

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

ALFRESH BEVERAGES CANADA CORP.

Plaintiff

- and -

HOECHST AG, EASTMAN CHEMICAL COMPANY INC.,  
DAICEL CHEMICAL INDUSTRIES, LTD.,  
UENO FINE CHEMICALS INDUSTRY, LTD.,  
CHISSO CORPORATION, NIPPON GOHSEI, and  
CHEMINOVA AGRO A/S.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

No. L011993  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

PETER MURA

Plaintiff

- and -

HOECHST AG, EASTMAN CHEMICAL COMPANY INC.,  
DAICEL CHEMICAL INDUSTRIES, LTD.,  
UENO FINE CHEMICALS INDUSTRY, LTD.,  
CHISSO CORPORATION, NIPPON GOHSEI,  
and CHEMINOVA AGRO A/S

Defendants

Brought under the *Class Proceedings Act*

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL  
No. 500-06-000103-008

**COUR SUPÉRIEURE**  
(Recours collectif)

L'ASSOCIATION COOPÉRATIVE D'ÉCONOMIE FAMILIALE DU NORD DE MONTRÉAL (CI-APRÈS  
L'ACEF DU NORD)

Requérante

et

RAYMOND MAILHOT

Personne Désignée

c.

HOECHST AKTIENGESELLSCHAFT, EASTMAN CHEMICAL COMPANY,  
DAICEL CHEMICAL INDUSTRIES, LTD.,  
UENO FINE CHEMICALS INDUSTRY, LTD.,  
CHISSO CORPORATION, NIPPON GOHSEI,  
et CHEMINOVA AGRO A/S

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## **SETTLEMENT AGREEMENT**

The Plaintiffs, Alfresh Beverages Canada Corp., l'Association Coopérative d'Économie Familiale du Nord de Montreal ("L'ACEF du Nord") and its designated member Raymond Mailhot, and Peter Mura (the "Plaintiffs"), in their capacity as class representatives, and Hoechst AG, Eastman Chemical Company Inc., Daicel Chemical Industries, Ltd., and Nippon Gohsei (the "Settling Defendants"), 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** Alfresh Beverages Canada Corp. commenced Action No. 33817/00 in Ontario on March 28, 2000, on its own behalf and on behalf of the proposed Ontario Class Members which includes all purchasers of Sorbates in Canada between January 1, 1979 and December 31, 1996, except for Class Members included in the British Columbia and Quebec actions referred to below;

**WHEREAS** Peter Mura commenced Action No. L011993 in British Columbia on July 20, 2001, on his own behalf and on behalf of the proposed British Columbia Class Members which includes all purchasers of Sorbates in British Columbia between January 1, 1979 and December 31, 1996;

**WHEREAS** L'ACEF du Nord commenced Action No. 500-06-000103-008 in Quebec on March 3, 2000, on its own behalf and on behalf of the proposed Quebec Class Members which includes all physical persons who, in Quebec, purchased Sorbates in

Quebec between January 1, 1979 and December 31, 1996, for their personal use (excluding purchases for marketing, distribution or reselling purposes);

**WHEREAS** the Plaintiffs in the Ontario, British Columbia and Quebec class 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 Sorbates in Canada, and sought damages for their respective Class Members;

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

**WHEREAS** the following Settling Defendants represent that their respective sales in Canada between January 12, 1979 and December 31, 1996 did not exceed, for Hoechst AG, \$12,000,000; for Daicel Chemical Industries, Ltd., \$8,000,000; and for Nippon Gohsei, \$243,116 and Eastman represents that its sales in Canada between January 1, 1995 and December 31, 1996 did not exceed \$3,900,000;

**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 premises 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 Settling Defendants intend that this Settlement Agreement be binding on all purchasers of Sorbates in Canada, and save and except for the Quebec Class and the British Columbia Class, that certification of a national class shall be sought in the Ontario Superior Court of Justice based on the substantial connections to Ontario which exist in the actions referred to herein;

**WHEREAS** the Settling Defendants, despite denial of liability and the existence of good and valid defences to the class 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 Settling Defendants enter this Settlement Agreement on the basis that there will be a valid and binding national class for all purchasers of Sorbates 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 Settling Defendants would not have entered into this Settlement Agreement if not for the foregoing;

**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 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 Sorbates directly from the Settling Defendants in raw form);

**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 Defendants of the truth of any allegations of liability or of jurisdiction of the Canadian courts over the Settling 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 other than 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 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 against the Settling Defendants for, or relating in any way to the alleged conspiracy with respect to the sale of Sorbates in Canada and to all direct or indirect purchases of Sorbates 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. 33817/00 commenced in the Superior Court of Justice of Ontario, Action No. L011993 commenced in the Supreme Court of British Columbia and Action No. 500-06-000103-008 commenced in the Quebec Superior Court.
- b. **“Approval Order”** means the orders of the Ontario Court, the British Columbia Court and the Quebec Court which certify the Actions as class actions and approve this Settlement Agreement.
- c. **“British Columbia Class”** means all persons other than the defendants, who purchased Sorbates in British Columbia between January 1, 1979 and December 31, 1996.
- d. **“British Columbia Court”** means the Supreme Court of British Columbia.
- e. **“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.
- f. **“Claims Administrator”** shall mean the persons or entity agreed upon by the Parties, and appointed by the Ontario and British Columbia Courts, as provided in paragraph 11 of this Settlement Agreement, and any employees of such person or entity.



