

Court File No. 39495

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

NEWLY WEDS FOODS CO.

Plaintiff

- and -

PFIZER INC., PFIZER CANADA INC.,
OTSUKA CHEMICAL CO., LTD.

Defendants

Proceeding under the Class Proceedings Act, 1992

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC
No. 06-000028-020

(Recours collectif)
COUR SUPÉRIEURE

GEORGES GARIÉPY

Requérant

c.

PFIZER INC., PFIZER CANADA INC., et.
OTSUKA CHEMICAL CO., LTD.

Intimées

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SETTLEMENT AGREEMENT

The plaintiffs, Newly Weds Foods Co. and Georges Gariépy (the "Plaintiffs"), in their capacity as class representatives, and Pfizer Inc., Pfizer Canada Inc. and Otsuka Chemical Co., Ltd. (the "Defendants"), hereby enter into this agreement pursuant to the terms set out below (the "Settlement Agreement") subject to the approval of the Ontario Court and the Quebec Court.

WHEREAS Newly Weds Foods Co. commenced Ontario Superior Court of Justice Action No. 39495 in Ontario on June 10, 2002, on its own behalf and on behalf of the proposed Ontario Class Members which includes all purchasers of Maltol in or from Canada between January 1, 1989 and December 31, 1995, except for Class Members included in the Quebec action referred to below;

WHEREAS, Georges Gariépy commenced Action No. 06-000028-020 in the Quebec Superior Court, District of Quebec, on June 6, 2002, on his own behalf and on behalf of the proposed Quebec Class Members which includes all physical persons who, in Quebec, purchased Maltol between January 1, 1989 and December 31, 1995, for their personal use (excluding purchases for marketing, distribution or reselling purposes);

WHEREAS, the Plaintiffs in the Ontario and Quebec class actions alleged that the Defendants were involved in a conspiracy to fix, raise, maintain or stabilize the prices of Maltol in or from Canada, and sought damages for their respective Class Members;

WHEREAS, the Defendants deny the allegations and claims which the Plaintiffs have made in the actions herein, and deny that damages are payable for any violation of the *Competition Act* or otherwise and assert that they have valid defences to the actions herein;

WHEREAS, the Plaintiffs' and Defendants' respective counsel have conducted settlement negotiations, which resulted in this Settlement Agreement;

WHEREAS, the Defendants represent that their respective sales of Maltol in Canada between January 1, 1989 and December 31, 1995 did not exceed, for Pfizer Inc. and Pfizer Canada Inc., \$4,162,301.00 (Cdn.); and for Otsuka Chemical Co., Ltd., \$844,883.00 (Cdn.);

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 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 negotiated this Settlement Agreement on the premise of measuring damages for all Class Members, and sought expert advice and input in devising the Distribution Protocol on behalf of all Class Members;

WHEREAS, the Plaintiffs and Defendants intend that this Settlement Agreement be binding on all purchasers of Maltol in or from Canada, and save and except for the Quebec Class that certification of a national class shall be sought in the Ontario Court based on the substantial connections to Ontario which exist in the Actions referred to herein;

WHEREAS, the Defendants, despite denial of liability and the existence of good and valid defences to the Actions, have 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 Defendants enter this Settlement Agreement on the basis that there will be a valid and binding national class for all purchasers of Maltol in Canada and that all

claims by all possible claimants for sales in Canada are included and will be satisfied by this Settlement Agreement subject to those individual Plaintiffs who opt out in a timely manner in compliance with the procedures for so doing and it is acknowledged that the Defendants would not have entered into this Settlement Agreement if not for the foregoing;

WHEREAS, for the purpose of this Settlement Agreement, only, each of the Defendants consents to the certification of the Actions as provided below, the Defendants expressly reserve their right to contest certification of other related or unrelated proceedings and assert that the Actions referred to herein would not be appropriately certified in the absence of the within Settlement Agreement; in particular, with respect to indirect claimants (those not purchasing Maltol directly from the Defendants in raw form);

