

*Ontario*  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

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**

**B E T W E E N:**

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

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

*COUR SUPÉRIEURE*  
(Recours collectif)

COLETTE BROCHU

Requérants

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

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## SETTLEMENT AGREEMENT

The Plaintiffs, Bona Foods Ltd., La Cie McCormick Canada Co., Christopher McLean, Abel Lam, Klas Consulting & Investment Ltd., and Colette Brochu, in their capacity as class representatives and for themselves personally, and Ajinomoto Co., Inc. (incorrectly named in the Actions as 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 "Settling Defendants"), hereby enter into this agreement pursuant to the terms set out below (the "Settlement Agreement") and subject to the approval of the Ontario Court, the British Columbia Court and the Quebec Court.

**WHEREAS** Action No. 37708 was commenced in the City of London, in the Ontario Superior Court of Justice on September 7, 2001 (amended September 2, 2003);

**WHEREAS** Abel Lam and Klas Consulting & Investment Ltd. commenced Action No. S015589 in the British Columbia Supreme Court on October 4, 2001, on his own behalf and on behalf of the proposed British Columbia Class Members;

**WHEREAS** Colette Brochu filed a Motion for authorization to bring a Class Action in the Quebec Superior Court No. 200-06-000019-011 on September 25, 2001, on her own behalf and on behalf of the proposed Quebec Class Members;

**WHEREAS** the Plaintiffs in the Ontario, British Columbia and Quebec Actions alleged that the defendants were involved in a conspiracy to fix, raise, maintain or stabilize the prices of, and allocate markets or customers for MSG and/or Nucleotides in Canada, and sought damages for their respective Class Members;

**WHEREAS** the Settling Defendants deny the allegations and claims that the Plaintiffs have made in the Actions and deny that damages are payable for any violation of the *Competition Act* or otherwise and have defences to the Actions;

**WHEREAS** the Class Counsel and counsel for the Settling Defendants have conducted extensive settlement negotiations, at arms' length, which resulted in this Settlement Agreement;

**WHEREAS** based on the analyses of the facts and law applicable to the claims of the Plaintiffs, and having regard to the burdens and expense in conducting litigation of the Actions including the risks and uncertainties associated with trials and appeals, the Plaintiffs and the Class Counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and that it is fair, reasonable and in the best interests of the Class Members;

**WHEREAS** the Class Counsel negotiated this Settlement Agreement on the premise of measuring damages in the aggregate for all Class Members, and sought expert advice with respect to devising the Distribution Protocol;

**WHEREAS** the Plaintiffs and the Settling Defendants intend that this Settlement Agreement be binding on all purchasers of MSG and/or Nucleotides and that certification of a national class, save and except in respect of the Quebec and British Columbia Classes, shall be sought in the Ontario Action based on the substantial connections to Ontario which exist;

**WHEREAS** the Settling Defendants enter this Settlement Agreement on the basis that there will be a valid and binding national class for all purchasers of MSG and/or Nucleotides and that all claims by all possible claimants for sales in, into, or from Canada are included and will be satisfied by this Settlement Agreement, subject to those who opt out in a timely manner

in compliance with the procedures for doing so and it is acknowledged that the Settling Defendants would not have entered into this Settlement Agreement were it not for the foregoing;

**WHEREAS** notwithstanding this Settlement Agreement, the Settling Defendants continue to deny any wrongdoing or legal liability arising out of any claims alleged against them in the Actions;

**WHEREAS** while for the purpose only of this Settlement Agreement, each of the Settling Defendants consents to the certification of the Actions as provided below, the Settling Defendants expressly reserve their right to contest certification of other related or unrelated proceedings and assert that the Actions would not be appropriately certified in the absence of this 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 Daesang America, Inc. f/k/a Miwon America, Inc. (the "Daesang Settlement Agreement"), the defendant Kyowa Hakko Kogyo Co., Ltd. (the "Kyowa Settlement Agreement"), and the defendant Takeda Chemical Industries Ltd. (the "Takeda Settlement Agreement") which are each subject to the approval of the Ontario Court, the British Columbia Court and the Quebec Court;

**AND WHEREAS** the Settling Defendants intend that this Settlement Agreement is to resolve all claims and potential claims for, or relating in any way to, the alleged involvement of the Settling Defendants in any alleged conspiracy relating to the sale of MSG and/or Nucleotides in, into or from Canada, in accordance with the terms of this Settlement Agreement.

