

Ontario
SUPERIOR COURT OF JUSTICE

BETWEEN:

LONG DUC NGO and CHRISTOPHER MCLEAN

Plaintiffs

- and -

AJINOMOTO U.S.A., INC., AJINOMOTO COMPANY INC.,
CHEILJEDANG CORP, 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. SO15589
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 COMPNAY, INC.,
CHEILJEDANG CORP., MIWON COMPANY LTD., DAESANG JAPAN INC.,
DAESANG AMERICA INC., formerly known as MIWON AMERICA, INC.,
TAKEDA CHEMICAL INDUSTRIES LTD., TAKEDA VITAMINS & FOOD INC.,
TAKEDA CANADA VITAMIN & FOOD INC.,
ARCHER DANIELS MIDLAND CO., KYOWA HAKKO KOGYO OC., 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 BROCHI

Requérants

c.

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

Intimées

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SETTLEMENT AGREEMENT

Plaintiff Class Representatives (as hereinafter defined) 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 (as hereinafter defined), the British Columbia Class (as hereinafter defined) and the Quebec Class (as hereinafter defined) (all, collectively, referred to as "Plaintiffs") and Kyowa Hakko Kogyo, Ltd (the "Settling Defendant"), hereby enter into this agreement pursuant to the terms set out below (the "Settlement Agreement") subject to the approval of the Ontario Court, the British Columbia Court and the Quebec Court.

WHEREAS Long Duc Ngo and Christopher McLean commenced Action No. 37708 in Ontario on September 7, 2001 on their own behalf and on behalf of the proposed Ontario Class;

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

WHEREAS Option Consommateurs and Roger Fortier commenced Action No. 500-06-000089-991 in Quebec on September 29, 1999, on its own behalf and on behalf of the proposed Quebec Class Members;

WHEREAS the Plaintiffs in the Ontario, British Columbia and Quebec Actions (as hereinafter defined) alleged that the defendants were involved in a conspiracy to fix, raise, maintain or stabilize the prices of and allocate markets or

customers for Nucleotides in Canada, and sought damages for their respective Class Members (as hereinafter defined);

WHEREAS the Settling Defendant denies each and every one of the allegations and claims which the Plaintiffs have made in the Actions and denies that damages are payable for any violation of the *Competition Act* or otherwise and assert that it has valid defences to the Actions;

WHEREAS Plaintiffs' counsel and counsel for the Settling Defendant have conducted extensive settlement negotiations which resulted in this Settlement Agreement;

WHEREAS based on the analysis of the facts and law applicable to the claims of the Plaintiffs, and having regard to the burdens and expense in conducting this litigation, including the risks and uncertainties associated with protracted trials and appeals, the Plaintiffs and the Plaintiffs' 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 Plaintiffs and the Settling Defendant intend that this Settlement Agreement be binding on all purchasers of Nucleotides and on all purchasers of products containing or derived from Nucleotides in Canada and, save and except for the British Columbia Class and Quebec Class, that certification of a national class shall be sought in the Ontario Superior Court of Justice based on the substantial connections of Ontario with the facts giving rise to the actions referred to herein and that certification of a Quebec Class and a British Columbia Class shall be similarly sought in the respective jurisdictions;

WHEREAS the Settling Defendant, despite denial of liability and the assertion of good and valid defences to the Actions, has similarly concluded that this Settlement Agreement is desirable in order to avoid the time, risk and expense of defending against repetitive and protracted litigation, and to resolve completely the pending and potential claims of the Class Members;

WHEREAS the Settling Defendant enters this Settlement Agreement on the basis that there will be a valid and binding national class, British Columbia Class and Quebec Class for all purchasers of Nucleotides and for purchasers of products containing or derived from Nucleotides in Canada and that all claims by all possible claimants for sales to or in Canada are included and will be satisfied by this Settlement Agreement subject to those individual Class Members who opt out in a timely manner in compliance with the procedures for so doing and it is acknowledged that the Settling Defendant would not have entered into this Settlement Agreement if not for the foregoing;

WHEREAS while for the express purpose only of this Settlement Agreement, the Settling Defendant consents to the certification of the Actions as provided below, the Settling Defendant expressly reserves its right to contest certification of other related or unrelated proceedings and asserts that the Actions referred to herein would not be appropriately certified in the absence of the within Settlement Agreement.