WHEREAS, other than as expressly stated in this Settlement Agreement, neither this Settlement Agreement nor any step taken to carry out the Settlement Agreement nor any document relating to it, may be construed as, or may be used as, an admission by or against the Defendants of the truth of any allegations of liability or of jurisdiction of the Canadian courts over the Defendants 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. 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 Defendants, 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, it is agreed by the Parties that this Settlement Agreement constitutes the full and final resolution of any and all claims or potential claims for, or relating in any way to the alleged conspiracy with respect the sale of Maltol in Canada and to all direct or indirect purchases of Maltol 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. 39495 commenced in the Superior Court of Justice of Ontario and Action No. 06-000028-020 commenced in the Quebec Superior Court, District of Quebec.
- b. **“Approval Order”** means the orders of the Ontario Court and the Quebec Court which certify the Actions as class actions and approve this Settlement Agreement.
- c. **“Claim Deadline”** means the date by which Claim Forms set out in the Distribution Protocol must be submitted to the Claims Administrator to become eligible for benefits under the Settlement Agreement, which date shall be the date four months following the Effective Date.
- d. **“Claims Administrator”** shall mean Messrs. Neal, Pallett & Townsend LLP. or such other persons or entity appointed by the Ontario Court, as provided in paragraph 8 of this Settlement Agreement, and any employees of such person or entity.
- e. **“Class”** shall mean collectively the Ontario National Class and the Quebec Class.
- f. **“Class Counsel”** shall mean Siskind, Cromarty, Ivey & Dowler LLP, in Ontario; and, the law firm of Desmeules, *Eizenga, Strickland, Wright S.E.N.C.* in Quebec.

- g. **“Class Members”** shall mean either members of the Ontario National Class or Quebec Class, or shall mean all of the members of those Classes collectively as the context requires.
- h. **“Court”** shall mean any one or more of the Ontario or Quebec Courts, or collectively as the context requires.
- i. **“Distribution Protocol”** shall mean the mechanisms for paying Settlement Benefits to Class Members as provided for in Appendix “C” of this Settlement Agreement.
- j. **“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 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.
- k. **“Maltol”** shall include Ethyl Maltol and Methyl Maltol, and shall include products sold under the trade names of Veltol, Veltol-Plus, Pyromaltol and Ethyl Pyromaltol.
- l. **“Ontario Court”** means the Superior Court of Justice.
- m. **“Ontario National Class”** means all persons, other than the Defendants, who directly or indirectly purchased Maltol, or any product directly or

indirectly derived from or containing Maltol, in Canada, excluding Quebec Class members, between January 1, 1989 and December 31, 1995.

- n. **“Opt Out Deadline”** shall, for the Ontario National 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 first published.
- o. **“Opt Out Reduction”** shall be the amount to be paid from the Settlement Benefits to the Defendants in respect of the purchases made by Class Members who Opt Out from the Settlement Agreement in accordance with the formula set forth in paragraph 13 of this Settlement Agreement.
- p. **“Parties”** shall mean collectively the Plaintiffs and the Defendants.
- q. **“Proxy Claim”** means a claim asserted by a Defendant or Defendants in respect of Settlement Benefits that would otherwise be payable to a Class Member in accordance with paragraph 13 of this Settlement Agreement.
- r. **“Quebec Class”** shall mean all physical persons in Quebec who directly or indirectly purchased Maltol, or any product directly or indirectly derived from or containing Maltol, between January 1, 1989 and December 31, 1995, for their personal use (excluding purchases for marketing, distribution or reselling purposes).
- s. **“Quebec Court”** shall mean the (Cour Supérieure) Quebec Superior Court.

- t. **“Settlement Benefits”** shall mean the amount set out in paragraph 2 plus all interest accrued on that amount in accordance with paragraph 2 of this Settlement Agreement.

SETTLEMENT BENEFITS

2. The Settlement Benefits shall be paid by the Defendants in the total amount of \$567,000.00 (Cdn.) inclusive of all applicable interest and all legal costs and expenses. The aforesaid sum shall be payable by Pfizer Canada Inc. in the amount of \$453,600.00 and by Otsuka Chemical Co., Ltd., in the amount of \$113,400.00 respectively, for which sums each of the Defendants shall remain severally and not jointly liable. The Settlement Benefits shall be paid to the Claims Administrator within 15 (fifteen) business days of the Effective Date.
3. The Class and Class Counsel shall be reimbursed and indemnified solely out of the Settlement Benefits for all expenses including, but not limited to, the costs of Notice. The Defendants shall not be liable for any costs, fees, or expenses of the Class' respective legal counsel, expert advisors, agents or representatives. All such costs, fees and expenses as approved by the Court shall be paid out of the Settlement Benefits.

