

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

IN RE: VITAMIN C ANTITRUST  
LITIGATION

MASTER FILE 06-MD-1738 (BMC) (JO)

**This Document Relates To:**

**ANIMAL SCIENCE PRODUCTS, INC.,  
et al.**

**CV-05-453**

**Plaintiffs,**

**v.**

**HEBEI WELCOME  
PHARMACEUTICAL CO. LTD., et al.**

**Defendants.**

**DIRECT PURCHASER PLAINTIFFS' NOTICE OF MOTION TO AUTHORIZE  
DISTRIBUTION OF THE WEISHENG DIRECT PURCHASER SETTLEMENT FUND  
AND TO PAY COSTS OF CLAIMS ADMINISTRATION**

PLEASE TAKE NOTICE THAT, upon the accompanying Memorandum in Support of Plaintiffs' Motion to Authorize Second Distribution of the Weisheng Direct Purchaser Settlement Fund and to Pay Costs of Claims Administration, and the Declaration of April Hyduk dated November 13, 2014, and all other papers and proceedings herein, Plaintiffs move this Court for an Order authorizing distribution of the Weisheng Direct Purchaser Settlement Fund to class members, and authorizing payment of claims administration costs to Rust Consulting, Inc..

Dated: November 13, 2014

Respectfully submitted,

/s/ Michael D. Hausfeld

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/s/ William A. Isaacson

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*Co-Lead Counsel for the Certified Direct Purchaser Damages Class*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

IN RE: VITAMIN C ANTITRUST  
LITIGATION

MASTER FILE 06-MD-1738 (BMC) (JO)

**This Document Relates To:**

**ANIMAL SCIENCE PRODUCTS, INC.,  
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**CV-05-453**

**Plaintiffs,**

**v.**

**HEBEI WELCOME  
PHARMACEUTICAL CO. LTD., et al.**

**Defendants.**

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO AUTHORIZE SECOND  
DISTRIBUTION OF THE WEISHENG DIRECT PURCHASER SETTLEMENT FUND AND  
TO PAY COSTS OF CLAIMS ADMINISTRATION**

Plaintiffs respectfully submit this memorandum in support of their motion to authorize Distribution of the Direct Purchaser Settlement Fund from their settlement with Weisheng Pharmaceutical Company, Ltd. ("Weisheng") and China Pharmaceutical Group, Ltd. ("CPG").

**I. FACTUAL BACKGROUND**

The Court has granted final approval of the settlement with Weisheng and CPG (Minute Entry and Order, Oct. 2, 2013; Final Judgment, ECF No. 796, Oct. 16, 2013). Rust Consulting, Inc. ("Rust"), serving as the Court-approved Claims Administrator, has engaged in a thorough claims administration process, and the Settlement Fund from the Weisheng and CPG settlement, minus the deductions set forth in more detail below, are ready to be distributed to class members. *See* Declaration of April Hyduk Re: Final Weisheng and CPG Distribution, dated November 13, 2014 ("Hyduk Declaration").

### **A. The Settlement Fund**

In accordance with the Court's April 22, 2014 order, Weisheng's first payment under its settlement (\$20,000,000, minus approved fees and expenses) has been fully distributed to the Direct Purchaser class. Weisheng's second and final payment under its settlement agreement of \$2,500,000 was paid on October 10, 2014. In accordance with the Court's previous fee orders and the settlement agreement with Weisheng, Class Counsel are entitled to \$575,000 in fees from that payment, taken proportionately with settlement payments. (Oct. 2, 2013 Minute Order; *see also* Final Judgment, ECF No. 796, Oct. 16, 2013).

The Court also approved withholding \$12,587 in anticipated fees to Rust for distribution of Weisheng's first payment to the Settlement Fund. Order, ECF No. 872 (Apr. 22, 2014). Rust has now completed distribution of the first Weisheng payment and has incurred those fees; Plaintiffs request authorization to pay \$12,587 from the earmarked funds to Rust at this time. Hyduk Decl. at ¶ 8. In addition, Rust will charge an additional \$21,198.93 for distribution of the second and last payment from Weisheng, filing necessary tax returns, and responding to claimant inquiries. *Id.* Plaintiffs also owe the escrow agent \$1,250 total in fees. *Id.*, Exhibit A.

Following these adjustments and including interest earned, the total settlement funds available for distribution are \$1,602,646.99 (the "Net Settlement Fund"). *Id.* at ¶ 5.