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

## DEFINITIONS

1. The following words and phrases shall have the following meanings in this Settlement Agreement, including all of the appendices hereto:
  - (a) **“Actions” or “Action”** means any or all of action number 37708 commenced in Ontario in the Superior Court of Justice, action number S015589 commenced in the Supreme Court of British Columbia and proceeding number 200-06-000019-011 commenced in the Quebec Superior Court;
  - (b) **“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;
  - (c) **“Approval Orders”** means the orders or judgments of each of the Ontario Court, the British Columbia Court, and the Quebec Court, or if applicable, the order(s) of an appellate court, which certify or authorize the Ontario, British Columbia and Quebec Actions as class proceedings and approve this Settlement Agreement in substantially the form attached hereto as Appendix “E”, and which approve the Daesang Settlement Agreement, the Kyowa Settlement Agreement, and the Takeda Settlement Agreement;

- (d) **“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 Canada during the Class Period;
- (e) **“British Columbia Court”** means the Supreme Court of British Columbia and the Honourable Mr. Justice Goepel or his successor;
- (f) **“Claims Administrator”** shall mean the person(s) or entities agreed upon by the Parties and appointed by the Ontario and British Columbia Courts, as provided in paragraph 11 below, and any employees of such person(s) or entities;
- (g) **“Claims Deadline”** shall be the date 120 days following the Effective Date ;
- (h) **“Class Counsel”** shall mean Siskind, Cromarty, Ivey & Dowler LLP in Ontario; Camp Fiorante Mathews in British Columbia; and Desmeules, Eizenga, Strickland, Wright S.E.N.C. in Quebec;
- (i) **“Class Members”** shall mean members of the Ontario Class, British Columbia Class or Quebec Class, or any of them, or shall mean members of those Classes collectively as the context requires;
- (j) **“Class Period”** shall mean January 1, 1984 to December 31, 1999 inclusive;



- (k) **“Distribution Protocol”** shall mean the mechanisms for paying compensation to Class Members as provided for in Appendix “D”;
- (l) **“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;
- (m) **“MSG”** shall mean monosodium glutamate in any form whatsoever and for any use whatsoever, including products containing or derived from monosodium glutamate;
- (n) **“Notice”** shall mean the notice of certification and settlement agreement approval included in this Settlement Agreement as Appendix “A”;

- (o) **“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;
- (p) **“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;
- (q) **“Ontario Court”** means the Superior Court of Justice and the Honourable Mr. Justice Cullity, or his successor;
- (r) **“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;
- (s) **“Opt Out Reduction”** shall be the amount to be paid from the Settlement Benefits to Ajinomoto Co., Inc., Ajinomoto U.S.A., Inc., CJ Corp. f/k/a Cheil Jedang Corporation or CJ America, Inc. in accordance with paragraph 17 of this Settlement Agreement;
- (t) **“Parties”** shall mean collectively the Plaintiffs and the Settling Defendants;

- (u) **“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);
- (v) **“Quebec Court”** shall mean the Quebec (Cour Superieure) Superior Court and the Honourable Suzanne Hardy-Lemicux or her successor;
- (w) **“Released Parties”** shall mean all those entities or individuals referred to or falling within the provisions of paragraph 19 and without in any way limiting the generality of the foregoing, including P.T. SASA INTI;
- (x) **“Releasing Parties”** shall mean those entities or individuals referred to or falling with the provisions of paragraph 19;
- (y) **“Settlement Benefits”** shall mean the total of the payments to be made by the Settling Defendants as set out in paragraph 2; and
- (z) **“Settling Defendants”** shall mean Archer Daniels Midland Company, Ajinomoto Co., Inc., Ajinomoto U.S.A., Inc., CJ Corp. f/k/a Cheil Jedang Corporation, and CJ America, Inc.

## SETTLEMENT BENEFITS

2. The Settling Defendants shall, in settlement of the Actions, pay the following amounts (collectively the "Settlement Benefits"), inclusive of all legal costs.
  - a. Archer Daniels Midland Company - \$150,000.00 CDN plus interest accrued from October 6, 2003.
  - b. Ajinomoto Co., Inc. and Ajinomoto U.S.A., Inc. - \$4,601,481.66 CDN plus interest accruing from October 31, 2003.
  - c. CJ Corp. f/k/a Cheil Jedang Corporation and CJ America, Inc.- \$670,889.82 CDN plus interest accruing from October 9, 2003.
3. The Settling Defendants shall each pay to the Claims Administrator their portion of the Settlement Benefits outlined in paragraph 2 by the later of:  
(a) forty days from the Effective Date; and (b) if any Appeals are served or filed within forty days of the Effective Date, ten days from the date on which all such Appeals have been finally dismissed or discontinued.
4. The Settlement Benefits shall be paid by the Claims Administrator pursuant to the Distribution Protocol and subject to the Opt Out Reduction provided for in paragraph 17.
5. In no event shall the Settling Defendants have any liability or responsibility with respect to the distribution and administration of the Settlement Benefits including, but not limited to, the costs and expenses of such distribution and administration.

## **EFFECT OF APPEAL**

6. In the event that an Appeal is filed or served after any of the Settling Defendants have paid their portion of the Settlement Benefits to the Claims Administrator, any of the Settling Defendants may deliver written notice to the Claims Administrator of such an Appeal. Upon receipt of such notice, the Claims Administrator shall immediately cease making any payments to any Class Members or other persons under the Distribution Protocol. Following receipt of such notice the Claims Administrator shall make no payments from the Settlement Benefits to any Class Member or other person until such time as all Settling Defendants have confirmed in writing that the Appeal in question has been dismissed or discontinued.

## **PAYMENT FOR NOTICE**

7. In addition to the Settlement Benefits outlined in paragraph 2, Archer Daniels Midland shall pay a contribution of up to \$25,000.00 toward the actual out of pocket costs incurred in publishing the Notice (“ADM Notice Portion”) upon receipt of proof of such costs from the Claims Administrator. For greater certainty, the ADM Notice Portion shall not include any amount in respect of legal fees or interest.