4. The Claims Administrator, under the direction of the Court, shall invest the Settlement Benefits provided however, that such portions of the Settlement Benefits as may reasonably be needed to pay current expenses associated with providing notice to the Class, administering the Settlement Benefits, and administering the settlement may be deposited in a federally insured money market fund or other interest-bearing chequing account with a Canadian chartered bank. All interest earned on the Settlement Benefits shall become and remain part of the Settlement Benefits.

5. The Claims Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Benefits. Such returns shall reflect that all taxes (including any estimated taxes, interest or penalties) on any income earned by the Settlement Benefits shall be paid out of the Settlement Benefits as provided herein.

6. All taxes arising with respect to the income earned by the Settlement Benefits and expenses and costs incurred in connection with the operation and implementation of this Settlement Agreement shall be paid from the Settlement Benefits. The Defendants shall not have any liability or responsibility for the payment of any taxes or expenses and costs associated with the implementation

of this Settlement Agreement or the filing of any tax returns or other documents with any provincial or federal taxing authority. Taxes and the expenses associated with the implementation of this Settlement Agreement shall be treated as, and considered to be, a cost of administration of the settlement and shall be paid in a timely manner by the Claims Administrator out of the Settlement Benefits without prior order of the Court, and the Claims Administrator shall be obliged to withhold from distribution to the Class any funds necessary to pay such amount.

7. Settlement Benefits shall be paid to all Class Members pursuant to the Distribution Protocol provided for in Appendix "C".

CLAIMS ADMINISTRATOR

8. Class Counsel shall propose Neal, Pallett & Townsend LLP. as Claims Administrator, whose appointment shall be subject to Court approval in Ontario, for the purpose of facilitating the implementation of the Distribution Protocol provided for at Appendix "C".
9. The Claims Administrator appointed under paragraph 8 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 provided for in Appendix "C".

10. The Claims Administrator appointed under paragraph 8 shall be bilingual in English and French.
11. The Claims Administrator appointed under paragraph 8 shall report to and be subject to and under the direction of the Ontario Court.

OPTING OUT

12. 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 send an opt out form by registered or certified mail post marked by the Opt Out Deadline to the Claims Administrator or, for Quebec Class Members, to the Clerk of the Quebec Superior Court for the district of Quebec. Class Members who opt out shall be excluded from the terms of the settlement and from any and all rights and obligations under this Settlement Agreement. 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, regardless of whether they participate in the dispute resolution process or receive any consideration.

13. In the event that a Class Member who is a Distributor or Manufacturer as defined in "Appendix C" opts out, the Defendants shall be entitled to claim an Opt Out Reduction. The Claims Administrator shall provide a list including addresses and contact information on all Class Members who have opted out to the Parties within ten days of the Opt Out Deadline. The Defendants shall then have 45 days to provide to Class Counsel their individual computation of their respective entitlement to their Opt Out Reduction which shall be calculated on the following basis:

If a Class Member timely and properly opts out, the Defendant(s) who sold (directly or indirectly) Maltol to that Class Member shall be entitled to assert a Proxy Claim with respect to such Class Member by filing such Proxy Claim with the Claims Administrator. The assertion of a Proxy Claim shall entitle the Defendants to receive from the Claims Administrator a sum equal to the payment for which such Class Member would have qualified under the terms of this Settlement Agreement.

14. Opt Out Refunds shall be paid by the Claims Administrator to each individual Defendant claiming the Opt Out Reduction.
15. Quebec Class Members who commence proceedings and fail to discontinue such proceedings by the Opt Out Deadline shall be deemed to have opted out.

NOTICE OF APPROVAL HEARING

16. Notice of the hearing in Quebec for the Approval Order shall be disseminated at least 20 days prior to that hearing and shall be in a form and disseminated pursuant to a protocol agreed to by the Parties and approved by the Quebec Court.

APPROVAL ORDER

17. 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 the form attached as Appendix "B" to this Settlement Agreement.

NOTICE OF CERTIFICATION AND SETTLEMENT AGREEMENT APPROVAL

18. The Notice of Certification and Settlement Agreement Approval shall be disseminated in the form and pursuant to the protocol outlined in Appendices "A" and "D" to this Settlement Agreement. This Notice shall be published in the newspapers as set out in Appendix "D" within 15 days of the Effective Date, and in the industry publications as set out in Appendix "D" and by the other methods of dissemination as set out in Appendix "D" at the earliest possible date following the Effective Date.