### **II. PROPOSED DISTRIBUTION**

The Net Settlement Fund will be allocated in accordance with the Plan of Allocation approved by the Court. (ECF No. 560). Under the Plan of Allocation, the Net Settlement Fund shall be distributed to Direct Purchaser Class members that submitted valid claim forms, after deducting fees and expenses approved by the Court. Class members' direct purchases for each year are

multiplied by the percentage overcharge for that year, as calculated by Plaintiffs' expert economist, Dr. Bernheim, to determine each class members' total claimed damages.<sup>1</sup>

Rust has completed the processing of claims in connection with the Weisheng/CPG settlement. The Net Settlement Fund is now available for distribution to class members who have submitted valid claims.<sup>2</sup> Upon court approval, the distribution will be made pursuant to the chart attached as Exhibit B.<sup>3</sup> Exhibit B identifies each eligible claimant (by number rather than by name, for confidentiality) and provides the claimant's recognized loss amount (total purchases weighted by year as required under the Plan of Allocation) and recommended award amount under the Plan of Allocation.

Purchases made by eligible claimants account for over 90% of the vitamin C purchased from Chinese vitamin C manufacturers within the class definition. This high claims rate by percentage of purchases, combined with the substantial payments to many class members, is an excellent result for the Direct Purchaser Damages Class.

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<sup>1</sup> Dr. Bernheim calculated damages by year for sales without arbitration clauses using the SARS-adjusted but-for price, as evidenced in Figure 78 of his Expert Report, dated November 14, 2008. He revised his calculations in his Rebuttal Expert Report, dated August 31, 2012 (Figure 53), in response to amended sales numbers from Weisheng. After Mr. Innes identified additional contracts with arbitration clauses in his Expert Report, dated August 30, 2012, Dr. Bernheim updated his calculations, as shown in the chart attached to the Declaration of Charlene Young (ECF No. 868-2) as Exhibit E. Rust weighted claimants' purchases by year, as shown in the third column ("Sales using the SARS-adjusted but-for price, Net of Arbitration Clauses"). Dr. Bernheim testified at trial regarding his approach to calculating damages, and the jury found that Plaintiffs had proven the damages estimated by Dr. Bernheim.

<sup>2</sup> The amount due to the former Great Earth Chemical, LLC will be paid to North American World Trade Group and QualChem LLC in the proportion stipulated to at ECF No. 906, and ordered by Magistrate Judge Orenstein on June 26, 2014. For ease of reference, this claim is shown as Claimant 29 on Exhibit B to the Hyduk Declaration.

<sup>3</sup> As indicated in prior distribution motions, when Plaintiffs voluntarily dismissed Legend Ingredients Group, Inc. ("Legend") from the case in 2008, Legend assigned its share of any recovery to its customers. In order to effect that assignment, Class Counsel submitted a claim on Legend's behalf, and intends to distribute the proceeds of Legend's claim to Legend's customers, pro rata, based on sales data provided by Legend in discovery. For ease of reference, Legend's claim (as submitted by Class Counsel), is shown as Claimant #14 on Exhibit B to the Hyduk Declaration.

### III. CONCLUSION

Plaintiffs respectfully request that the Court authorize: (1) payment of the \$12,587, which was previously withheld from distribution, to Rust for work related to the first distribution of the Weisheng Direct Purchaser Settlement Fund, (2) payment of \$21,198.93 to Rust in claims administration costs from the second distribution of the Weisheng Direct Purchaser Settlement Fund, (3) distribution of the Weisheng/CPG Net Settlement Fund to Direct Purchaser Class members who have submitted valid claims as set forth above and in the Hyduk Declaration, Exhibit B.

Dated: November 13, 2014

Respectfully submitted,

/s/ Michael D. Hausfeld

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Brent W. Landau  
Melinda R. Coolidge  
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*Co-Lead Counsel for the Certified Direct Purchaser Damages Class and Injunction Class*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

IN RE VITAMIN C ANTITRUST  
LITIGATION

**1:06-MD-1738 (BMC) (JO)**

THIS DOCUMENT RELATES TO:

ANIMAL SCIENCE PRODUCTS, INC.,  
et al.,

Plaintiffs

**CV-05-453**

v.

HEBEI WELCOME PHARMACEUTICAL  
CO. LTD., et al.,

Defendants.

