

Court File No.37708

Ontario  
SUPERIOR COURT OF JUSTICE

BETWEEN:

BONA FOODS LTD., LA CIE MCCORMICK CANADA CO.  
and CHRISTOPHER MCLEAN

Plaintiffs

- and -

AJINOMOTO U.S.A., INC., AJINOMOTO COMPANY, INC.,  
CHEILJEDANG CORP, CHEILJEDANG AMERICA INC., MIWON COMPANY LTD.,  
DAESANG AMERICA, INC., f/k/a MIWON AMERICA, INC.,  
TAKEDA CHEMICAL INDUSTRIES LTD., TAKEDA VITAMIN & FOOD, INC.,  
TAKEDA CANADA VITAMIN & FOOD INC.,  
ARCHER DANIELS MIDLAND CO., KYOWA HAKKO KOGYO CO., LTD.,  
and TUNG HAI FERMENTATION INDUSTRIAL CORP.

Defendants

Proceeding under the Class Proceedings Act, 1992

No. SO 15589  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ABEL LAM and KLAS CONSULTING & INVESTMENT LTD.

Plaintiffs

- and -

AJINOMOTO U.S.A., INC., AJINOMOTO COMPANY, INC.,  
CHEILJEDANG CORP, CHEILJEDANG AMERICA INC., MIWON COMPANY LTD.,  
DAESANG AMERICA, INC., f/k/a MIWON AMERICA, INC.,  
TAKEDA CHEMICAL INDUSTRIES LTD., TAKEDA VITAMIN & FOOD, INC.,  
TAKEDA CANADA VITAMIN & FOOD INC.,  
ARCHER DANIELS MIDLAND CO., KYOWA HAKKO KOGYO CO., LTD.,  
and TUNG HAI FERMENTATION INDUSTRIAL CORP.

Defendants

PROVINCE DE QUÉBEC  
DISTRICT DE QUÉBEC  
No. 200-06-000019-011

COUR SUPÉRIEURE  
(Recours collectif)

COLETTE BROCHU

Requérant

c.

AJINOMOTO U.S.A. INC., AJINOMOTO COMPANY INC.,  
CHEILJEDANG CORP., MIWON COMOPANY LTD.,  
DAESANG AMERICA INC. f/k/a MIWON AMERICA, INC.,  
TAKEDA CHEMICAL INDUSTRIES LTD., TAKEDA VITAMINS & FOOD USA INC.,  
TAKEDA CANADA VITAMIS & FOOD INC.,  
ARCHER DANIELS MIDLAND, KYOWA HAKKO KOGYO LTD.,  
And TUNG HAI FERMENTATION INDUSTRIAL CORP.

Intimées

**ADDENDUM TO SETTLEMENT AGREEMENT**

(Settlement Agreement dated May, 2003)

The plaintiffs in the Ontario class action lawsuit No. 37708, in the British Columbia class action lawsuit No. S015589, and in the Quebec class action lawsuit No. 200-06-000019-011 on their own behalf and on behalf of the proposed Ontario Class, British Columbia Class and Quebec Class, and Daesang America, Inc., f/k/a Miwon America, Inc. entered into a Settlement Agreement dated May, 2003 (the "Daesang" Settlement Agreement").

WHEREAS the plaintiffs have advised that in their capacity as class representatives and for themselves personally, they have entered into separate settlement agreements with the defendant Kyowa Hakko Koygo Ltd. (the "Kyowa" Settlement Agreement"), and the defendant Takeda Chemical Industries Ltd. (the "Takeda Settlement Agreement") and with the defendants Ajinomoto Company, Inc., Ajinomoto U.S.A., Inc., Archer Daniels Midland Co., CJ Corp. f/k/a/ Cheil Jedang Corporation and CJ America, Inc. (the "Main Settlement Agreement") which are each subject to the approval of the Ontario Court, the British Columbia Court and the Quebec Court;

WHEREAS the plaintiffs have advised that the Takeda Settlement Agreement and the Main Settlement Agreement contain terms and definitions which differ from those contained in the Daesang Settlement Agreement;

WHEREAS the plaintiffs and the Settling Defendant, Daesang, have determined that it would be desirable for certain specified definitions and certain specified terms of the Daesang Settlement Agreement to be consistent with certain specified terms contained in the Takeda Settlement Agreement and the Main Settlement Agreement;

WHEREAS the plaintiffs and the defendant Daesang enter into this Addendum to the Settlement Agreement dated May, 2003 with the intent that the terms outlined herein will be incorporated into, and where applicable, replace certain specified terms of the Settlement Agreement. Unless specifically amended by this Addendum, all terms and definitions set out in the Settlement Agreement shall remain the same.