EFFECT OF NON-APPROVAL BY THE COURTS

19. If the Settlement Agreement is not approved by both Courts, then:
- (a) the Settlement Agreement shall be null and void and shall have no force or effect, and no party to the Settlement Agreement shall be bound by any of its terms except the terms of this paragraph and paragraph 1;
 - (b) the 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 Defendants, the Class, and Class Counsel, all of whom shall be restored to their respective positions existing immediately before the Settlement Agreement was executed;
 - (c) the Settlement Agreement, the fact of its negotiation and execution, the certification of any Class and any approval of the Settlement Agreement by any Court shall not constitute any admission by the Defendants or be used against the Defendants for any purpose in these or in any other proceedings and without limiting the generality of the foregoing, this Settlement Agreement and the fact of its negotiation and execution and certification by any 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 certification of these or any other proceedings in any province; and

(d) All monies paid by the Defendants (with accrued interest) shall be returned to the Defendants within seven (7) business days.

20. If the Settlement Agreement is not approved by one Court, then, at the option of each of the Defendants, the Defendants or one of them may, by written notice to Class Counsel and to the Courts within 15 days of the refusal by the Court to approve the Settlement Agreement, invoke the provisions of paragraph 19, above. If the Defendants invoke this provision, they shall be responsible solely for any out-of-pocket expenses (excluding partial indemnity costs, substantial indemnity costs, and any form of counsel fee whatsoever) incurred by the Class and Class Counsel in seeking approval of this Settlement Agreement, such payment to be made by each Defendant in proportion to such Defendant's contribution toward the Settlement Benefits.

RELEASE

21. In consideration for the Settlement Benefits set out in this Settlement Agreement, the Class Members hereby release and forever discharge Pfizer Inc., Pfizer Canada Inc., and Otsuka Chemical Co., Ltd., and each of their parents, successors, subsidiaries, assigns, affiliates, and past, present and future directors, officers, attorneys, employees, agents, consultants, advisors and other representatives of any type from any and all actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, claims and demands arising from the beginning of time to the date of this Settlement Agreement that were asserted or could have been asserted by or on behalf of or through the Plaintiffs or any Class Member individually, collectively or otherwise, based upon the conduct of the Defendants and/or their parents, successors, subsidiaries, assigns, affiliates, and past, present and future directors, officers, attorneys, employees, agents, consultants, advisors and other representatives of any type whatsoever in relation to the matters which were asserted or could have been asserted in any of the Court proceedings referred to in the preamble herein, including, without limiting the generality of the foregoing, any claims, however arising, asserting the tort of conspiracy, breaches of the *Competition Act*, price-fixing and/or anti-competitive behaviour in the market for Maltol.

22. The Plaintiffs and the Class Members further agree not to hereafter make any claims, or take or continue any proceedings against any other person, partnership, corporation or other entity who might claim contribution or indemnity or any other relief of a monetary, declaratory or injunctive nature from the Defendants in connection with the claims released in this Settlement Agreement. For greater certainty, this release is and is meant to be a subject matter release barring any proceeding of any nature or kind against any person or entity based on the claims released in this Settlement Agreement.
23. The Approval Orders shall forever bar the claims of the Plaintiffs and of all Class Members which were asserted or could have been asserted in any of the Court proceedings referred to in the preamble herein.

CLASS COUNSEL LEGAL FEES

24. Following the issuing and entering 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 the Class Members. Class Counsel in Ontario agree that they will not request legal fees in excess of twenty-five percent of \$502,976.00 (inclusive of disbursements) plus applicable taxes. Class Counsel in Quebec agree that they

will not request legal fees in excess of twenty-five percent of \$39,024.00 plus disbursements plus applicable taxes. The Defendants agree that they will take no position with respect to the Plaintiff's requests for legal fees.

25. No Class Counsel, or anyone previously 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 proceedings referred to in the preambles herein. Moreover, no Class Counsel or anyone previously employed with Class Counsel may divulge any information obtained in the course of the proceedings referred to in the preamble herein or in the preparation thereof or related to the proceedings referred to in the preambles herein, to anyone for any purpose.

26. Except as required by law or order of a court of competent jurisdiction or the terms of this Settlement Agreement, no Class Counsel or anyone previously employed by Class Counsel shall disclose any information regarding the negotiation and settlement of the Actions or this Settlement Agreement.

ENTIRE AGREEMENT

27. This Settlement Agreement, together with the preambles and the attached Appendices herein, 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.
28. The recitals to this Settlement Agreement are true and form part of this Settlement Agreement.

