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December 9, 1999

OFFICE OF
APPELLATE COURTS

DEC 13 1999

FILED

Supreme Court Administrator
Minnesota Supreme Court
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155-6102

**Re: In Re Minnesota Vitamin Antitrust Litigation
Court File No. C6-99-1909**

Dear Supreme Court Administrator:

Enclosed herein for filing with the Court in connection with the above matter, please find the original and three copies of the Response of Plaintiffs Form-A-Feed, Inc., *et al.* to Defendants' Motion to Transfer and Consolidate.

Very truly yours,

MANSFIELD, TANICK & COHEN, P.A.

V. John Ella (ccm)

V. John Ella

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STATE OF MINNESOTA
IN SUPREME COURT

DEC 13 1999

C6-99-1909

FILED

CASE TITLE:

In Re Minnesota Vitamin
Antitrust Litigation

**RESPONSE OF PLAINTIFFS
FORM-A-FEED, INC., ET AL. TO
DEFENDANTS' MOTION TO
TRANSFER AND CONSOLIDATE**

TO: The Honorable Kathleen Blatz
Chief Justice of the Minnesota Supreme Court

Plaintiffs Form-A-Feed, Inc.; Sparboe Agricultural Corp.; Alice and Walter Field; Bombay Elevator, Inc.; Delbert and Donna Mandelko; Nancy Kallio; Mary Denison; Cayol Natural Foods, Inc.; and Heart Foods Company, Inc. submit this Response to Defendants' Motion to Transfer and Consolidate Multi-District Vitamin Antitrust Class Litigation, dated November 8, 1999.

Plaintiffs are nine businesses and persons who have filed an action in McCleod County, First Judicial District of Minnesota, individually and on behalf of others similar situated, alleging violations of Minnesota's Antitrust Law by the Defendants in the above-captioned litigation.

Plaintiffs' action is entitled Form-A-Feed, Inc., et al v. Akzo, Nobel, Inc, et al., McCleod County Case No. 43-C0-99-000856, and has been assigned to the Honorable Thomas F. McCarthy. A copy of Plaintiffs' Complaint is attached hereto as Exhibit A.

Since Defendants were not aware of Plaintiffs' action until very recently, it was not listed in Defendants' Motion, but Plaintiffs assume that any action taken with regard to this litigation will affect their case,¹ and they therefore wish to be involved in the decision-making process. For

¹ See Defendant's Memorandum at 3 regarding "subsequently filed actions."

this reason, Supreme Court Commissioner Richard Slowes suggested that Plaintiffs also respond and participate in the hearing on Defendant's Motion.

Plaintiffs are a livestock feed company, a poultry feed company, a sheep farm, a grain elevator, a dairy farm, a drug store, a health food store, and two individuals. Plaintiffs seek to represent two distinct classes: a class of vitamin purchasers for agricultural use, and a class of vitamin purchasers for human use. See Form-A-Feed Complaint at 12.

It should be noted that while Plaintiffs' counsel in the five pending actions may be able to agree on ways to harmonize their cases, the Form-A-Feed action differs from one or more of the other actions in that:

- The Form-A-Feed action names 22 defendants who were not made defendants in any of the other actions.
- Unlike the other four actions, it is brought on behalf of two distinct classes – one for indirect purchasers for agricultural use and one for indirect purchasers for human use.
- The Form-A-Feed classes include all indirect purchasers anywhere in the chain of purchase one or more steps removed from the direct purchaser, whether the purchase was for resale or as an end-user. Compare DeNardi Complaint, ¶ 34 (excludes purchase for resale).
- Unlike DeNardi, the Form-A-Feed classes do not exclude members who have incurred damages of \$75,000 or more. Compare DeNardi Complaint, ¶ 11, *supra*.
- The Form-A-Feed Complaint includes a claim for deceptive trade practices under Minn. Stat. §§ 325D.44 and 325F.69 which is not included in any of the other four

actions, as well as a claim in common with those actions for violation of the Minnesota Antitrust Law, Minn. Stat. §§ 325D.49 *et seq.*

The Form-A-Feed Plaintiffs agree that these cases will likely be more efficiently litigated before a single court, and therefore do not oppose consolidation. Plaintiffs furthermore endorse the suggestion that the Chief Justice assign the matter to the Chief Judge of one of the districts in which the cases have been filed. The Form-A-Feed action is venued in the First Judicial District (McLeod County), as is the Thomas Murr action (Dakota County). The Customer Nutrition action (Kandiyohi County) and the Big Valley Action (Chippewa County) have been filed in the Eighth Judicial District. Only one case, the DeNardi action, has been filed in the Fourth Judicial District, Hennepin County. While the DeNardi action was the first case filed, it was almost immediately stayed by agreement of the parties as part of the global Alternative Dispute Resolution (“ADR”) proceedings seeking a packaged resolution in all 18 states and the District of Columbia which grant indirect purchasers standing under their antitrust statutes. Plaintiffs explicitly do not and have not waived their statutory right to strike any particular judge who is assigned to the consolidated action.

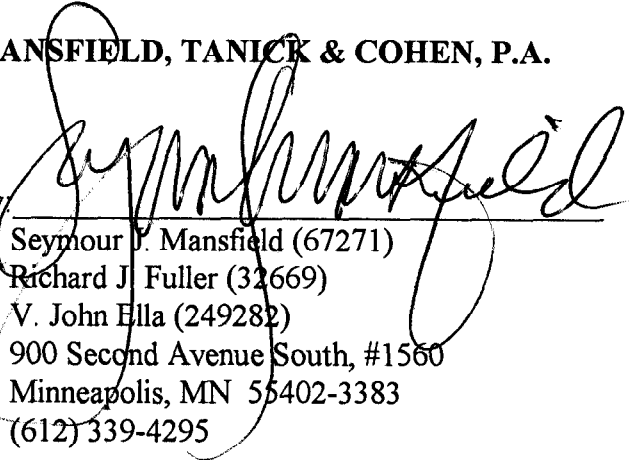
Regardless of whether or where these actions are ultimately consolidated, Plaintiffs feel strongly that these class actions on behalf of Minnesota indirect purchasers should be allowed to proceed forward expeditiously to vindicate the rights or determine anti-trust damages for Minnesota class members, rather than being held hostage to a global attempt to simultaneously resolve all indirect purchaser claims in 19 jurisdictions.

Dated: December 9, 1999

Respectfully Submitted,

MANSFIELD, TANICK & COHEN, P.A.

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