WHEREAS neither this Settlement Agreement nor any step taken to carry out the Settlement Agreement nor any document relating to it is, may be construed as, or may be used as, an admission by or against the Settling Defendant of the

truth of any allegations of liability or of jurisdiction of the Canadian courts over the Settling Defendant or of the certifiability of the actions herein as class actions or as a waiver of any applicable legal right or benefit other than as expressly stated in this Settlement Agreement. This Settlement Agreement may not be construed 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, or action taken to carry out this Settlement Agreement shall be offered or received in evidence in any action or proceeding against the Settling Defendant, 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 the Settlement Agreement or to seek court approval of the Settlement Agreement in the manner as described below.

NOW THEREFORE IN CONSIDERATION OF THE COVENANTS, AGREEMENTS, AND RELEASES SET FORTH HEREIN AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged whereof quit, it is agreed by the Parties that this Settlement Agreement constitutes the full and final resolution of any and all past, present, future, and/or potential claims, demands, causes of action, actions, recourses, pursuits, disputes and/or proceedings, real or otherwise, against the Settling Defendant for, or relating in any way to the alleged conspiracy with respect to the sale of Nucleotides and/or products containing and/or derived from Nucleotides in Canada and to all direct and/or indirect purchases of Nucleotides and purchasers of products containing or derived from Nucleotides to or in Canada in accordance with the terms of this Settlement Agreement.

DEFINITIONS

1. The following words and phrases shall have the following meanings in this Settlement Agreement, including all of the appendices hereto:
 - a. **“Actions”** means any of Action No. 37708 commenced in the Superior Court of Justice of Ontario, Action No. S015589 commenced in the Supreme Court of British Columbia and Action No. 200-06-000019-011 commenced in the Quebec Superior Court.
 - b. **“Approval Orders”** means the orders of the Ontario Court and the British Columbia Court, and the judgment of the Quebec Court which certify the Actions as class actions and approve this Settlement Agreement.
 - c. **“British Columbia Class”** means the Plaintiffs class as certified by the British Columbia Court, as may be amended from time to time by the said Court.
 - d. **“British Columbia Court”** means the Supreme Court of British Columbia.
 - e. **“Class”** means any one or more of the British Columbia Class, the Ontario Class or the Quebec Class.
 - f. **“Class Counsel”** means Siskind, Cromarty, Ivey & Dowler^{LLP}, in Ontario; Camp Fiorante Matthews in British Columbia; and Desmeules, Eizenga, Stickland, Wright S.E.N.C. in Quebec.
 - g. **“Class Members”** means either each member of the Ontario Class, the British Columbia Class or the Quebec Class, including the Plaintiffs herein, or such members of those classes collectively as the context requires.

- h. **“Court”** means any one or more of the British Columbia, Ontario or Quebec Courts, or collectively as the context requires.
- i. **“Effective Date”** means the earliest date by which all of the following have occurred; (1) this Agreement has been executed by all of the Parties hereto, (2) the Ontario, British Columbia and Quebec Approval Orders have been issued and entered, and (3) the time to appeal the Approval Orders, if appeals lie, has expired, and all appeals, if any from such Approval Orders have been exhausted.
- j. **“MSG”** means monosodium glutamate in any form whatsoever and for any use whatsoever.
- k. **“Non-Settling Defendants”** shall mean Ajinomoto U.S.A., Inc., Ajinomoto Company Inc., Cheiljedang Corp, Miwon Company Ltd., Daesang America Inc., f/k/a Miwon America Inc., Takeda Chemical Industries Ltd., Takeda Vitamin & Food, Inc., Archer Daniels Midland Co., and Tung Hai Fermentation Industrial Corp.
- l. **“Nucleotides”** means Nucleotides in any form whatsoever and for any use whatsoever including, *inter alia*, DSI , IMP, GMP, DSG and I+G.
- m. **“Ontario Class”** means the Plaintiffs class certified by the Ontario Court, as may be amended from time to time by the said Court.
- n. **“Ontario Court”** means the Superior Court of Justice and the Honourable Mr. Justice Cullity, or his successor.
- o. **“Opt Out Deadline”** shall, for the Ontario and British Columbia Classes be the date 75 days following the date on which the last of the Approval Orders has been issued and entered or, if applicable, rendered and for the Quebec Class shall be the date 30 days

following the date on which the last of the three Approval Orders is issued and entered or, if applicable, rendered.