**NOW THEREFORE it is hereby agreed as follows:**

#### **DEFINITIONS**

The following definitions shall supplement, and where applicable, replace the definitions contained in the Settlement Agreement.

"Appeal" or "Appeals" means any appeal of any Approval Orders and includes, without limitation, any motion or application by a party or Class Member seeking leave of the Court regarding such an appeal;

"British Columbia Class" means all persons resident in British Columbia other than the Settling Defendants, and their present and former parents, subsidiaries, and affiliates, who purchased MSG and/or Nucleotides in, into or from British Columbia during the Class Period;

"Class Period" shall mean January 1, 1984 to December 31, 1999 inclusive;

"Effective Date" shall mean the earliest date by which all of the following have occurred: (1) this Settlement Agreement has been executed by all of the Parties hereto; (2) the Ontario, British Columbia and Quebec Approval Orders have been granted, or if applicable, rendered; and (3)(a) if any Appeals have been served or filed within thirty days of the date on which the last of the British Columbia, Ontario and Quebec Approval Orders is granted, all such Appeals have been finally dismissed or discontinued, or (b) thirty days following the date on which the last of the British Columbia, Ontario or Quebec Approval Orders is granted if no Appeals have been served or filed by that time;

"MSG" shall mean monosodium glutamate in any form whatsoever and for any use whatsoever, including products containing or derived from monosodium glutamate;

"Notice" shall mean the notice of certification and settlement approval included in this agreement as Appendix "A";

"Nucleotides" means nucleotides in any form whatsoever and for any use whatsoever including, *inter alia*, DSI, IMP, GMP, DSG and I+G, and including products containing or derived from nucleotides;

"Ontario Class" means all persons other than the Settling Defendants and their present and former parents, subsidiaries and affiliates, who purchased MSG and/or Nucleotides in, into or from Canada, excluding Quebec and British Columbia Class Members, during the Class Period;

"Opt Out Deadline" shall, for the Ontario Class and British Columbia Class, be the date 60 days following the Effective Date, and for the Quebec Class shall be the date 30 days following the date on which the Notice of Approval Hearing is published;

"Quebec Class" shall mean all physical persons resident in Quebec who, in, into or from Canada, purchased MSG and/or Nucleotides during the Class Period for their personal use (excluding purchases for marketing, distribution or reselling purposes).

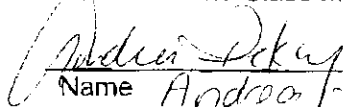
**NOTICE**

The Notice of Certification and Settlement Agreement Approval shall be disseminated in the form and pursuant to the protocol outlined in Appendices "A" and "B" hereto. The Notice shall be published in the newspapers listed in Appendix "B" and sent by direct mail in accordance with Appendix "B" within 15 days of the Effective Date. The Notice shall be published and in the industry publications and by the other methods set out in Appendix "B" at the earliest possible date following the Effective Date.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

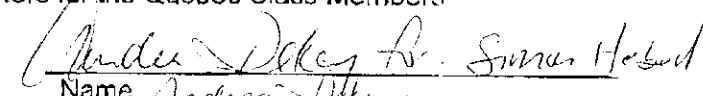
SISKIND, CROMARTY, IVEY & DOWER <sup>LLP</sup>  
Solicitors for the Ontario Class Members

Date Nov 28/03

Per:   
Name Andrea Dickey  
Title Associate

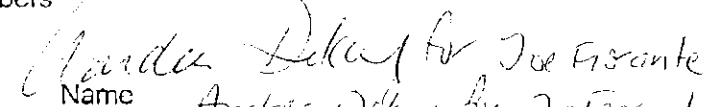
DESMEULES, EIZENGA, STRICKLAND, WRIGHT  
S.E.N.C.  
Solicitors for the Quebec Class Members:

Date Nov 13/03

Per:   
Name Andrea Dickey  
Title Associate

CAMP FIORANTE MATHEWS  
Barristers & Solicitors for the British Columbia Class  
Members

Date Nov 18/03

Per:   
Name Andrea Dickey for Joe Fiorante  
Title

Minden Gross Grafstein & Greenstein LLP  
Solicitors in Ontario for the Defendant, Daesang  
America, Inc. f/k/a Miwon America, Inc.