ONGOING AUTHORITY

29. 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 Defendants. Further, the Court will retain exclusive 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. 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.

30. The Distribution Protocol provided for in Appendix "C" governs the claims of all Class Members. The Parties want the distribution of Settlement Benefits to be efficient, rapid and cost effective and have therefore agreed that these claims will be administered on a national basis through a single Claims Administrator and a single protocol. The Ontario Court shall adjudicate any matters arising from the implementation of the Distribution Protocol provided for in Appendix "C" including but not limited to supervision of the Claims Administrator.

APPLICABLE LAW

31. 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*.

NOTICE

32. 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 Defendants 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 National Class Members

Desmeules, Eizenga, Strickland, Wright S.E.N.C.

Avocats
Les Promenades du Vieux-Québec
43 rue Buade, bureau 320
Québec, (Qc) G1R 4A2
Counsel for the Quebec Class Members

Cassels, Brock & Blackwell LLP

Scotia Plaza
Suite 2100 - 40 King Street West
Toronto, Ontario M5H 3C2
Counsel for the Defendants, Pfizer Inc., and Pfizer Canada Inc.

McMillan Binch LLP

Barristers & Solicitors
Suite 3500, South Tower
Toronto, Ontario M5J 2J7
Counsel for the Defendant, Otsuka Chemical Co., Ltd.

EXECUTION AND PROCESSING OF SETTLEMENT AGREEMENT

33. The Parties and their respective counsel shall expeditiously do all things as may be reasonably required to give effect to this Settlement Agreement.
34. The Parties agree that this Settlement Agreement may be executed by their respective counsel.

FRENCH TRANSLATION

35. A French translation of this Settlement Agreement and all Appendices attached hereto shall be prepared and the costs of translating this Settlement Agreement and all Appendices attached hereto shall be paid by the Defendants.

FRENCH LANGUAGE CLAUSE

36. Les Parties ont convenu que la présente entente soit rédigée en anglais.
37. 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.

This Settlement Agreement may be signed in counterpart.

Dated this day of , 2003.

Date:

March 13/03

SISKIND, CROMARTY, IVEY & DOWLER ^{LLP}

Per: Andrew Dekey
Solicitors for the Ontario National Class Members

Date:

March 14 /03

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

Per: Andrew Dekey for Claude Desmeules
Solicitors for the Quebec Class Members

Date:

MAR 15 2003

CASSELS, BROCK & BLACKWELL LLP

Per: [Signature]
Solicitors for the Defendants, Pfizer Inc. and
Pfizer Canada Inc.

Date:

April 7 /03

McMILLAN BINCH LLP

Per: David Kent
Solicitors for the Defendants, Otsuka Chemical Co.,
Ltd.

APPENDIX "A"

Notice of Certification and Settlement Agreement Approval

IN THE MATTER OF CANADIAN MALTOL CLASS ACTION LITIGATION

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

TO: All persons or entities in Canada, who directly or indirectly purchased Maltol, or any product directly or indirectly derived from or containing Maltol, in Canada between January 1, 1989 and December 31, 1995.

1 Purpose of this Notice Class Proceeding lawsuits have been initiated in Ontario and Quebec against Pfizer Inc., Pfizer Canada Inc., Otsuka Chemical Co., Ltd., in which it is alleged that the Defendants conspired to fix, raise, maintain or stabilize the prices of Maltol in Canada. For purposes of this Notice, "Maltol" shall include Ethyl Maltol and Methyl Maltol, and shall include products sold under the trade names of Veltol, Veltol-Plus, Pyromaltol and Ethyl Pyromaltol.

A Settlement Agreement has been reached between the individuals who brought the lawsuit (hereafter the "Plaintiffs") and Pfizer Inc., Pfizer Canada Inc. and Otsuka Chemical Co., Ltd. (hereafter the "Defendants"). The Settlement Agreement has been approved by the Courts.

This Notice is to advise you of the Settlement Agreement and inform you of your rights as a Class Member under the Agreement. You will be bound by the terms of the Settlement Agreement unless you decide to exclude yourself by opting out of the Settlement Agreement. Opting out is explained in Section 6 of this Notice.

The proceeding was certified and the Settlement Agreement approved by the Courts in Ontario and Quebec, on _____, and _____, respectively. The Ontario Court certified and approved the settlement on behalf of all persons who directly or indirectly purchased Maltol, or any product directly or indirectly derived from or containing Maltol, in Canada, excluding Quebec Class Members, between January 1, 1989 and December 31, 1995.