- p. **“Parties”** mean collectively the Plaintiffs and the Settling Defendant.
- q. **“Plaintiffs Class Representatives”** shall mean any one or more of Long Duc Ngo, Christopher McLean, Abel Lam, Klas Consulting & Investment Ltd., and Colette Brochu.
- r. **“Quebec Class”** means the Plaintiffs class certified by the Quebec Court, as may be amended from time to time by the said Court.
- s. **“Quebec Court”** shall mean the Quebec (Cour Supérieure) Superior Court.
- t. **“Released Parties”** refers jointly and severally to Kyowa Hakko Kogyo Ltd. and their past, present and future officers, directors, employees, agents, stockholders, attorneys, representatives, parents, subsidiaries, affiliates, partners and insurers, including without limitation, all other persons, partnerships or corporations with whom they have been, or are now, affiliated, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.
- u. **“Releasers”** refers to the Plaintiffs and the Class Members and to their respective past, present and future officers, directors, employees, agents, stockholders, attorneys, representatives, parents, subsidiaries, affiliates, partners and insurers and the predecessors, successors, heirs, executors, administrators and assignees of each of the foregoing.
- v. **“Settling Defendant”** shall mean Kyowa Hakko Kogyo, Ltd.

SETTLEMENT BENEFITS

2. Settlement Benefits shall be paid by the Settling Defendant in the total amount of \$100,000.00 (Cdn.), inclusive of interest and all legal costs. In or about January, 2003 the Settling Defendant transferred into an interest-bearing trust account in Canada the Settlement Benefits and provided written verification confirming the transfer of funds to Class Counsel. Interest earned in such interest-bearing trust accounts shall be added to, and become part of, the Settlement Benefits and shall be transferred to Siskind, Cromarty, Ivey & Dowler ^{LLP} in Trust for Class Members within seven days of the Effective Date.
3. Settlement Benefits shall be distributed to Class Members in accordance with a protocol to be determined by the Courts on motion by Class Counsel.
4. (a) The Settling Defendant agrees to cooperate with Class Counsel by providing them with information known to the Settling Defendant and related entities about the alleged conspiracy involving Nucleotides, solely by way of (i) within 30 days of the of the execution of the Settlement Agreement, a solicitor's proffer of information about the alleged conspiracy involving Nucleotides; (ii) production to Class Counsel of copies of such documents as were provided to U.S. class counsel in or about 2001 in respect of the settlement of U.S. class proceedings in the Unites States District Court, District of Minnesota in respect of monosodium glutamate and nucleotides.

(b) All information and documents provided by the Settling Defendant to Class Counsel pursuant to this Settlement Agreement shall be subject to the confidentiality provisions contained in this Settlement Agreement.

(c) Class Counsel agree to use any of the information and/or documents obtained under this paragraph only for the purpose of this litigation and agree not to share any such information and/or documents with any other person, including, but without limitation, Class Members and other parties in the Actions. If any other person demands or requests any such information and/or documents, Class Counsel shall promptly notify the Settling Defendant. Immediately upon entry of final judgment as to all claims in the Actions, the originals and all copies of documents provided by or on behalf of the Settling Defendant pursuant to this Settlement Agreement, together with all documents containing information provided by the Settling Defendant (including but not limited to, notes, memos, records and abstracts of documents, interviews or other information provided by or on behalf of the Settling Defendant) shall be returned to the Settling Defendant or destroyed at Settling Defendant's option, provided that attorney notes and attorney memos may be destroyed rather than returned, at Class Counsel's option, if an affidavit of such destruction is promptly provided to the Settling Defendant through its counsel. This duty to destroy or return documents shall not apply to documents, if any, which have been filed with the Court, so long as Class Counsel have complied with the requirements of the confidentiality provisions of this Settlement Agreement in their use and filing of such documents.

(d) Unless otherwise agreed in writing by the Settling Defendant, no information and/or documents, of any kind or nature,

provided by the Settling Defendant, or representatives of the Settling Defendant, pursuant to this Agreement, may be shared with any counsel who are representing or advising non-class member Plaintiffs (example: Class Members who elect to opt out of the Class) in actual or potential litigation against any one or more of the Releasees.