Date

Per: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Owen, Bird  
Solicitors in British Columbia for the Defendant  
Daesang America, Inc. f/k/a Miwon America, Inc.

Date

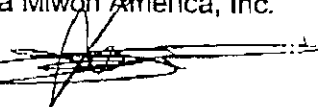
Per:

Name   
Title

Mendelsohn, General Partnership  
Solicitors in Quebec for the Defendant Daesang  
America, Inc. f/k/a Miwon America, Inc.

Date

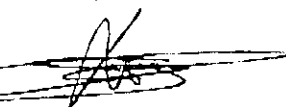
Per

Name   
Title

Law Offices of Richard B. Pacella  
U.S. Solicitors for the Defendant Daesang America,  
Inc. f/k/a Miwon America, Inc.

Date

Per

Name   
Title

## APPENDIX "A"

# Notice of Certification and Settlement Agreement Approval

### IN THE MATTER OF MSG/NUCLEOTIDES CLASS ACTION LITIGATION

PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS.

**TO:** All persons and entities in Canada who purchased MSG and/or Nucleotides in any form and for any use, including products containing or derived from MSG and/or Nucleotides, in, into, or from Canada, between January 1, 1984 and December 31, 1999.

**1 Purpose of this Notice** 

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Class Proceeding lawsuits have been initiated in Ontario, British Columbia, and Quebec in which it is alleged that the Defendants conspired to fix prices and allocate markets for MSG and/or Nucleotides in Canada.

Settlement Agreements have been reached between the Plaintiffs (the parties who brought the lawsuit) and some of the Defendants, Archer Daniels Midland Company, Ajinomoto Co., Inc., Ajinomoto U.S.A., Inc., Takeda Chemical Industries Ltd., CJ Corp. f/k/a Cheil Jedang Corporation, CJ America, Inc., Daesang America, Inc., f/k/a Miwon America, Inc., and Kyowa Hakko Kogyo Co., Ltd. The proceeding was certified and the Settlement Agreements were approved by the Courts in Ontario on X, in British Columbia on X, and in Quebec on X.

No settlement has been reached with Tung Hai Fermentation Industrial Corp. Litigation continues against this defendant.

This Notice is to advise you of the Settlement Agreements and to inform you of your rights as a Class Member under the Settlement Agreements.

**2 Class Member Categories** 

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If you purchased MSG and/or Nucleotides or products containing or derived from MSG and/or Nucleotides in, into, or from Canada between January 1, 1984 and December 31, 1999 you are a Class Member. Class Members fall into the following categories:

1. Distributors – Class Members who purchased MSG and/or Nucleotides in raw form between January 1, 1984 and December 31, 1999, and only resold the MSG and/or Nucleotides without further processing or including them in another product.
  2. Producers – Class Members, other than Distributors, who purchased MSG and/or Nucleotides in raw form between January 1, 1984 and December 31, 1999 (including restaurants and food service outlets).
  3. Intermediaries and Consumers – Class Members who are neither Distributors nor Producers.
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- 3 Claim Program - Distributors and Producers** Distributors and Producers will be eligible to receive monetary benefits under the Settlement Agreements. \$X less counsel fees, disbursements, administration and proportionate costs of notice, will be available to compensate Distributors and Producers.

The monetary benefits paid to Distributors and Producers will depend, in part, on the number of claims that are made.

Distributors and Producers must complete a claim form, and submit certain required supporting documentation outlined in the claim form. To be eligible for compensation, the claim form together with the required supporting documentation must be submitted to the Claims Administrator by X, 2004. Claim forms are available by telephoning the Claims Administrator at X or at [www.classaction.ca](http://www.classaction.ca).

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- 4 Compensation Plan - Consumers and Intermediaries** A Settlement Fund of \$ X plus accrued interest, less legal fees, disbursements, and proportionate costs of notice, shall be available to compensate Consumers and Intermediaries.