A separate Notice concerning Quebec consumers was published on

2 Class Member Categories

Class Members fall into four categories:

1. Distributors – Class Members who purchased Maltol from a Defendant between January 1, 1989 and December 31, 1995, and who resold the Maltol to a further purchaser. Distributors should review Section 3 of this Notice which outlines the Claim Program.

2. Manufacturers - Class Members who purchased Maltol from a Defendant or a Distributor between January 1, 1989 and December 31, 1995, and manufactured a product of which the Maltol was a component part. Manufacturers should review Section 3 of this Notice, which outlines the Claim Program.

3. Intermediaries and Consumers - Class Members who are neither Distributors nor Manufacturers. Intermediaries and Consumers should review Section 4 of this Notice which outlines the Compensation Plan.

3 Claim Program - Distributors And Manufacturers

Distributors and Manufacturers will be eligible to receive direct compensation from the Claim Program. The total amount of compensation available to all Distributors and Manufacturers is a maximum of \$453,600 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 credits. Compensation will be paid out based on the dollar value of purchases made and will depend on the total number of claims made.

A Distributor or Manufacturer must complete a Claim Form, along with 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 sent to the Claims Administrator and post marked by the Claim Deadline (date to be inserted). Claim forms are available by telephoning the Claims Administrator at 1-800-_____-_____-_____ or on the Internet at www.classaction.ca.

4 Compensation Plan - Intermediaries and Consumers

A fund of at least \$113,400 plus accrued interest less (a) applicable class counsel fees and disbursements, and (b) proportionate costs of Notice, shall be available to compensate Intermediaries and Consumers. Recognizing the difficulty of determining the damage suffered by any

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

- (a) Breakfast for Learning - 45%.
- (b) TBD – Cosmetic, Fragrance, and Toiletry Association - 45%
- (c) ACEF – 10%

-
- 5 Release of claims and the effect on other proceedings** You will be bound by the terms of the Settlement Agreement, 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 in connection with Maltol, unless you “opt out”.
-
- 6 Opting out of the Agreement** If you would like to exclude yourself from the Settlement Agreement, you can opt out by obtaining an opt out form (available from the Claims Administrator), and sending it to the Claims Administrator post marked no later than [date].
- If you opt out you will not be eligible for any of the benefits of the Agreement.
-
- 7 Class Counsel** The law firm of *Siskind, Cromarty, Ivey & Dowler LLP* represents Class Members other than consumers in Quebec. Ontario Class Counsel can be reached toll-free at **1-800-461-6166 ext. 455**.
- The law firm of *Desmeules, Eizenga, Strickland, Wright S.E.N.C.* represents Quebec consumers. Quebec Class Counsel can be reached at (418)-694-2009.
- The Courts in Ontario and Quebec have approved Class Counsel’s legal fees and expenses in the amount of \$[insert] which amount will be deducted from the settlement funds.
-
- 8 Questions About the Agreement** If you would like a copy of the Settlement Agreement or have questions, you can call the Claims Administrator’s Information Line at **XX**. A copy

of the Settlement Agreement can be sent to you at a cost of \$20.00 per copy, which amount represents the cost of photocopying and mailing the Agreement.

9 Interpretation

If there is a conflict between the provisions of this Notice and the Settlement Agreement and any of its appendices, the terms of the Settlement Agreement shall prevail.

MAILING OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE AND THE QUEBEC (COUR SUPÉRIEURE) SUPERIOR COURT.

APPENDIX "B"
Order - Certification & Settlement Approval

Court File No. 39495

ONTARIO
SUPERIOR COURT OF JUSTICE

The Honourable) Monday, the 7th day
Justice Winkler) of April , 2003

B E T W E E N:

NEWLY WEDS FOODS CO.

Plaintiff

-and-

PFIZER INC., PFIZER CANADA INC.,
OTSUKA CHEMICAL CO., LTD.

Defendants

Proceeding under *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the representative Plaintiff, Newly Weds Foods Co., for an Order that the within proceeding be certified as a class proceeding, and that the settlement of this action, be approved, and that Messrs. Neal, Pallett & Townsend LLP. be appointed as Claims Administrator, was heard this day.

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

1. **THIS COURT ORDERS** that the within proceeding be certified as a class proceeding pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c.6, ss.2 and 5.