OPTING OUT

5. Class Members shall have the right to exclude themselves from this Settlement Agreement ("opt out"). Class Members who elect to opt out of this Settlement Agreement shall mail an Opt Out Form to Class Counsel and Counsel for the Settling Defendant, or for Quebec Class Members, file the Opt Out Form with the Clerk of the Quebec Superior Court for the district of Quebec by registered or certified mail, by the Opt Out Deadline. Class Members who opt out shall be excluded from the terms of the settlement and the action as a whole, and from any and all rights and obligations under this Settlement Agreement and the action as a whole. Class Members who do not opt out in the manner prescribed shall be deemed to have elected to participate in this Settlement Agreement and thus shall be bound by this Settlement Agreement and all related court orders. Where a Class Member is a member of more than one Class, opting out of one Class results in opting out of the entire proceedings and the entire settlement. Furthermore, Class Counsel undertake to immediately notify counsel for the Settling Defendant in writing as to the number and identity of opt out immediately upon being made aware of same.

RIGHT TO RESCIND

6. If Class Members comprising greater than \$1,000,000 of Nucleotides Sales opt out of this Settlement Agreement in accordance with paragraph 5, the Settling Defendant shall have the option, in its unfettered discretion, to rescind this Settlement Agreement as set forth in paragraph 7. Similarly, the Settling Defendant shall have the option to rescind this Settlement Agreement if Court approval of the Agreement, or any part thereof, is not obtained by any of the Courts, or if such approval is modified or set aside on appeal, or if the Court enters final judgment and appellate review is sought, and on such review, such final judgment is not affirmed.
7. The Settling Defendant shall exercise its option to rescind the Settlement Agreement within thirty (30) days of having been informed in writing by Class Counsel of the number and identity of Class Members that have opted out or within thirty (30) days of being informed that Court approval of the Agreement has not been obtained, in whole or in part, or within thirty (30) days of such approval being modified or set aside by an appellate review and having been so informed, the whole by providing written notice (Notice of Rescission) to Class Counsel and the Courts.
8. In the event that the Settling Defendant exercises its option to rescind pursuant to section 7 of this Settlement Agreement, Notice of Rescission shall be given to Class Members by way of public notice and also individually to all Class Members who opted out, in the latter case, such notice shall be given by Class Counsel. The content and method of dissemination of the Notice of Rescission shall be determined by the Courts.

9. The Settling Defendant shall be responsible for all costs associated with the Notice of Rescission and the notice in connection with the Approval Orders if it exercises its option to rescind the Settlement Agreement.
10. The Plaintiffs shall have the right to rescind this Settlement Agreement if the Settling Defendant does not substantially comply with its obligation as provided in Section 4 hereinabove.

EFFECT OF RESCISSION

11. In the event that the Settlement Agreement is rescinded, then the Settlement Agreement shall be terminated and shall be of no force or effect, except as provided in section 14 herein, and, in such event, the parties hereto agree that this Settlement Agreement, its negotiation and execution, the certification of the British Columbia Class and/or Ontario Class and/or Quebec Class and any approval of the Settlement Agreement by any Court, as well as the exhibit, and any and all documents and discussions associated with the Settlement Agreement shall be without prejudice to the rights of any party, shall not be deemed or construed to be an admission or evidence of any violation of any law or of any liability or wrongdoing by the Settling Defendant, or of the truth of any of the claims or allegations contained in the Statement of Claim of any of the Actions or any other pleading, and shall be maintained in confidence, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Class Action or in any other action or proceeding nor shall it constitute an admission in an effort to establish the jurisdiction of the Canadian Courts over any foreign party and the Parties will enter a Consent Order in the courts of British Columbia, Ontario and Quebec to that effect.

RESERVATION OF RIGHTS

12. The Settling Defendant and Class Members expressly reserve all their rights if this Settlement Agreement is rescinded. Class Members and Class Counsel (and any person who effectively elects to exclude himself, herself or itself from the Class) agree that in the event that this Settlement Agreement is rescinded, the originals and all copies of documents provided by or on behalf of the Settling Defendant pursuant to this Agreement, together with all documents containing information provided by the Settling Defendant (including but not limited to, notes, memos, records and abstracts of documents, interview of other information provided by or on behalf of the Settling Defendant) shall be returned to the Settling Defendant, provided that attorney notes and memos may be destroyed rather than returned if an affidavit of such destruction is promptly provided to the Settling Defendant through its counsel. Further, none of the aforesaid persons and entities shall use or attempt to use in any manner whatsoever, directly or indirectly, any documents or information derived in whole or in part therefrom, against the Settling Defendant or against any other party to the Action in connection with the Action or for any other purpose. The Settling Defendant acknowledges, however, that in the event this Settlement Agreement is rescinded, Class Counsel may nevertheless continue to represent the Class Members in the Actions.

