IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Petitioner, v. **LSL Biotechnologies, Inc.** **1200 N. El Dorado Place, #D-44** **Tucson, AZ 85715,** Respondent.	Civil Action No._____

Petition to Enforce Civil Investigative Demand

The United States of America and Joel Klein, Assistant Attorney General of the Antitrust Division of the United States Department of Justice, by the undersigned attorneys, hereby petition this Court, pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1314(a) (1994), to enter judgment on the pleadings enforcing Civil Investigative Demand ("CID") No. 17420, which was duly issued and served on LSL Biotechnologies, Inc. ("LSL"), and as grounds state as follows:

1. This is a proceeding brought pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1314(a), to judicially enforce a Civil Investigative Demand ("CID") served upon the Respondent.

2. In enacting and amending the Antitrust Civil Process Act ("ACPA"), 15 U.S.C. §§1311 *et seq*. (1994), Congress provided the Antitrust Division (the "Division") with broad pre-complaint powers to investigate possible violations of

the federal antitrust laws. More specifically, ACPA 15 U.S.C. §1312(a) (1994), empowers the Attorney General and the Assistant Attorney General in charge of the Antitrust Division to issue a CID to any person who they have reason to believe "may be in possession, custody, or control of any documentary material, or may have information, relevant to a civil antitrust investigation." Such a CID may require the recipient "to produce such documentary material for inspection and copying or reproduction, to answer in writing written interrogatories, to give oral testimony . . . , or to furnish any combination of such material, answers or testimony."

3. The Respondent, LSL Biotechnologies, Inc.("LSL"), is located at 1200 N. El Dorado Place, #D-44, Tucson, Arizona 85715, and transacts business in Arizona.

4. The Division is currently conducting an investigation into possible violations of the Sherman Antitrust Act, 15 U.S.C. §§ 1 and 2, namely the possible restraint or monopolization of domestic and international markets for long-shelf-life tomato seeds by, among others, LSL. This investigation is focusing on provisions in agreements between LSL and an Israeli seed company named Hazera (1939) Ltd. (“Hazera”) that permanently prevent Hazera from competing in the research, development, and manufacturing of long-shelf-life tomato seeds.

5. As part of this investigation, the Division requested that LSL voluntarily provide information regarding the agreements and any intellectual property rights LSL may have in long-shelf-life tomato seeds. This information was requested in July 1997.

6. At that time, LSL was represented by Yerushalmi and Associates. Despite numerous telephone conversations and letters to counsel for LSL, and assurances by counsel that LSL would respond, several months passed, and LSL did not provide the information requested.

7. On December 10, 1997, the Division issued a CID compelling Respondent LSL to produce documentary material and to answer interrogatories by December 29, 1997. A copy of the CID and attached schedule is attached hereto as Exhibit 1 and incorporated herein as part of this petition. The CID demands, *inter alia*, that LSL produce the following types of information: financial statements and annual reports, documentation of all claimed proprietary rights, and explanations of the no-compete provisions under investigation.

8. Shortly before the December 29 due date, Marc Leve, Esq. of Yerushalmi and Associates, told the Division that the LSL had specially retained the law firm of Collier, Shannon, Rill & Scott for this matter. Consequently, the Division agreed to extend the due date for LSL's response to the CID until January 20, 1998, to allow the attorneys at Collier,

Shannon, Rill & Scott the opportunity to familiarize themselves with the issues. A copy of the letter reflecting that extension is attached hereto as Exhibit 2 and incorporated herein as part of this petition.

9. Following a request by the attorneys from Collier, Shannon, Rill & Scott, the Division agreed to further extend the deadline for LSL's compliance from January 20, 1998 to January 26, 1998. The Division also limited the required production to a response to Interrogatories 9 and 12. All other documents and responses were temporarily deferred. The Division sent a letter to this effect on January 15, 1998. A copy of that letter is attached hereto as Exhibit 3 and incorporated herein as part of this petition.

10. LSL did not comply with the CID, even as substantially limited, by the January 26, 1998 due date. Therefore, on January 28, 1998, the Division sent a letter to LSL's attorneys demanding full compliance with all specifications of the CID by February 17, 1998. This letter detailed the efforts undertaken by the Division, over six months, to obtain the information sought from LSL, first on a voluntary basis, and then pursuant to the CID. A copy of that letter is attached hereto as Exhibit 4 and incorporated herein as part of this petition.

11. On February 5, 1998, in anticipation of a meeting with LSL's counsel to attempt to resolve this matter, the Division agreed to toll the 20 days given to LSL to fully comply with

the CID. This agreement extended the deadline for full compliance to February 25, 1998. A letter reflecting this extension is attached hereto as Exhibit 5 and incorporated herein as part of this petition.