**DECLARATION OF APRIL HYDUK**  
**RE: FINALWEISHENG AND CPG DISTRIBUTION**

I, April Hyduk, declare and state that:

1) I submit this declaration to provide the Court and the parties to the above-captioned litigation with information regarding the distribution of the Weisheng and CPG Settlement Funds. I am over 21 years of age and am not a party to this action. I am a Senior Project Administrator for Rust and have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2) Pursuant to ¶ 4 of the Order on Plaintiffs' Motion for Preliminary Approval of Settlement with Defendant Weisheng, dated March 28, 2013 (ECF No. 683), and pursuant to ¶ 4 to the Order on Plaintiffs' Motion for Preliminary Approval of Settlements with Defendant NEPG, dated March 28, 2013 (ECF No. 682), the Court approved Rust Consulting, Inc. ("Rust") as the Administrator of the Settlements. Rust was retained to administer the notice procedures, process Claim Forms submitted by Class Members, audit Claim Forms, calculate Class Members'

qualifying direct purchases as defined in the Plan of Allocation, determine the validity and amount of the Class Member claims and distribute the Net Settlement Fund to Class Members who submitted valid claims. The details of the administration are discussed in an earlier Affidavit filed with this Court dated April 4, 2014 (the "Distribution Affidavit") (ECF No. 868-2).

3) Throughout the claims process, Rust has received and responded to Class Member inquiries by telephone and mail. Rust maintains: (a) a toll-free telephone number (866-684-9673), (b) Post Office Box 2717, Faribault, MN 55021-9717 for the receipt of Claim Forms and written communications necessary to the administration of the Settlement, (c) a website dedicated to the Settlement, [www.vitamincantitrust.com](http://www.vitamincantitrust.com) and (d) an email address, [info@vitamincantitrust.com](mailto:info@vitamincantitrust.com).

#### **CALCULATION OF QUALIFYING PURCHASES BY CLASS MEMBERS**

4) Based on determinations by Rust after the review, audit and processing of Claim Forms, and after correspondence with Class Members, a total of 48 eligible claims submitted by Class Members were eligible for payment. Pursuant to the Settlement Agreements, Weisheng and CPG paid \$22.5 million in damages to the Class. From these funds, the initial payment made into the Settlement Fund was \$20 million. After fees and costs were deducted, the initial Net Settlement Fund available to distribute to the Class was \$11,299,784.76. Checks were issued to the 48 eligible claims for the initial distribution on May 23, 2014. All checks from the initial distribution have now been cashed.

#### **FINAL DISTRIBUTION OF APPROVED SETTLEMENT PROCEEDS**

5) The remaining \$2.5 million payment for the Class has now been paid by Weisheng and CPG into the Settlement Fund. From that amount, the total amount available for the final distribution to eligible Class Members is \$1,602,646.99. Attached hereto as Exhibit A is a chart showing the calculation of the final Net Settlement Fund.

6) Based on determinations by Rust after their review, audit and processing of claim forms,



and after correspondence with Class Members, attached as Exhibit B is a breakdown of the claims submitted by Class Members that will be paid from the Net Settlement Fund following approval by the Court. These are the same Class Members as approved by the Court for the first Weisheng distribution, based on the same allocation formula as previously approved.

7) Upon entry by the Court of a Distribution Order, Rust will mail the Class Members their portion of the final Net Settlement Fund. The checks will have a stale date of 90 days to encourage Class Members to promptly cash their distribution checks and to avoid or reduce future expenses relating to unpaid distributions. For any checks returned as undeliverable, an attempt will be made to find new addresses through a trace processing service Rust subscribes to. Payments to Class Members that are returned as undeliverable after reasonable efforts to locate the Class Members, or checks not cashed after 90 days from issue, will revert to the Settlement Fund.

**RUST FEES AND EXPENSES**

8) Annexed hereto as Exhibit C and D respectively are Rust's invoice of the fees and expenses in the amount of \$12,587.00 that were incurred for the first distribution and \$21,198.93 that will be incurred to complete the final distribution of checks, file the necessary tax returns, and respond to claimant inquiries.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 13<sup>th</sup> day of November, 2014 in Palm Beach Gardens, Florida.