ORDER OR JUDGMENT APPROVING THE SETTLEMENT

13. The Parties shall take all steps necessary to ensure that court approval of this settlement and the Approval Orders are sought in an expedited manner. The Parties shall seek Approval Orders from the Courts

in a form to be agreed upon by the parties and approved by the Courts. The Order or Judgment of approval of the Settlement Agreement shall:

- (a) approve the Settlement Agreement and Order the Parties and all Class Members to comply with it;
- (b) declare that the Settlement constitutes a “transaction” which is binding upon the parties and upon all Class Members;
- (c) declare that the Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class;
- (d) provide for the publication of Notice of the certification of the actions and the approval of the Settlement Agreement in accordance with terms agreed upon by the Parties and approved by the Courts;
- (e) declare that the within settlement does not release the claims of Class Members as against all Non-Settling Defendants;
- (f) order that the court shall retain jurisdiction over the Parties and Non-Settling Defendants to consider the credit which must be given against any future judgment as a consequence of this Settlement Agreement; and
- (g) declare that the Non-Settling Defendants remain jointly and severally liable for any damages proven subject to any reductions provided for in this Settlement Agreement;
- (h) expressly provide that all claims for contribution, indemnity, subrogation or other claims over, by any Non-Settling Defendant or any other person or party against the Settling Defendant for or in respect of the subject matter of the Class actions, whether direct, subrogated, asserted or unasserted or asserted in a representative capacity, inclusive of interest, GST and costs are thereby barred.

NOTICE OF CERTIFICATION AND SETTLEMENT AGREEMENT APPROVAL

14. The Notice of Certification and Settlement Agreement Approval shall be disseminated in a form and pursuant to a protocol to be agreed upon by the parties and approved by the Courts. This Notice shall be published in the newspaper within 10 days of the rendering of the judgment and by any other method of dissemination as determined by the Court. The costs shall be borne by the Class.

RELEASE

15. Except in such provinces or territories of Canada where the granting of such releases would affect Plaintiffs' entitlement to pursue remedies against Non-Settling Defendants, in consideration for the Settlement Benefits set out in this Settlement Agreement, the Plaintiffs and the Class Members (collectively the "Releasers") hereby release and forever discharge, the Released Parties in respect of any and all claims, demands and causes of action, whether class, individual or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, anywhere in Canada, including costs, expenses, legal fees, 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 herein, that any Releasers, whether directly, 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 Settling Defendant, and all other defendants and/or respondents in the actions referred to herein, prior to the date of this

Settlement Agreement, in respect of the manufacture, sale, purchase, distribution or pricing of Nucleotides and/or MSG, including without limitation any all claims that were asserted or could have been asserted by or on behalf of or through the Releasors individually, collectively or otherwise in any of the actions referred to herein, or in any other possible action anywhere else in Canada.

COVENANT NOT TO SUE

16. In respect of any provinces or territories of Canada in respect of which the Release set out paragraph 15 does not apply for the reasons set out in that paragraph, the Plaintiffs and Class Members, 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, demands and causes of action, whether class, individual or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, anywhere in Canada, including costs, expenses, legal fees, 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 herein, that any of the Plaintiffs or Class Members, whether directly, 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 Settling Defendant, and all other defendants and/or respondents in the actions referred to herein, prior to the date of this Settlement Agreement, in respect of the manufacture, sale, purchase, distribution or pricing of Nucleotides and/or MSG, including without limitation any and all claims that were asserted or

could have been asserted by or on behalf of or through the Plaintiffs or Class Members, individually, collectively or otherwise in any of the actions referred to herein, or in any other possible action anywhere else in Canada, provided that nothing in this paragraph shall constitute a release of any person or entity. Upon the final conclusion of the Proceedings against all Defendants, the Plaintiffs and Class Members shall provide the Settling Defendant with a full and final Release in respect of all provinces or territories of Canada not subject to the Release set out in paragraph 15, in the terms of this covenant not to sue, in a form satisfactory to the Settling Defendant.