## **SETTLING DEFENDANTS’ OBLIGATIONS SEVERAL AND NOT JOINT**

8. All obligations assumed by each of the Settling Defendants pursuant to this Settlement Agreement are intended to be, and shall remain, several

(individual) and not joint. No Settling Defendant shall have any liability for the default of any other Settling Defendant pursuant to this Settlement Agreement.

## **APPROVAL ORDERS**

9. The Parties shall take all steps necessary to ensure that the Approval Orders are sought in an expedited manner. The Parties shall seek Approval Orders from the Ontario Court, the British Columbia Court and the Quebec Court in substantially the form attached here to as Appendix "E". Each Approval Order will be conditional until each Court has approved this Settlement Agreement and the Kyowa Settlement Agreement, the Daesang Settlement Agreement, and the Takeda Settlement Agreement, and only after all Courts have approved all of these settlements shall this Settlement Agreement and each Approval Order become binding and effective.

## **NOTICE OF CERTIFICATION AND COURT APPROVAL**

10. 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". 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 in the industry publications and by the other methods set out in Appendix "B" at the earliest possible date following the Effective Date.

## **CLAIMS ADMINISTRATOR**

11. Class Counsel in Ontario and British Columbia shall propose a Claims Administrator to be agreed upon by the Settling Defendants, such agreement not to be unreasonable withheld, and whose appointment shall be subject to approval of the Ontario and British Columbia Courts, for the purpose of implementing the Distribution Protocol provided for at Appendix "D".
12. The Claims Administrator shall be required to administer the Settlement Benefits and process claims in accordance with this Settlement Agreement, including the provisions and procedures set forth in the Distribution Protocol.
13. The Claims Administrator shall be fluent in the English and French languages.
14. The Claims Administrator shall report to, and be subject to the direction of, or removal by, the Ontario Court.

## **OPTING OUT**

15. Class Members shall have the right to exclude themselves from this Settlement Agreement (to "opt out"). British Columbia Class Members and Ontario Class Members who elect to opt out of this Settlement Agreement shall complete the opt out form attached as Appendix "C" and file it with the Claims Administrator by the Opt Out Deadline. Quebec Class Members

shall opt out by the Opt Out Deadline by giving notice to the Clerk of the Superior Court of Quebec in the manner prescribed under the laws of Quebec. Class Members who opt out shall be excluded from the Actions, as applicable, and from any and all rights and obligations under this Settlement Agreement. Where a Class Member is a member of one or more of the British Columbia Class, the Ontario Class, or the Quebec Class, opting out of one class results in opting out of all Classes and all Settlement Agreements. Except as provided for in paragraph 16, Class Members who do not opt out in the manner and time prescribed above shall be deemed to have elected to participate in this Settlement Agreement and all related Court orders, regardless of whether they file a timely claim form or receive any Settlement Benefits.

16. Quebec Class Members who have commenced proceedings or commence proceedings and fail to discontinue such proceedings by the Opt Out Deadline shall be deemed to have opted out.
17. The Claims Administrator shall provide a list including addresses and contact information of all Class Members who have opted out to the Parties within 10 days of the Opt Out Deadline. If a Class Member who purchased MSG and/or Nucleotides during the Class Period from Ajinomoto Co., Inc., Ajinomoto U.S.A., Inc., CJ corp. f/k/a Cheil Jedang Corporation, or CJ America, Inc. opts out of this Settlement Agreement in accordance with paragraph 15, the respective Settling Defendant from whom the Class



Member purchased MSG and/or Nucleotides, shall be entitled to claim an Opt Out Reduction. Ajinomoto Co., Inc., Ajinomoto U.S.A., Inc., CJ Corp. f/k/a Cheil Jedang Corporation, or CJ America, Inc. shall have 45 days from receipt of the opt out list to claim an Opt Out Reduction and to provide the Claims Administrator, with a copy to Ontario Class Counsel, verification of their sales for which an Opt Out Reduction is claimed. The Opt Out Reduction will be calculated by the Claims Administrator pursuant to the Distribution Protocol and shall be equal to the benefit which would have been payable to the Class Member, had the Class Member filed a timely claim form. Verification acceptable to the Claims Administrator shall be deemed to satisfy the eligibility requirements set out in section 2.2 of the Distribution Protocol. Upon expiration of the 45 day period outlined above, the Claims Administrator shall have 30 days to calculate all Opt Out Reductions and to notify the relevant Settling Defendant(s) of the Opt Out Reductions to which they are entitled. Any disputes concerning the entitlement to, or calculation of, an Opt Out Reduction shall be resolved in accordance with section 2.3 of the Distribution Protocol. All Opt Out Reductions shall be paid by the Claims Administrator within 15 days of the resolution of all appeals taken in accordance with section 2.3 of the Distribution Protocol, or if no appeals are filed, within 15 days of the expiration of the appeal period set out in section 2.3 of the Distribution Protocol.