  
\_\_\_\_\_  
APRIL HYDUK

# **EXHIBIT A**

Vitamin C - Weisheng 2nd Distribution

▲ Escrow Account

Settlement Fund (including interest)	\$	1,625,095.92
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▲ Deductions

Incentive Awards		Paid
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Attorneys' Fees		Paid
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Attorneys' Expenses		Paid
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Rust's Fees and Costs - 2nd Distribution	\$	21,198.93
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Escrow Fees	\$	1,250.00
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Taxes on the fund		None
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▲ Net Distributable Amount	\$	1,602,646.99
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**EXHIBIT B**

## Eligible Claims

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Page 1 of 2

Report ID :DST21W032

DISTRIBUTION NO: 2

CLM NO	RECOGNIZED LOSS AMOUNT	FRACTION OF FUND	AWARD AMOUNT
45	6,048,294.87	0.126003970213	\$201,939.89
10	5,529,193.28	0.115189540247	\$184,608.17
12	5,156,335.40	0.107421801700	\$172,159.23
29	4,500,264.39	0.093753891359	\$150,254.39
5	4,030,814.88	0.083973861888	\$134,580.46
9	3,270,953.00	0.068143679043	\$109,210.26
16	1,923,652.10	0.040075394325	\$64,226.71
42	1,886,025.10	0.039291512009	\$62,970.42
14	1,831,950.00	0.038164966853	\$61,164.97
15	1,486,462.28	0.030967430140	\$49,629.86
4	1,484,453.00	0.030925570862	\$49,562.77
18	1,140,348.50	0.023756850735	\$38,073.85
47	1,085,852.36	0.022621534063	\$36,254.33
36	1,037,696.39	0.021618301989	\$34,646.51
50	971,957.02	0.020248755398	\$32,451.61
35	923,069.36	0.019230280044	\$30,819.35
32	817,776.32	0.017036712872	\$27,303.84
24	800,505.57	0.016676911785	\$26,727.20
33	453,139.20	0.009440237205	\$15,129.37
8	444,214.60	0.009254311245	\$14,831.39
25	422,287.16	0.008797497456	\$14,099.28
21	394,920.55	0.008227369579	\$13,185.57
19	308,816.40	0.006433564055	\$10,310.73
28	246,977.13	0.005145268146	\$8,246.05
43	230,423.55	0.004800407843	\$7,693.36
17	204,203.35	0.004254163096	\$6,817.92
27	180,574.20	0.003761897627	\$6,028.99
39	153,932.44	0.003206870532	\$5,139.48
41	141,780.00	0.002953699064	\$4,733.74
1	136,578.00	0.002845325933	\$4,560.05
11	123,015.39	0.002562776430	\$4,107.23
3	119,466.86	0.002488849997	\$3,988.75
30	82,847.00	0.001725949403	\$2,766.09
13	79,577.63	0.001657838703	\$2,656.93
46	79,453.06	0.001655243539	\$2,652.77
7	63,404.20	0.001320898055	\$2,116.93
34	47,096.10	0.000981151830	\$1,572.44
38	30,216.08	0.000629490811	\$1,008.85
20	25,250.40	0.000526040929	\$843.06
22	22,315.01	0.000464888025	\$745.05
31	20,831.40	0.000433980016	\$695.52
37	19,677.90	0.000409949181	\$657.00
40	15,780.60	0.000328756831	\$526.88
6	10,675.32	0.000222398665	\$356.43
26	6,026.40	0.000125547835	\$201.21
2	5,628.80	0.000117264644	\$187.93
49	4,014.00	0.000083623558	\$134.02

# Eligible Claims

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Page 2 of 2

Report ID :DST21W032

DISTRIBUTION NO: 2

CLM NO	RECOGNIZED LOSS AMOUNT	FRACTION OF FUND	AWARD AMOUNT
23	2,101.20	0.000043774245	\$70.15
TOTAL CLAIMS: 48	\$48,000,827.75	1.000000000000	\$1,602,646.99

**EXHIBIT C**



# Invoice

625 MARQUETTE AVENUE, SUITE 880  
MINNEAPOLIS, MN 55402  
P 612.359.2000 | F 612.359.2050  
WWW.RUSTCONSULTING.COM  
FEDERAL ID #: 41-1813634

DATE: 11/04/14  
INVOICE #:   
MATTER #: 3890

TO: Melinda R. Coolidge  
Hausfeld LLP  
1700 K Street, NW  
Suite 650  
Washington, DC 20006  
[mcoolidge@hausfeldllp.com](mailto:mcoolidge@hausfeldllp.com)

**PROJECT**  
*In re Vitamin C Direct CPG*  
*Professional Fees and Expenses - Vitamin C Weisheng 1st Distribution*

Final Validation and Reporting	\$ 1,800.00
Call Center	1,866.00
Distribution	3,091.00
Fees	3,480.00
Expenses	<u>2,350.00</u>
Total Due	<u><u>\$ 12,587.00</u></u>

