later a monthly basis. Daiichi also agreed to concerted price increases, including target prices.

59. The cartel was concerned with worldwide prices, in part, to ensure that price differentials between the United States and other regions did not undercut the cartel. For example, when the dollar became strong in relation to European currencies, the cartel raised prices in Europe to deter dealers in Europe from selling to the United States.

60. The cartel also was concerned with quotas both worldwide and for each country, particularly the United States. A 1991 Takeda report of a meeting with Roche concerning sales

quotas notes that Roche "it is not enough to exchange the figures of key clients, but is necessary to fix the figures country by country to attain our policy." The Takeda report also included a list of minimum prices in each national currency.

61. The cartel participants normally agreed that one producer should first announce price increases in a trade journal or in direct communication with major customers. These price increases included prices in Mississippi and were made within Mississippi. Once the price increase was announced by one cartel member, the others would generally follow suit.

62. After the filing of a class action and the subsequent announcement in late 1997 of a U.S. grand jury investigation, senior executives of the Club decided to continue the cartel on a more discrete basis. It was decided there would be no more group meetings and one-on-one contacts only as necessary. Senior executives exchanged monthly sales data from their private homes to continue to monitor quota allocations.

63. Following the 1995 announcement of a criminal investigation concerning citric acid Roche, BASF, Rhone_Poulenc and Takdea all agreed that any contacts between them at the level of their U.S. subsidiaries would be suspended. According to a meeting note, "This is because R USA has been requested to submit documents in connection with citric acid."2.

2. Illegal Exchanges of Information to Facilitate the Conspiracy

64. For purposes of forming and carrying out the charged combination and conspiracy, defendants exchanged information on the volumes of sales of vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin and vitamin premixes in Mississippi and elsewhere, for the purpose of monitoring and enforcing adherence to the agreed-upon prices, sales volumes and market allocations.

3. Additional Facilitating Practices and Agreements

65. For purposes of carrying out the charged combination and conspiracy, defendants rigged bids for contracts to supply vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin and vitamin premixes.

B. The Impermissible Effect on Mississippi Markets

66. Due to defendants' price fixing and market allocation activity, price increases took place in vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin, and vitamin premixes despite fluctuations in the costs of production. As a result of defendants' conduct, prices were maintained at all-time high levels from the beginning of the 1990s until the conspiracy was discovered.

67. For many years, prices of vitamins and vitamin premixes did not follow the laws of supply and demand existing in a competitive market. Price reductions, for example, did not follow increases in supply.

68. Further, due to defendants' price fixing, market allocation, and other anti-competitive conduct, prices increased even as new supply and production came on the market.

69. The foregoing conduct continued until at least 1998 and the effect of the foregoing conduct is continuing. Executives of defendants continued until at least 1998 to discuss price fixing and market allocation, both by telephone (wireline and cellular) and in person. The purpose of these communications was to manage the markets for vitamins A, C, E, B1, B2, B3, B5, B6, B9 B12, H, beta carotene, astaxanthin, canthaxanthin, and vitamin premixes.

70. The alleged combination and conspiracy has had the following effects, among others:

- (a) The price of vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta

carotene, astaxanthin, canthaxanthin, and vitamin premixes purchased by Mississippi purchasers was fixed, raised, maintained and stabilized at artificial and non-competitive levels;

(b) The price of substitute products for vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin and vitamin premixes products purchased by Mississippi purchasers was fixed, raised, maintained and stabilized at artificial and non competitive levels;

(c) Buyers of vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin, and vitamin premixes, including Mississippi purchasers, were deprived of free and open competition in the purchase of vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin, and vitamin premixes; and

(d) Competition in the sale of vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin, and vitamin premixes was restrained.

71. During the period covered by this Complaint, the State of Mississippi and its citizens purchased vitamins and vitamin premixes made by defendants. By reason of the alleged violations of Mississippi law, the State and its citizens paid more for vitamins and vitamin premixes and substitute products than they would have paid in the absence of the illegal combination and conspiracy and, as a result, have been injured in its business and property and suffered damages in an amount to be proved at trial.

72. During the period covered by this Complaint, millions of dollars of vitamins were purchased in Mississippi, directly or indirectly, at above market prices as a result of defendants' illegal conduct. Consequently, Mississippi purchasers have been damaged in an amount to be provided at trial as a result of defendants' illegal actions. Mississippi has a quasi-sovereign interest in protecting Mississippi consumers from such unlawful conduct and the ensuing

damages.

VII. MISSISSIPPI MONOPOLY

73. Defendants, their co-conspirators, agents, employees have sold and distributed vitamins to the State of Mississippi, its consumers, commercial vendors, farmers, and stores. These transactions were wholly intrastate. Ben Whiteside, a technical sales representative of the animal nutrition division of the BASF Corporation, is an example of one of the co-conspirator's employees that aided and assisted in creation and the maintenance of the intrastate monopoly in Mississippi in the vitamin market.

74. Defendants' vitamin monopoly in Mississippi's intrastate commerce was one of the material objects of its interstate conspiracy. The vitamin intrastate monopoly of Mississippi was material to the maintenance of the vitamin interstate monopoly and the monopoly of the commerce of Mississippi was a factor in bringing about the interstate a monopoly. These wholly intrastate transactions were critical to the creation and the maintenance of the Defendants' illegal monopoly.

75. Defendants have sold illegally overpriced vitamins to Mississippi farmers, like Sanderson Farms, which in turn sold the illegally overpriced vitamins to grocery stores in Mississippi, restaurants in Mississippi and/or consumers in Mississippi.