## **EFFECT OF NON-APPROVAL BY THE COURTS**

18. If Approval Orders are not granted in each of Ontario, British Columbia and Quebec in substantially the form attached as Appendix "E",
- (a) this Settlement Agreement shall be null and void and shall have no force or effect, and no party to this Settlement Agreement shall be bound by any of its terms, except the terms of this paragraph and paragraph 1 which shall be incorporated and adopted for the sole purpose of giving effect to paragraph 18;
  - (b) this Settlement Agreement and all of its provisions and all negotiations, statements and proceedings relating to it shall be without prejudice to the rights of the Settling Defendants, the British Columbia Class, the Ontario Class and the Quebec Class, all of whom shall be restored to their respective positions existing immediately before the execution of this Settlement Agreement; and
  - (c) this Settlement Agreement, including the Appendices hereto, the fact of its negotiation and execution, the certification of the British Columbia Class and/or Ontario Class and/or Quebec Class Actions, and any approval of this Settlement Agreement by any Court shall not constitute any admission by the Settling Defendants and shall not be used against any of the Settling Defendants or referred to for any purpose in this or in any other proceeding and without limiting the generality of the foregoing, this Settlement Agreement and the fact

of its negotiation and execution and certification by a Court shall not constitute any admission or be used by anyone (whether or not a party to these proceedings) in an effort to establish any of the alleged facts, the jurisdiction of the Canadian Courts over any foreign party or the appropriateness of certification of these or any other proceedings in any province.

## **RELEASE**

19. Except to the extent that the granting of such releases would affect the Plaintiffs' entitlement to pursue remedies against non-settling joint tortfeasors, including Tung Hai Fermentation Industrial Corp., a/k/a Vedan, in consideration of the payment of the Settlement Benefits set out in this Settlement Agreement, the Plaintiffs and all Class Members, including their respective executors, heirs, successors, administrators, and assigns (collectively the "Releasing Parties") hereby release and forever discharge the Settling Defendants and each of their present and former, direct and indirect, parents, subsidiaries, affiliates, related entities, predecessors, successors, shareholders, insurers and assigns and all of their past, present and future directors, officers, attorneys, employees, agents, consultants, advisors and other representatives of any type and their executors, heirs, successors, administrators, and assigns but specifically excluding Tung Hai Fermentation Industrial Corp., a/k/a Vedan, (collectively, the "Released Parties") from any and all claims, lawsuits, demands and causes of action,

whether class, individual or otherwise in nature, damages whenever and wherever incurred, liabilities of any nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, in law or equity, including without limitation those based on any statute or any law of Canada or elsewhere providing any remedy or relief in respect of any claim or matter asserted or that could have been asserted in the Actions, including interest, costs, expenses, legal fees, disbursements, notice and administration expenses that any of the Releasing Parties, whether directly, indirectly, representatively, derivatively or in any other capacity, ever had, now has, or hereafter can, shall or may have, relating in any way to any conduct of the Released Parties, and all other defendants and/or respondents in the Actions, prior to the date of this Settlement Agreement, including without limitation any conduct related to the manufacture, sale, purchase, distribution or pricing of MSG and/or Nucleotides, that was asserted or could have been asserted by or on behalf of or through the Releasing Parties individually, collectively or otherwise in any of the Actions or in any possible action anywhere else.

#### **COVENANT NOT TO SUE**

20. In respect of any Plaintiffs or Class Members to whom the Release set out in paragraph 19 does not apply for the reasons set out in that paragraph, the Plaintiffs and Class Members including their respective executors, heirs, successors, administrators, and assigns, in consideration for the Settlement

Benefits set out in this Settlement Agreement, hereby covenant not to sue the Released Parties in respect of any and all claims, lawsuits, demands and causes of action, whether class, individual or otherwise in nature, damages whenever and wherever incurred, liabilities of any nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, in law or equity, including without limitation those based on any statute or any law of Canada or elsewhere providing any remedy or relief in respect of any claim or matter asserted or that could have been asserted in the Actions, including interest, costs, expenses, legal fees, disbursements, notice, and administration expenses that any of the Plaintiffs or Class Members, including their respective executors, heirs, successors, administrators, and assigns, where directly, indirectly, representatively, derivatively or in any other capacity, ever had, now has, or hereafter can, shall or may have, relating in any way to any conduct of the Released Parties, and all other defendants and/or respondents in the Actions, prior to the date of this Settlement Agreement, including without limitation any conduct related to the manufacture, sale, purchase, distribution or pricing of Nucleotides and/or MSG that was asserted or could have been asserted by or on behalf of or through the Plaintiffs and Class Members, including their respective executors, heirs, successors, administrators, and assigns, individually, collectively or otherwise in any of the Actions.

## SETTLEMENT NOT AN ADMISSION OF LIABILITY

21. Neither this Settlement Agreement nor any step taken to carry out this Settlement Agreement may be construed as, or may be used as, an admission by or against the Released Parties, or of the truth of any allegations or of liability or of jurisdiction of the Canadian Courts over any of the Released Parties who are non-Canadian entities or of the appropriateness of certification of the Actions as class actions or as a waiver of any applicable legal right or benefit other than as expressly stated in this Settlement Agreement. Likewise, this Settlement Agreement may not be construed as or used as an admission by or against the Plaintiffs or the Class Members or as a waiver of any applicable legal right or benefit of the Plaintiffs or the Class Members other than as expressly stated in this Settlement Agreement. Further, neither this Settlement Agreement nor any document relating to (including the Appendices hereto), or action taken to carry out this Settlement Agreement, shall be offered or received in evidence in any action or proceeding against the Released Parties, the Plaintiffs or the Class Members, or any of them, in any Court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of this Settlement Agreement or to seek Approval Orders in accordance with paragraph 9.