**PAYMENT TERMS: NET DUE UPON RECEIPT**

**WIRE INFORMATION**

ACCOUNT #: 8093434387  
ABA/ROUTING # WIRE or ACH: 111014325  
BANK: BANK OF TEXAS, DALLAS, TX 75225  
BANK CONTACT: MAYRA LANDEROS 214.987.8817  
REFERENCE: INVOICE NUMBER

**RUST**

**PAYMENT MAILING ADDRESS:**

P O BOX 142589  
DRAWER #9051  
Irving, TX 75014-2589



# **EXHIBIT D**



# Invoice

625 MARQUETTE AVENUE, SUITE 880  
MINNEAPOLIS, MN 55402  
P 612.359.2000 | F 612.359.2050  
WWW.RUSTCONSULTING.COM  
FEDERAL ID #: 41-1813634

DATE: 11/04/14  
INVOICE #:   
MATTER #: 3890

TO: Melinda R. Coolidge  
Hausfeld LLP  
1700 K Street, NW  
Suite 650  
Washington, DC 20006  
[mcoolidge@hausfeldllp.com](mailto:mcoolidge@hausfeldllp.com)

**PROJECT**  
*In re Vitamin C Direct CPG*  
*Professional Fees and Expenses - Vitamin C Weisheng 2nd Distribution*

Final Reporting	\$ 1,350.00
Hotline	1,625.00
Distribution	7,423.00
Fees	7,300.00
Expenses	<u>3,500.93</u>
Total Due	<u>\$ 21,198.93</u>

**PAYMENT TERMS: NET DUE UPON RECEIPT**

**WIRE INFORMATION**

ACCOUNT #: 8093434387  
ABA/ROUTING # WIRE or ACH: 111014325  
BANK: BANK OF TEXAS, DALLAS, TX 75225  
BANK CONTACT: MAYRA LANDEROS 214.987.8817  
REFERENCE: INVOICE NUMBER

**RUST**

**PAYMENT MAILING ADDRESS:**

P O BOX 142589  
DRAWER #9051  
Irving, TX 75014-2589

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

IN RE: VITAMIN C ANTITRUST  
LITIGATION

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**CV-05-453**

**Plaintiffs,**

**v.**

**HEBEI WELCOME  
PHARMACEUTICAL CO. LTD., et al.**

**Defendants.**

**[PROPOSED] ORDER AUTHORIZING THE SECOND DISTRIBUTION OF THE  
WEISHENG DIRECT PURCHASER SETTLEMENT FUND**

WHEREAS, the Direct Purchaser Damages Class entered into a settlement agreement with Defendant Weisheng Pharmaceutical Company, Ltd. (“Weisheng”) and China Pharmaceutical Group, Ltd (“CPG”);

WHEREAS, the Court preliminarily approved the settlement, and directed Class Counsel to issue notice of the proposed settlement to potential class members;

WHEREAS, publication and mailing notice were issued;

WHEREAS, following a fairness hearing, the Court granted final approval to the settlements, approved the plan of allocation, and awarded attorneys’ fees and expenses;

WHEREAS, Class Counsel recommended that the \$12,587 previously withheld from the first distribution of the Weisheng Direct Purchaser Settlement Fund to pay Rust Consulting for the first distribution be paid at this time;

WHEREAS, Class Counsel recommended that \$21,198.93 be paid at this time from the Weisheng Direct Purchaser Settlement Fund to Rust Consulting to complete claims administration and distribution of the second payment from Weisheng;

WHEREAS, the Net Settlement Fund to be distributed to class members is calculated after deduction of the Court-approved attorneys' fees and expenses, administrative expenses, taxes and tax expenses relating to the income earned by the settlement fund, and any other necessary adjustments under the Court's orders or the settlement agreement;

WHEREAS, Rust Consulting, as the Court-approved Claims Administrator, has evaluated and audited claims forms from potential claimants, and calculated the appropriate amount to be allocated to each qualified claimant;

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

Direct Purchaser Plaintiffs are authorized to pay claims administration costs to Rust Consulting of \$12,587 related to the first distribution from the Weisheng Direct Purchaser Settlement Fund, and \$21,198.93 related to the second distribution from the Weisheng Direct Purchaser Settlement Fund; and

The Net Settlement Fund shall be distributed to class members who have submitted valid claims, as determined by Rust Consulting, and in the amounts that Rust Consulting recommends, as set forth in Exhibit B to the Declaration of April Hyduk, dated November 13, 2014.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2014

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HON. BRIAN M. COGAN  
UNITED STATES DISTRICT JUDGE