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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America, Petitioner, v. **LSL Biotechnologies, Inc.,** Respondent.	MISC. 98-7-JMR

Opposition to Request for Oral Argument

The Antitrust Division of the Unites States Department of Justice (the "Division") has placed a single issue before the Court: the enforcement of a statutorily authorized Civil Investigative Demand ("CID") issued to LSL Biotechnologies, Inc. ("LSL"). The Division and Respondent LSL have had ample opportunity to address this issue in pleadings filed with the Court. The Division therefore opposes LSL's request for an oral argument.

LSL has not shown any compelling reason why this matter cannot be decided on the pleadings as requested in the Division's Petition. The rules of practice for the Federal District Court for the District of Arizona contain a presumption of no oral argument on all motions other than those filed pursuant to Rule 12(b) or Rule 56 of the Federal Rules of Civil Procedure. U.S. Dist. Ct. Rules D. Ariz, Rule 1.10(f). LSL's request for oral

argument contains no justification sufficient to overcome that presumption.

First, LSL states that oral argument is warranted "[i]n light of the importance of the issues raised by the Petition . . . ." *See*, Request For Oral Argument at 1. The Petition raises only one issue, LSL's failure to comply with a CID issued pursuant to the Antitrust Civil Process Act in the course of an ongoing investigation of possible antitrust violations. LSL has sought to obscure that one issue in its Opposition Memorandum and its Request for Oral Argument. For example, LSL "believes that oral argument will provide a productive forum for the Court to explore the ramifications of Hazera's role as a fiduciary in possession of LSL's trade secrets." *See*, Request For Oral Argument paragraph 4, at 2. Hazera's fiduciary duties with regard to LSL's trade secrets may or may not be relevant to the Division's antitrust investigation. However, they are certainly not relevant to the enforcement of the Division's CID. The Division sees no reason to conduct an oral argument so that LSL can seek to further distract the Court's attention from its failure to comply with the CID.

Second, LSL's other grounds for requesting oral argument are either irrelevant to the case at bar or a further illustration of the point that whether there has indeed been a violation of the antitrust laws is a factual question. The Division has not yet determined whether there has been a violation of the antitrust laws, and the Court does not have (nor need) the factual record to make that determination either. The

Division is confident, however, that the Court does have the record it needs to determine the enforceability of the CID without any oral argument.

Finally, holding an oral argument in this matter would be a waste of public and judicial resources. The two Division attorneys on this investigation are located in Washington, D.C. There is no reason for these attorneys to travel to Arizona to argue a matter that can easily be determined on the pleadings already before the Court without demanding more of the Court's time and resources. (We are surprised that LSL, which continues to inform the Court of all the resources it has expended in this matter, is requesting oral argument, particularly since three of its attorneys are located in Washington, D.C. and two more are in New York.)

The Division and LSL have had a full and fair opportunity to address the issue of LSL's failure to comply with CID No. 17420. The Division respectfully requests that the Court issue a judgment on the pleadings.

Respectfully submitted,

/s/

John R. Read
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United States Department of Justice
Antitrust Division

Dated: June 23, 1998