## CLASS COUNSEL

22. Following the granting or, if applicable, the rendering, of the Approval Orders, or at the occasion thereof, Class Counsel shall bring motions before their respective Courts for payment of any legal fees or disbursements which the Court may deem are payable by Class Members. Class Counsel will request fees not to exceed 25% of the Settlement Benefits plus disbursements and taxes. The Settling Defendants shall have no obligation or responsibility to pay any legal fees or disbursements to Class Counsel. Class Counsel shall be paid any legal fees and disbursements so ordered by the Claims Administrator following receipt of the Settlement Benefits.
  
23. No Class Counsel, or anyone employed with Class Counsel, may, directly or indirectly, participate in or be involved in or in any way assist with respect to any action commenced by a Class Member who has opted out or with respect to any other action related to the claims asserted in the Actions except in pursuit of the claim(s) against non-settling joint tortfeasors, including Tung Hai Fermentation Industrial Corp. a/k/a Vedan. Moreover, no Class Counsel or anyone employed with Class Counsel may divulge any information obtained in the course of the Actions or in the preparation thereof or related to the Actions, to anyone for any purpose, except as required by law.

## **ENTIRE AGREEMENT**

24. This Settlement Agreement, together with the recitals and the attached appendices, constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes all prior understandings, representations, negotiations, discussions, and agreements, whether oral or written, which may have occurred prior hereto. There are no other warranties or representations between the Parties in connection with the subject matter of this Settlement Agreement except as specifically set forth herein and none have been relied upon by the Parties in entering into this Settlement Agreement.

## **ONGOING AUTHORITY**

25. The Parties agree that the Ontario, British Columbia and Quebec Courts will retain jurisdiction over the Actions and over all Parties named or described therein, including, but not limited to, all Class Members and the Settling Defendants. Further, the Parties agree that the Ontario, British Columbia and Quebec Courts will retain jurisdiction over this Settlement Agreement to ensure that all payments and disbursements are properly made, and to interpret and enforce the terms, conditions and obligations of this Settlement Agreement. None of the Parties will seek or consent to any order or direction from any of the Courts mentioned herein which may affect the rights of Class Members unless such orders or directions are also



sought from the Court or Courts with jurisdiction over the Class Members that may be affected thereby.

26. The Distribution Protocol provided for in Appendix “D” governs the claims of Class Members and Opt Out Reductions. The Parties intend that this process be efficient, rapid, and cost effective, and the Parties have agreed that these claims be administered on a national basis through a single Claims Administrator and Distribution Protocol. The Parties agree that the Ontario Court, with the concurrence of the British Columbia Court and the Quebec Court, shall adjudicate any matters arising from the implementation of the Distribution Protocol provided for in Appendix “D” including but not limited to, the supervision of the Claims Administrator.

#### **APPLICABLE LAW**

27. Except for the Quebec Class to which the law of the Province of Quebec shall apply, the law of the Province of Ontario shall apply to this Settlement Agreement. This Settlement Agreement constitutes a “transaction” within the meaning of Articles 2631 in compliance with the Civil Code of Quebec.

#### **NOTICES**

28. All communications to be provided pursuant to or in connection with this Settlement Agreement shall be in writing and shall be delivered personally or sent by registered mail or overnight delivery service, costs prepaid, to the Parties at the addresses set forth below, or to such other individuals and

addresses as the Plaintiffs or the Settling Defendants may designate in writing from time to time.

**SISKIND, CROMARTY, IVEY & DOWLER LLP**

Barristers & Solicitors  
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Counsel for the Ontario Class Members

Attention: Charles M. Wright

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**STIKEMAN ELLIOTT LLP**

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Counsel for the Defendants Ajinomoto Co., Inc. and Ajinomoto U.S.A., Inc.

Attention: Katherine Kay

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Counsel for CJ Corp. f/k/a Cheil Jedang Corporation, and CJ America, Inc.

Attention: John Fabello

**EXECUTION AND PROCESSING OF SETTLEMENT AGREEMENT**

29. The Parties and their respective counsel shall expeditiously do all things as may be reasonably required to give effect to this Settlement Agreement.
30. The Parties agree that this Settlement Agreement may be executed by their respective counsel.
31. The Parties further agree that this Settlement Agreement may be executed by facsimile and in counterparts, each of which shall be deemed to be an original for all purposes and all executed counterparts taken together shall constitute the complete Settlement Agreement.

**FRENCH TRANSLATION**

32. A French translation of this Settlement Agreement and all Appendices attached hereto shall be prepared by and at the sole expense of the Plaintiffs. In the event of any dispute as to the meaning or interpretation, the English version shall prevail.