2. **THIS COURT ORDERS** that the class be defined as:

all persons, other than the Defendants who directly or indirectly purchased any Maltol, or any product directly or indirectly derived from or containing Maltol, in Canada, excluding Quebec Class members, between January 1, 1989 and December 31, 1995.

3. **THIS COURT ORDERS** that Newly Weds Foods Co. be appointed as the representative Plaintiff for the class proceeding;

4. **THIS COURT ORDERS** that the within proceeding is certified on the basis of the following Common Issue:

(1) Did the Defendants or any of them engage in conduct which is contrary to s. 45 of the *Competition Act* ?

5. **THIS COURT DECLARES** that the Settlement Agreement with its attached Appendices and Exhibits, annexed hereto and marked as Schedule "A" to this Order (the "Settlement Agreement"), is fair, reasonable and in the best interests of the members of the class;
6. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to s. 29 of the *Class Proceedings Act, 1992*;
7. **THIS COURT DECLARES** that the Settlement Agreement, in its entirety (including its preamble, appendices and definitions), forms part of this Order and is binding upon the representative Plaintiff, upon all members of the class who do not opt out of the class in accordance with the Notice, and upon the Defendants;
8. **THIS COURT ORDERS** that the representative Plaintiff, all members of the class, and the Defendants comply with the terms of the Agreement;
9. **THIS COURT ORDERS** that Messrs. Neal, Pallett & Townsend LLP. be appointed as Claims Administrator in accordance with section 8 of the Settlement Agreement;

10. **THIS COURT ORDERS** that a Notice of Certification and Settlement Agreement Approval be published in accordance with section 18 of the Agreement and Appendices "A" and "D" to the Agreement;

11. **THIS COURT ORDERS** that this action be dismissed without costs;

12. **THIS COURT ORDERS** that approval of this Order and the Settlement Agreement is contingent upon the approval of the Quebec Court of the same Settlement Agreement and this Order shall be of no force and effect if such approval is not secured in Quebec.

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Date:

APPENDIX "C"

DISTRIBUTION PROTOCOL

The procedures set forth herein are intended to govern the administration of the settlement funds paid in accordance with the Settlement Agreement. 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 Maltol as defined in the Settlement Agreement

1. QUALIFICATION CATEGORIES

1.1 Class Members shall qualify for benefits under this Settlement Agreement in one of three categories:

Distributors - Class Members who purchased Maltol from a Defendant between January 1, 1989 and December 31, 1995, and who resold the Maltol to a further purchaser.

Manufacturers - Class Members who purchased Maltol from a Defendant or a Distributor between January 1, 1989 and December 31, 1995, and manufactured a product of which Maltol was a component part.

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

2. SETTLEMENT BENEFITS AVAILABLE TO DISTRIBUTORS AND MANUFACTURERS

2.1. A Settlement Fund of \$453,600 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 credits, shall be available to compensate Distributors and Manufacturers.

2.2 Eligibility

Eligibility requires proper completion of the Distributors and Manufacturers Claim Form which is available from the Claims Administrator. The Distributors and Manufacturers Claim Form must be submitted to the Claims Administrator and post marked no later than four (4) months of the date of the Approval Order to make a claim ("Claim Deadline").

Subject to the approval of the Claims Administrator, a Distributor or Manufacturer shall be eligible for compensation out of the Distributors and Manufacturers Settlement Fund upon filing a properly completed Distributors and Manufacturers Claim Form postmarked before the Claim Deadline, and upon establishing: (a) that the Distributor or Manufacturer purchased Maltol in Canada between January 1, 1989 and December 31, 1995; and (b) the dollar amount of the Maltol purchased.

To be deemed sufficient to establish that a Distributor or Manufacturer purchased Maltol between January 1, 1989 and December 31, 1995 and to be deemed sufficient to establish the dollar value of the Maltol purchased, "Product Purchase Verification" in the following form shall be required:

- a. Proof of purchase confirming the Distributor or Manufacturer purchased Maltol between January 1, 1989 and December 31, 1995; and confirming that compensation in respect of such purchases has not been previously made;
- b. Seller's sales record, if available, verifying the sale of Maltol to the Distributor or Manufacturer between January 1, 1989 and December 31, 1995; and confirming that compensation in respect of such purchases has not been previously made; or
- c. If a Distributor or Manufacturer is unable to provide any of the documentation as specified above in paragraphs, a or b above, or providing that information is impractical, a Distributor or Manufacturer 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 Manufacturer stating that steps taken by the Distributor or Manufacturer to obtain the Product Purchase Verification outlined in subparagraph a and b above and the responses, if any, to those steps.