12. Despite the meeting with LSL's counsel, the matter was not resolved. LSL did respond to interrogatories 9 and 12, but, on February 25, 1998, LSL failed to produce the remainder of the requested material.

13. On March 9, 1998, in a telephone conversation with Markus Meier, Esq. of Collier, Shannon, Rill & Scott, the Division stated it intended to visit LSL's offices, as permitted by the Antitrust Civil Process Act, 15 U.S.C. § 1313(b), to inspect the responsive files. Mr. Meier assured the Division that would not be necessary, and promised that by March 11, 1998, LSL would tell the Division the locations of the materials responsive to the CID and provide a timetable for LSL's production. Mr. Meier further promised that as to one of the CID specifications, which only asked for documents filed in a case LSL had litigated, the Division would receive the materials by March 16 at the latest.

14. On March 16, 1998, having not received any responsive material or the promised timetable for compliance from LSL, the Division sent LSL a letter stating that Division investigators would travel to those sites it had been informed contained non-privileged, responsive documents, namely New York, where a LSL director was located, and

Arizona, LSL's principal place of business, to inspect the documents located at those sites. A copy of that letter is attached hereto as Exhibit 6 and incorporated herein as part of this petition.

15. In a series of telephone conversations on March 17 and 18, 1998, LSL asked for a postponement of the inspection and more time to comply. The Division eventually stated that it would postpone its inspection on the 19th, but only if the attorneys from Collier, Shannon, Rill & Scott, rather than LSL's employees, conducted the search for the responsive materials. LSL would not agree to that proposal unless Joseph Yerushalmi, a director of LSL and the name partner of Yerushalmi and Associates was present to supervise the search and make the decision as to which materials to produce. Mr. Yerushalmi, however, would not make himself available to supervise the search and production for three weeks. Since LSL employed or retained others who could just as easily direct the Collier, Shannon, Rill & Scott attorneys to the appropriate files and make sure that they did not breach their client's confidences, the Division would not agree to any further delay based on Mr. Yerushalmi's lack of trust in LSL's other counsel.

16. Later, on March 18, 1998, attorneys at Collier, Shannon, Rill & Scott told the Division that they no longer represented LSL. The Division then sent a letter to Mr. Yerushalmi reminding him that Division investigators would

arrive in New York on March 19, 1998 to inspect those responsive documents located there.

17. When the Division investigators arrived in New York, Mr. Yerushalmi was present despite the fact that Division attorneys had been informed that he would be unavailable until April 5. Mr. Yerushalmi did not have the responsive materials available for inspection and refused to allow the investigators to search for responsive materials. Moreover, Mr. Yerushalmi stated that the investigators would waste their time traveling to LSL's headquarters in Tucson, Arizona because LSL would not allow them to inspect any materials there. The investigators were given a handful of documents that had been filed in other lawsuits, but their efforts to inspect all other responsive materials located in the office were rebuffed.

18. Soon after the events described above, the Division was informed that the law firm of Wilmer, Cutler & Pickering had been retained to represent LSL.

19. In the six weeks that Wilmer, Cutler & Pickering has been representing LSL, LSL has not responded to any more of the twenty-one interrogatories, has partially complied with four of the nine document requests, and has not complied at all with the other five document requests.

20. The documents sought by CID No. 17420 are not already in the possession of the United States, are relevant to a valid investigation, and are not exempt from disclosure. LSL

sought to stall the production of responsive documents for several months, refused (except for the two interrogatories and the materials filed in other courthouses) to make the materials available for inspection, and has so far failed to produce all of the materials demanded by CID No. 17420.

21. LSL's continuing failure to comply with the CID has impaired the Division's ability to obtain documentary material and information needed to complete in a timely manner the investigation described in this Petition.

22. To the extent that LSL has legitimate interests in preserving the confidentiality of documentary material and information required by the CID, those interests are adequately protected by the express restrictions against disclosure embodied in the Antitrust Civil Process Act, 15 U.S.C. §§ 1313(c)(3) & 1314(g).

WHEREFORE, the United States and Joel Klein respectfully request that this Court:

1. Order LSL Biotechnologies, Inc. to comply with the requirements of CID No. 17420 within fourteen days of the Court's Order;

2. Assess against LSL Biotechnologies, Inc. all costs of the United States in maintaining this action; and

3. Grant such other and further relief as is just and proper.

Respectfully submitted,

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May 7, 1998