**FRENCH LANGUAGE CLAUSE**

33. Les Parties ont convenu que cette entente soit rédigée en anglais.

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

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

Date

Nov 7/03

Per: \_\_\_\_\_

Name

Title

**DESMEULES, EIZENGA, STRICKLAND,  
WRIGHT S.E.N.C.**

**Solicitors for the Quebec Class Members**

Date

Nov 7/03

Per: \_\_\_\_\_

Name

Title

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

Date

\_\_\_\_\_

Per: \_\_\_\_\_

Name

Title

**STIKEMAN ELLIOTT <sup>LLP</sup>** Solicitors for the  
**Defendants Ajinomoto Co., Inc. and Ajinomoto  
U.S.A., Inc.**

Date

\_\_\_\_\_

Per: \_\_\_\_\_

Name

Title

**FRENCH LANGUAGE CLAUSE**

33. Les Parties ont convenu que cette entente soit rédigée en anglais.

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

**SISKIND, CROMARTY, IVEY & DOWER <sup>1.L.P.</sup>**  
**Solicitors for the Ontario Class Members**

Date \_\_\_\_\_

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

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

Date \_\_\_\_\_

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

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

Date Nov. 10, 2003

Per:   
Name  
Title **PARTNER**

**STIKEMAN ELLIOTT <sup>1.L.P.</sup>** Solicitors for the  
**Defendants Ajinomoto Co., Inc. and Ajinomoto  
U.S.A., Inc.**

Date \_\_\_\_\_

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

**FRENCH LANGUAGE CLAUSE**

33. Les Parties ont convenu que cette entente soit rédigée en anglais.

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

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

Date \_\_\_\_\_

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

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

Date \_\_\_\_\_

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

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

Date \_\_\_\_\_

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

**STIKEMAN ELLIOTT <sup>LLP</sup>** Solicitors for the  
**Defendants Ajinomoto Co., Inc. and Ajinomoto  
U.S.A., Inc.**

Date 2003-11-11

Per: Stikeman Elliott LLP per [Signature]  
Name Katherine L-Kay  
Title Partner

**OGILVY RENAULT**  
**Solicitors for the Defendant Archer Daniels**  
**Midland Company**

Date

NOV. 11 / 03

Per:

OGILVY RENAULT per DMB  
Name D. MICHAEL BROWN  
Title LAWYER

**FRASER MILNER CASGRAIN LLP**  
**Solicitors for the Defendants , CJ Corp. f/k/a Cheil**  
**Jedang Corporation, and CJ America, Inc.**

Date

November 11/03

Per:

Fraser Milner Casgrain LLP per J.A.  
Name John A. Paballa  
Title Partner

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.
-



- 
- 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).
- 
- 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%
-

- 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".
- 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.
- 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.
- 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.
- 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.
- 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.

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.

**APPENDIX "C"**  
**OPT OUT FORM**  
**MSG/NUCLEOTIDES LITIGATION SETTLEMENT**

This is NOT a Claim Form.  
It EXCLUDES you from the Settlement Class.  
Do NOT use this Form if you want to receive benefits under the Settlement.

Name: \_\_\_\_\_  
Name of Class Member (full legal name)

\_\_\_\_\_   
Contact Person (If Class Member is a corporation)

Address: \_\_\_\_\_  
No./Apt. /Street                      City                      Province                      Postal Code

Telephone : \_\_\_\_\_  
Area code / phone no.                      (Ext. if applicable)

**Please provide the following additional information.**

1. Identification of person signing this Claim (check one only):
- I am a Class Member, or an authorized employee, officer or director of the above-identified Class Member. I am signing this Form to opt-out of the settlement.
  - I am the trustee, receiver or other representative of the above-identified Class Member. I am signing this Form to opt-out the Class Member from the settlement.
- (Attach copy of court order or other official document appointing you as representative and state your name, title, mailing address and telephone number).

**I understand that by opting out I will never be eligible to receive any compensation pursuant to the MSG/ Nucleotides Litigation Settlement.**

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature (Class Member or Personal Representative)

To be effective as an election to opt-out of this Settlement, this Form must be completed, signed and sent by registered mail, postmarked no later than XXX, to the address listed below.

The consequences of returning this Opt Out Form are explained in paragraph 6 of the Notice of Certification and Settlement Agreement Approval. If you have questions about using or completing this Form, contact your lawyer or call 1-800-461-6166.

Please mail this Form to the CLAIMS ADMINISTRATOR at :

XXX

## APPENDIX "D"

### DISTRIBUTION PROTOCOL

The procedures set forth herein are intended to govern the administration of the Settlement Benefits paid in accordance with the Settlement Agreements. The procedures shall be implemented by the Claims Administrator, subject to the ongoing authority and supervision of the Ontario Court. This Distribution Protocol operates with respect to MSG and Nucleotides as defined in the Settlement Agreements.

#### 1. QUALIFICATION CATEGORIES

- 1.1 Class Members shall qualify for benefits under the Settlement Agreements in one of three categories:

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.

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).

Intermediaries and Consumers - Class Members who are neither Distributors nor Producers.