2.3. Entitlement to Compensation

Distributors or Manufacturers who satisfy the eligibility requirements outlined in section 2.2 of this Distribution Protocol, shall be entitled to compensation, calculated in accordance with either section A or section B as follows.

- A. A Distributor who establishes to the satisfaction of the Claims Administrator that it purchased Maltol from a Defendant shall be entitled to the lesser of:
 - a. \$0.03 per dollar spent on Maltol; and
 - b. pro-rata share of the fund for Distributors and Manufacturers where such share is based on a value equal to 15% of the Distributor's established purchases.

- B. A Manufacturer who establishes to the satisfaction of the Claims Administrator that it purchased Maltol from a Distributor or a Defendant shall be entitled to the lesser of:
 - a. \$0.20 per dollar spent on Maltol; and

- b. a pro-rata share of the fund for Distributors and Manufacturers based on a value equal to the full dollar value of the Manufacturer's established purchases.

2.4 General Claims Processing Guidelines for Distributors and Manufacturers

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

If during claims processing, the Claims Administrator finds that technical deficiencies exist in a Distributors and Manufacturers Claim Form, or the Product Purchase Verification, the Claims Administrator shall notify the Distributor or Manufacturer of the deficiencies via registered mail and shall allow the Distributor or Manufacturer thirty (30) days from the date of mailing of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, the Claims Administrator shall reject the claim without prejudice to the right of the Distributor or Manufacturer to resubmit the claim provided the Distributor or Manufacturer is able to meet the filing deadlines and other requirements set forth in this Distribution Protocol.

Technical deficiencies shall not include missing the deadline for filing the Claim Form. In no event shall the Claims Administrator consider Claim Forms postmarked after the Claim Deadline.

2.5. Notification and Payment of Claims

The Claims Administrator shall notify via registered mail all claiming Distributors and Manufacturers 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.

2.6. Appeal of Claims

A Distributor or Manufacturer shall be granted thirty (30) days from the date it receives notice pursuant to paragraph 2.5 of this 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 revision whatsoever.

2.7. Disposition of Any Residue of the Fund for Distributors and Manufacturers

Following the expiration of all appeals periods, the Claims Administrator shall transfer any residue of the fund for Distributors and Manufacturers (excluding any Opt Out Reduction), to the fund for Consumers and Intermediaries, to be distributed in accordance with paragraph 3.2 of this Distribution Protocol.

3. SETTLEMENT BENEFITS AVAILABLE TO INTERMEDIARIES AND CONSUMERS

3.1. A fund of at least \$113,400 plus any amounts that may be paid pursuant to paragraph 2.7, plus accrued interest, less (a) applicable class counsel fees and disbursements, and (b) proportionate costs of Notice, shall be available to compensate Intermediaries and Consumers.

3.2 Method of Distribution

The fund payable to Consumers and Intermediaries shall be paid out in its entirety to the following representative in the following percentages:

1. Breakfast for Learning – 45%
2. Cosmetic, Fragrance, and Toiletry Association – 45%
3. ACEF – 10%

APPENDIX "D"

METHOD OF DISSEMINATION OF NOTICE OF CERTIFICATION AND SETTLEMENT AGREEMENT APPROVAL

1. Publication in Newspapers

The Notice of Certification and Settlement Agreement Approval will be published on one day in each of the following newspapers:

The Globe & Mail (National Edition)

La Presse

2. Industry Publications

The Notice of Certification and Settlement Agreement Approval will be published once in each of the following publications:

Food in Canada

3. Other Methods of Dissemination

- a. The Notice of Certification and Settlement Agreement Approval shall be sent to all members of the following industry organizations:
 - a. Food Processors of Canada via e-mail;
 - b. Flavour Manufacturers Association of Canada via e-mail; and
 - c. Cosmetic, Fragrance, and Toiletry Association of Canada via e-mail or internal newsletter.
- b. To the extent possible, the Settling Defendants will provide contact information respecting their Maltol customers to the Claims Administrator, and the Claims Administrator will mail the Notice of Certification and Settlement Agreement Approval to such customers. The Claims Administrator will mail the Notice of Certification and Settlement Agreement Approval by direct mail to the customers of Pfizer Inc., and of Otsuka Chemical Co., Ltd..
- c. The Notice of Certification and Settlement Agreement Approval shall be posted on Class Counsel's web site(s).