76. One of the Defendants' co-conspirators, BASF Corporation, retained an agent so it could conduct wholly intrastate activities that monopolized the market in Mississippi.

77. Defendants and its agents, employees, vendors, manufacturers, partners and co-conspirators accomplished its illegal monopoly in the vitamin market in Mississippi in part by transactions which are wholly intrastate, i.e., contracting with Mississippi residents through their contractual agreements; selling its vitamins directly in Mississippi through its agents, employees,

partners, manufacturers, and co-conspirators; advertising through its agents, employees, partners, and co-conspirators in Mississippi; and, distributing its products in the state of Mississippi through its agents, employees, partners, manufacturers, and co-conspirators.

78. Each and every sale of the Defendants' vitamin products in Mississippi restrained trade, increased the price, limited the production, hindered competition in the production, importation, and transportation of vitamin products in Mississippi.

VIII. DISCLAIMER OF FEDERAL CLAIMS

79. The Plaintiff, hereby disclaim any relief under any federal statute, law, rule or regulation, and no claims are made pursuant to the same.

IX. CLAIMS FOR RELIEF

COUNT ONE RESTITUTION / UNJUST ENRICHMENT

80. The State realleges and incorporates herein the foregoing allegations of this Amended Complaint.

81. By common law and the Mississippi Code, the Defendants should refund any and all illegal overcharges for vitamins purchased directly and indirectly by the State of Mississippi and its citizens.

COUNT TWO MISSISSIPPI ANTITRUST ACT

82. The State realleges and incorporates herein the foregoing allegations of this Amended Complaint.

83. The Defendants' actions complained of herein violates the provisions of Mississippi law governing "Trusts and Combines in Restraint or Hindrance of Trade," Miss. Code Ann. § 75-21-1 et seq.

84. The Plaintiff seeks compensatory damages, punitive damages, statutory damages, and

civil penalties for the State of Mississippi, its corporations, and its citizens.

COUNT THREE
MISSISSIPPI CONSUMER PROTECTION ACT

85. The State realleges and incorporates herein the foregoing allegations of this Amended Complaint.

86. The Defendants' actions complained of herein violate the provisions of Mississippi law governing "Regulation of Business for Consumer Protection," Miss. Code Ann. § 75-24-1 et seq.

87. The Plaintiff seeks compensatory damages, punitive damages, civil penalties, and injunctive relief for the State of Mississippi and its citizens.

COUNT FOUR
CIVIL CONSPIRACY

88. The State realleges and incorporates herein the foregoing allegations of this Amended Complaint.

89. The Defendants' actions complained of herein constitute a combination of entities for the purpose of accomplishing an unlawful purpose or a lawful purpose unlawfully.

90. The Plaintiff seeks compensatory and punitive damages for the State of Mississippi and its citizens for the Defendants' civil conspiracy.

X. PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for the following relief:

a. That plaintiff recover damages, as provided by law, determined to have been sustained as a result of defendants' violations of the Mississippi Antitrust Act, and that joint and several judgments in favor of plaintiff, be entered against defendants, and each of them;

b. That plaintiff recover a penalty of up to \$2,000 for each violation of the Mississippi Antitrust Act, pursuant to Miss. Code Ann. § 75-21-7;

- c. The plaintiff recovers a penalty of \$500 for each injury sustained under the Mississippi Antitrust Act, pursuant to Miss. Code Ann. § 75-21-9;
- d. That the unlawful combination and conspiracy alleged herein be adjudged and declared an unfair and deceptive trade practice in violation of the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-5;
- e. That plaintiff obtain restitution, as provided by law, for damages determined to have been sustained as a result of defendants' violations of the Mississippi Consumer Protection Act, pursuant to Miss. Code Ann. § 75-24-11, and that joint and several judgments in favor of plaintiff, be entered against defendants, and each of them;
- f. That plaintiff recover a penalty of \$10,000 for each violation of the Mississippi Consumer Protection Act, pursuant to Miss. Code Ann. § 75-24-19;
- g. That the defendants be permanently enjoined from engaging in such a combination or conspiracy in restraint of trade and in such unfair and deceptive trade practices in the future and be enjoined from further violations of the Mississippi Antitrust and Consumer Protection Acts;
- h. That plaintiff recover the costs of this suit, including reasonable attorneys' fees, as provided by law; and
- i. That plaintiff be granted such other, further and different relief as the nature of the case may require or as may be deemed just and proper by this court.

RESPECTFULLY SUBMITTED this the ___th day of December, 2009.

Jim Hood, Attorney General, *ex rel* State of Mississippi

Plaintiffs

By:

Brent Hazzard (MB# 99721)

Attorney for the Plaintiff

Hazzard Law, LLC

P.O. Box 24382

Jackson, MS 39225

Tel: 601.977.5253

Fax: 601.977.5236

OF COUNSEL:

A. Lee Abraham, Jr.

Preston David Rideout, Jr.

Abraham & Rideout

305 West Market

P.O. Box 8407

Greenwood, MS 38935-8407

Tel: (662) 453-3000

Precious T. Martin

Attorney at Law

P.O. Box 373

Jackson, MS 39205

Tel: (601) 944-1447

Fax: (601) 944-1448

John Gadow

Blake Tyler

Attorney at Law

502 South President Street

Jackson, MS

Tel: (601) 948-4878

Fax: (601) 948-3549

Richard Schwartz

David G. Galyon

Schwartz & Associates, P.A.
162 East Amite Street
P.O. Box 3949
Jackson, MS 39207-3949
Tel: (601) 353-1215
Fax: (601) 353-0217