#### 2. SETTLEMENT BENEFITS AVAILABLE TO DISTRIBUTORS AND PRODUCERS

- 2.1. A Settlement Fund equal to 85% of the total Settlement Benefits plus accrued interest less (a) applicable Class Counsel fees and disbursements, (b) proportionate costs of Notice, (c) costs of administration and (d) applicable Opt Out Reductions, shall be available to compensate Distributors and Producers.

#### 2.2 Eligibility

Subject to the approval of the Claims Administrator, a Distributor or Producer shall be eligible for compensation out of the Distributors and Producers Settlement Fund upon filing a properly completed claim form postmarked before the Claim Deadline, and upon establishing: (a) that the Distributor or Producer purchased MSG and/or Nucleotides in, into, or from Canada during the Class Period and (b) the dollar amount of the MSG and/or Nucleotides purchased during the Class Period.

To be deemed sufficient to establish that a Distributor or Producer purchased MSG and/or Nucleotides in, into, or from Canada during the Class Period and to be deemed sufficient to establish the dollar value of the MSG and/or Nucleotides purchased during the Class Period "Product Purchase Verification" in one of the following forms must be submitted by Distributors and Producers with their claim form:

- a. Proof of purchase confirming the Distributor or Producer purchased MSG and/or Nucleotides in raw form during the Class Period and confirmation that compensation in respect of such purchases has not been previously made;
- b. Seller's sales record, if available, verifying the sale of MSG and/or Nucleotides in raw form to the Distributor or Producer during the Class Period; and confirmation that compensation in respect of such purchases has not been previously made; or
- c. If a Distributor or Producer is unable to provide any of the documentation as specified above in paragraphs (a) or (b) or providing that information is impractical, a Distributor or Producer may submit to the Claims Administrator such other objective verification as may be acceptable to the Claims Administrator. Such other objective verification must be accompanied by an Affidavit from the Distributor or Producer stating that steps taken by the Distributor or Producer to obtain the Product Purchase Verification outlined in subparagraphs (a) and (b) above and the responses, if any, to those steps.

No claim shall be allowed and no payment shall be made to any Class Member in respect of sales made by any of the Settling Defendants to the Class Members which have been the subject of a compromise or settlement between the Class Member and any such Settling Defendant anywhere in the world. Evidence that such compromises or settlements were reached shall be provided to the Claims Administrator by the Settling Defendant.

### **2.3. Entitlement to Compensation**

Distributors or Producers who satisfy the eligibility requirements outlined in section 2.2 of this Distribution Protocol shall be entitled to compensation, to be calculated by the Claims Administrator, in the following manner.

#### MSG

- A. A **Distributor** who establishes to the satisfaction of the Claims Administrator that it purchased MSG shall be entitled to the lesser of:
  - i. \$0.009 per dollar spent on MSG; or

- ii. pro-rata share of the fund for Distributors and Producers where such share is based on a value equal to 4% of the Distributor's established MSG purchases.
- B. A **Producer** who establishes to the satisfaction of the Claims Administrator that it purchased MSG shall be entitled to the lesser of:
- i. \$0.060 per dollar spent on MSG; or
  - ii. pro-rata share of the fund for Distributors and Producers based on a value equal to 24% of the value of the Producer's established MSG purchases.

### Nucleotides

- A. A **Distributor** who establishes to the satisfaction of the Claims Administrator that it purchased Nucleotides shall be entitled to the lesser of:
- i. \$0.038 per dollar spent on Nucleotides; or
  - ii. pro-rata share of the fund for Distributors and Producers where such share is based on a value equal to 15% of the Distributor's established Nucleotides purchases.
- B. A **Producer** who establishes to the satisfaction of the Claims Administrator that it purchased Nucleotides shall be entitled to the lesser of:
- i. \$0.250 per dollar spent on Nucleotides; or
  - ii. pro-rata share of the fund for Distributors and Producers based on a value equal to the full dollar value of the Producer's established Nucleotides purchases.

### General Claims Processing Guidelines

#### Efficiency

The Claims Administrator shall process all claims in a cost-effective and timely manner.

#### Technical Difficulties

If during claims processing, the Claims Administrator finds that technical deficiencies exist in a claimant's claim form, or the Product Purchase Verification, the Claims Administrator shall notify the claimant of the deficiencies via

registered mail and shall allow the claimant thirty days from the date of mailing of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty day period, the Claims Administrator shall reject the claim without prejudice to the right of the claimant to resubmit the claim provided the claimant is able to meet the filing deadlines and other requirements set forth in this Protocol.

Technical deficiencies shall not include missing the deadline for filing the claim form. In no event shall the Claims Administrator accept claim forms postmarked after the Claims Deadline.

#### **Notification and Payment of Claims**

The Claims Administrator shall notify via registered mail all claimants as to the approval or rejection of their claims under this Distribution Protocol.

The Claims Administrator shall promptly make arrangements to pay approved claims as expeditiously as possible.

#### **Appeal of Claims**

All claimants shall be granted thirty (30) days from the date it receives notice pursuant to paragraph 2.3 of this Distribution Protocol, to appeal the rejection of its claim. Such appeal will be on the basis of written submissions, supported only by the documentation originally provided to the Claims Administrator. The Appeals will be determined by the Ontario Court.

The judgment of the Ontario Court respecting any appeal from the Claims Administrator's decision is final and binding and shall not be subject to any further appeal or review whatsoever.