17. Nothing in this Settlement Agreement shall prejudice or in any way interfere with the rights of Class Members to pursue all of their other rights and remedies against persons and/or entities other than the Settling Defendant. Nevertheless, Class Members further agree that in the event a Class Member commences or continues litigation or pursues a claim or makes a claim against any person or entity arising from, arising out of, or connected directly or indirectly with the manufacture and/or distribution in Canada of Nucleotides, including all claims for non-pecuniary, punitive, aggravated, consequential damages, and costs, then the Class Member expressly agrees not to include in respect of any such claim any right to recover from such person or entity any such amounts as a court attributes to the fault of the Settling Defendant and any amount the Settling Defendant may ultimately be responsible to pay in the event that Class Members do not collect a judgment from a Non-Settling Defendant.

ENTIRE AGREEMENT

18. This Settlement Agreement, together with the preambles 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 pertaining to the subject matter hereof. 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

19. The Court will retain exclusive jurisdiction over the Actions and over all Parties named or described therein, including, but not limited to, all Class Members and the Settling Defendant. Further, the Court will retain exclusive jurisdiction to interpret and enforce the terms, conditions and obligations of this Settlement Agreement. Notwithstanding the foregoing, the Court will not make any order which may affect the rights of Class Members other than those within the jurisdiction of such court unless like orders are being made by the Court with jurisdiction over such other Class Members that may be affected thereby.

APPLICABLE LAW

20. Except for the Quebec Class to which the law 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 Article 2631 of the *Quebec Civil Code*.

NOTICES

21. All communications to be provided pursuant to or in connection with this Settlement 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 Defendant may designate in writing from time to time.

Siskind, Cromarty, Ivey & Dowler ^{LLP}
Barristers & Solicitors
680 Waterloo Street
London, Ontario N6A 3V8
Counsel for the Ontario Class Members

Camp, Fiorante, Matthews
Barristers & Solicitors
4th Floor, 555 West Georgia Street
Vancouver, British Columbia V6B 1Z5
Counsel for the British Columbia Class Members

Desmeules, Eizenga, Strickland, Wright ^{S.E.N.C.}
Les Promenades du Vieux
43 rue Buade, Bureau 320
Quebec, Quebec G1R 4A2
Counsel for the Quebec Class Members

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Box 25, Commerce Court West
Suite 2800, 199 Bay Street
Toronto, ON M5L 1A9
Counsel for the Defendant Kyowa Hakko Kogyo, Ltd.

EXECUTION AND PROCESSING OF SETTLEMENT AGREEMENT

22. The Parties and their respective counsel shall expeditiously do all things as may be reasonably required to give effect to this Settlement Agreement.

23. The Parties agree that this Settlement Agreement may be executed by their respective counsel.

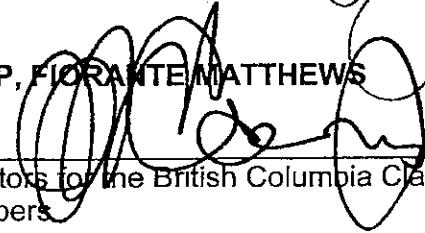
FRENCH LANGUAGE CLAUSE

24. Les Parties ont convenu que la présente entente soit rédigée en anglais.

25. The Parties further agree that this Settlement Agreement may be executed 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.

Dated this day of , 2003.

Date: March 7 / 2003 **SISKIND, CROMARTY, IVEY & DOWLER^{LLP}**
Per:  _____
Solicitors for the Ontario Class Members

Date: March 6, 2003 **CAMP, FIORANTE/MATTHEWS**
Per:  _____
Solicitors for the British Columbia Class Members

Date:

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

Per: 

Solicitors for the Québec Class Members

Date:

BLAKE, CASSELS & GRAYDON ^{LLP}

Per: _____

Solicitors in Ontario for the Defendant, Kyowa
Hakko Kogyo Co., Ltd.

Date:

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

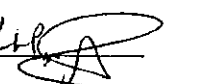
Per:

Solicitors for the Quebec Class Members

Date:

BLAKE, CASSELS & GRAYDON^{LLP}

March 14, 2003

Per: Blake Casels Graydon LLP 

Solicitors in Ontario for the Defendant, Kyowa
Hakko Kogyo Co., Ltd.