Recognizing the difficulty of determining the damage suffered by any given Consumer or Intermediary, and recognizing the related difficulties in directly compensating Consumers and Intermediaries, it has been determined that compensation will be paid to the following organizations for the general benefit of Consumers and Intermediaries:

- a. Canadian Council of Grocery Distributors –25%
  - b. Canadian Federation of Independent Grocers – 25%
  - c. Community Foundations – 45% to be split between the following Foundations in the following percentages:
    - Vancouver Foundation-19%
    - The Calgary Community Foundation – 5%
    - The Edmonton Community Foundation- 5%
    - The Saskatoon Foundation – 3.3%
    - The Winnipeg Foundation – 3.7%
    - Toronto Community Foundation – 25%
    - Community Foundation of Ottawa – 9%
    - London Community Foundation – 4%
    - Hamilton Community Foundation – 6%
    - The Foundation of Greater Montreal – 12%
    - The Halifax Foundation – 3%
    - Community Foundation of Greater Moncton – 2.4%
    - Community Foundation of Newfoundland and Labrador – 1.7 %
    - Community Foundation of Prince Edward Island – 0.5 %
    - Yellowknife Community Foundation – 0.4%
  - d. General Romeo Dallaire Foundation – 5%
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- 5 Release of claims and the effect on other proceedings** You will be bound by the terms of the Settlement Agreements, unless you “opt out”, a process that is described in the next section.
- This means that you will not be able to bring or maintain any other claim or legal proceeding against the Defendants who have entered into the Settlement Agreements in connection with MSG and/or Nucleotides or products containing or derived from MSG and/or Nucleotides unless you “opt out”.
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- 6 Opting out of the Settlement Agreements** If you would like to exclude yourself from the Settlement Agreements, you can opt out by obtaining an “Opt Out Form” (available from the Claims Administrator), and filing it with the Claims Administrator no later than X.
- If you opt out you will not be eligible for any of the benefits of the Settlement Agreements.
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- 7 Class Counsel** The law firms of *Siskind, Cromarty, Ivey & Dowler*<sup>LP</sup> represent the Class in Ontario, along with all Class Members in provinces other than British Columbia and Quebec. Ontario Class Counsel can be reached toll-free at 1-800-461-6166 ext. 455.
- The law firm of *Camp Fiorante Mathews* represent the Class in British Columbia. *Camp Fiorante Mathews* can be reached at 604-689-7555.
- The law firm of *Desmeules, Eizenga, Strickland, Wright S.E.N.C* represents members of the Quebec Class. Quebec Class Counsel can be reached at 418-694-2009.
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- 8 Legal Fees** Class Counsel in all jurisdictions will seek legal fees from their respective courts in an amount not to exceed 25% of the Settlement Benefits attributable to their jurisdiction, plus disbursements and taxes.
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- 9 Questions About the Settlement Agreements** If you would like a copy of the Settlement Agreements or have questions, you can reach the Claims Administrator by telephone at X or by email at X. A copy of the Settlement Agreements can be sent to you at a cost of \$20.00, which amount represents the cost of photocopying and mailing the Settlement Agreements.
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- 10 Interpretation** If there is a conflict between the provisions of this Notice and the Settlement Agreements and any of its appendices, the terms of the Settlement Agreements shall prevail.
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DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE, THE SUPREME COURT OF BRITISH COLUMBIA AND THE QUEBEC (COUR SUPERIEURE) SUPERIOR COURT.

## **APPENDIX “B”**

### **METHOD OF DISSEMINATING THE NOTICE OF CERTIFICATION AND SETTLEMENT AGREEMENT APPROVAL**

The Notice of Certification and Settlement Agreement Approval shall be distributed in the following manner:

- a. published once in the following newspapers;
  - i. Globe and Mail (National Edition)
  - ii. National Post
  - iii. La Presse
  
- b. published once in the following industry magazines;
  - i. Food in Canada
  - ii. Food Service and Hospitality Magazine
  
- c. sent to the following organizations for distribution to their membership;
  - i. Food Processors of Canada;
  - ii. Flavour Manufacturers Association of Canada;
  - iii. Canadian Restaurant and Food Services Association;
  - iv. Canadian Council of Grocery Distributors; and
  - v. Canadian Federation of Independent Grocers.
  
- d. posted on Class Counsel’s website at [www.classaction.ca](http://www.classaction.ca);
  
- e. where possible, sent by direct mail to the Settling Defendants’ customers who purchased MSG and/or Nucleotides during the Class Period. To the extent possible, the Settling Defendants will provide contact information respecting the customers to whom they sold MSG and/or Nucleotides during the Class Period to the Claims Administrator, and the Claims Administrator will mail the Notice by direct mail to each such customers. Where the Settling Defendants sold MSG and/or Nucleotides to a Distributor, the Settling Defendants shall assist in obtaining customer contact information from that Distributor for use by the Claims Administrator; and
  
- f. sent by first class mail to the counsel for individuals pursuing independent litigation where those individuals are known to Class Counsel.