### **2.4 Disposition of Any Residue of the Fund for Distributors and Producers**

Following the resolution of any appeals filed in accordance with section 2.3 or, if no appeals are filed, after the expiration of all appeals periods, the Claims Administrator shall transfer any residue of the fund for Distributors and Producers (excluding any Opt Out Reduction), to the fund for Consumers and Intermediaries, to be distributed in accordance with paragraph 3 of this Distribution Protocol.

### **3. SETTLEMENT BENEFITS AVAILABLE TO CONSUMERS/INTERMEDIARIES**

Recognizing the difficulty of accurately identifying the amount of overcharge, if any, actually borne by any given Consumer or Intermediary, and recognizing the related difficulties in directly compensating Consumers and Intermediaries, compensation for Consumers and Intermediaries will be paid out by the Claims Administrator through a distribution to organizations which operate for the general benefit of



Consumers and Intermediaries.

The compensation available to these Class Members shall be equal to 15% of the total Settlement Benefits plus accrued interest less (a) applicable Class Counsel fees and disbursements, and (b) proportionate share of the costs of Notice.

The organizations specified below have been identified as appropriate recipients of Settlement Benefits and will receive funds from the Settlement Benefits available to Consumers and Intermediaries in the percentage specified:

- a. Canadian Counsel of Grocery Distributors – 25%;
- b. Canadian Federation of Independent Grocers – 25%;
- c. Community Foundations – 45% 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%.

## APPENDIX "E"

### ORDER

THIS MOTION made by the plaintiffs, X, X, and X, for an order that the within proceeding be certified as a class proceeding, and that the settlement of this action as against the Settled Defendants, Ajinomoto Co., Inc., Ajinomoto U.S.A., Inc., Archer Daniels Midland Co., CJ Corp f/k/a Cheil Jedang Corporation, CJ America Inc., Takeda Chemical Industries Ltd., Kyowa Hakko Kogyo, Ltd., and Daesang America, Inc., f/k/a Miwon America, Inc., each of whom is a party to one of four settlement agreements, (collectively referred to as the "Settlement Agreements"), be approved, and that Neal, Pallett & Townsend LLP be appointed as Claims Administrator, was heard this day.

ON READING the materials filed and on hearing the submissions of counsel for the representative plaintiff and counsel for the Settled Defendants:

1. THIS COURT ORDERS that the within proceeding be certified as a class proceeding pursuant to the X [insert the name of the relevant provincial legislation].
2. THIS COURT ORDERS that the class be defined as:
  - all persons other than the 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, between January 1, 1984 and December 31, 1999;
  - [British Columbia Class definition to be inserted in B.C. Order and Quebec Class definition to be inserted in Quebec Order]
3. THIS COURT ORDERS that X, X, and X, be appointed as representative plaintiffs for the class proceeding.
4. THIS COURT ORDERS that the within proceeding is certified on the basis of the following common issues:
  - a. Did the defendants or any of them engage in conduct which is contrary to s. 45 of the Competition Act?

b. What damages, if any, are payable pursuant to s. 36 of the Competition Act?

5. THIS COURT DECLARES that the Settlement Agreements with their attached appendices, annexed hereto as Schedule "A" to this Order, are fair, reasonable, and in the best interests of the members of the class.
6. THIS COURT ORDERS that the Settlement Agreements with their attached appendices, are approved pursuant to [insert the name of the relevant provincial legislation].
7. THIS COURT DECLARES that the Settlement Agreements, with their attached appendices, including their preambles and appendices, form part of this Order and are binding upon the representative plaintiffs, upon all members of the class who do not opt out of the class in accordance with the provisions of the Settlement Agreements, and upon the Settled Defendants.
8. THIS COURT DECLARES that the attached Settlement Agreements do not release the claims of Class Members as against non-settling joint tortfeasors, including Tung Hai Fermentation Industrial Corp. a/k/a Vedan, and that nothing in the Settlement Agreements prejudices or in any way interferes with the rights of Class Members to pursue all of their rights and remedies against non-settling joint tortfeasors, including Tung Hai Fermentation Industrial Corp. a/k/a Vedan, except as specifically provided for in the Settlement Agreements.
9. THIS COURT ORDERS that all claims for contribution, indemnity, subrogation or other claims over by any non-settling joint tortfeasor, including Tung Hai Fermentation Industrial Corp. a/k/a Vedan, or any other person or party, made against the Settled Defendants for or in respect of the subject matter of the Actions, whether direct, indirect, subrogated, asserted or unasserted or asserted in a representative capacity, inclusive of interest, GST and costs, are hereby barred.

10. THIS COURT ORDERS that Neal, Pallett & Townsend LLP be appointed as Claims Administrator.
11. THIS COURT ORDERS that notice of certification or settlement approval shall be published in accordance with the Settlement Agreements.
12. THIS COURT ORDERS that the certification of this proceeding as a class proceeding and the approval by this order of the Settlement Agreements is contingent upon the approval of the Settlement Agreements by each of the Ontario, British Columbia, and Quebec Courts and this order shall have no force or effect unless and until the Settlement Agreements are so approved.

Date:

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XX