

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIAN M. WHITAKER, M.D., *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 TOMMY G. THOMPSON, Secretary,)
 United States Department of)
 Health and Human Services, *et al.*)
)
 Defendants.)

Civil Action No. 1:01CV01539 (GK)

FILED

APR 24 2003

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER

This matter is before the Court on a Joint Notice of Dismissal Without Prejudice to Refiling. The notice is signed by all parties' counsel pursuant to Fed. R. Civ. P. 41(a)(1) and informs the Court that the parties have reached an agreement whereby the defendants have stated their intention to exercise enforcement discretion to permit plaintiffs to place on the labels and labeling of their antioxidant vitamin dietary supplements containing vitamin E and/or vitamin C any one of the following three health claims:

- (1) Consumption of antioxidant vitamins may reduce the risk of certain kinds of cancer.*
*Some scientific evidence suggests that consumption of antioxidant vitamins may reduce the risk of certain forms of cancer. However, FDA has determined that this evidence is limited and not conclusive.
- (2) Consumption of antioxidant vitamins may reduce the risk of certain kinds of cancer.*
* Some scientific evidence suggests that consumption of antioxidant vitamins may reduce the risk of certain forms of cancer. However, FDA does not endorse this claim because this evidence is limited and not conclusive.
- (3) Consumption of antioxidant vitamins may reduce the risk of certain kinds of

(N)

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cancer.*

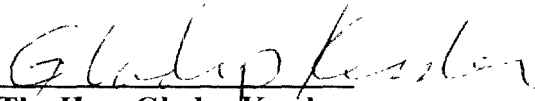
*FDA has determined that although some scientific evidence suggests that consumption of antioxidant vitamins may reduce the risk of certain forms of cancer, this evidence is limited and not conclusive.

The parties agree that the second sentence (i.e., the disclaimer) must be placed immediately adjacent to and directly beneath the antioxidant vitamin claim, with no intervening material, in the same size, typeface, and contrast as the claim itself. The parties also agree that the supplement will not recommend or suggest in its labeling, or under ordinary conditions of use, a daily intake exceeding the Tolerable Upper Intake Level established by the Institute of Medicine (IOM) of 2000 mg per day for vitamin C and 1000 mg per day for vitamin E. The parties further agree that each party will bear its own costs and fees, and that plaintiffs reserve the right to refile their complaint if the defendants conclude that it is no longer appropriate to exercise enforcement discretion with respect to the health claim. Accordingly, it is hereby

ORDERED, that plaintiffs' complaint in the above-referenced action is dismissed without prejudice to refiling.

Dated:

April 23, 2003


The Hon. Gladys Kessler
United States District Judge

Copies to:

Jonathan W. Emord
Emord & Associates, P.C.
1050 17th Street, N.W., Suite 600
Washington, D.C. 20036
(202) 466-6937
Fax: (202) 466-6938
Counsel for Plaintiffs

Drake Cutini
Attorney
Office of Consumer Litigation
United States Department of Justice
P.O. Box 386
Washington, D.C. 20044
(202) 307-0044
Fax: (202) 514-8742
Counsel for Defendants