- g. **“Class”** shall mean collectively the British Columbia, Ontario and Quebec Classes.
- h. **“Class Counsel”** shall mean Siskind, Cromarty, Ivey & Dowler LLP, in Ontario; Poyner Baxter Poyner in British Columbia; and Unterberg, Labelle, Lebeau & Morgan, and Sylvestre, Charbonneau, Fafard in Quebec.
- i. **“Class Members”** shall mean either members of the Ontario, British Columbia or Quebec Classes or shall mean members of those Classes collectively as the context requires.
- j. **“Court”** shall mean any one or more of the British Columbia, Ontario or Quebec Courts, or collectively as the context requires.
- k. **“Distribution Protocol”** shall mean the mechanisms for paying damages to Class Members as provided for in Appendices “D” and “E” of this Settlement Agreement.
- 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 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.
- m. **“Non-Settling Defendants”** shall mean Ueno Fine Chemicals Industry, Ltd., Chisso Corporation, and Cheminova Agro A/S.

- n. **“Ontario Class”** means all persons other than the defendants, who purchased Sorbates in Canada, excluding Quebec and British Columbia class members, between January 1, 1979 and December 31, 1996.
- o. **“Ontario Court”** means the Superior Court of Justice and the Honourable Mr. Justice Cumming, or his successor.
- p. **“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 is issued and entered 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.
- q. **“Opt Out Reduction”** shall be the amount to be paid from the Settlement Benefits to the Settling 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 17 of this Settlement Agreement.
- r. **“Parties”** mean collectively the Plaintiffs and the Settling Defendants.
- s. **“Quebec Class”** shall mean all physical persons in Quebec who purchased Sorbates between January 1, 1979 and December 31, 1996, for their personal use (excluding purchases for marketing, distribution or reselling purposes).
- t. **“Quebec Court”** shall mean the Quebec (Cour Supérieure) Superior Court.

- u. **“Released Parties”** shall mean all those entities or individuals referred to in paragraph 24 and Appendix “A” of this Settlement Agreement.
- v. **“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.
- w. **“Settling Defendants”** shall mean Hoechst AG, Eastman Chemical Company Inc., Daicel Chemical Industries, Ltd., and Nippon Gohsei.
- x. **“Sorbates”** means all sorbate products, including all types of sorbates (dry and liquid), potassium sorbates and sorbic acid, and products containing or derived from sorbates.

## **SETTLEMENT BENEFITS**

2. The Settlement Benefits shall be paid by the Settling Defendants in the total amount of \$2,655,743 inclusive of interest, all legal costs, and disbursements including costs of Notice. Within seven business days of the execution of this Settlement Agreement each of the Settling Defendants shall transfer into interest-bearing trust accounts in Canada their proportionate share of the Settlement Benefits and shall provide written verification to Class Counsel confirming the transfer of funds. Interest earned in such interest-bearing trust accounts shall be added to and become part of the Settlement Benefits which shall be transferred to the Claims Administrator or Class Counsel in Quebec for the Settlement Benefits paid in favour of the Quebec Class, in trust, in accordance with the provisions of this Settlement Agreement, within seven business days of the Effective Date.

3. Prior to a final order approving this Settlement Agreement, disbursements for expenses associated with providing notice of the settlement to the class, administering the Settlement Benefits, and administering the settlement, all as agreed to by the Parties or approved by the Court, are to be made from the Settlement Benefits.
  
4. 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 to the Classes and administration of this settlement to the Class. The Settling Defendants shall not be liable for any costs, fees, or expenses of the Classes' 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.
  
5. The Claims Administrator, and Quebec Class Counsel for the Settlement Benefits paid in favour of the Quebec Class, 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.

6. The Claims Administrator and Quebec Counsel 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.

7. 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 paragraph shall be paid from the Settlement Benefits. The Settling 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 paragraph 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 and Quebec Counsel out of the Settlement Benefits without prior order of the Court, and the Claims Administrator and Quebec Counsel shall be obliged to withhold from distribution to the Class any funds necessary to pay such amount.

8. Settlement Benefits shall be paid to Ontario and British Columbia Class Members pursuant to the Distribution Protocol provided for in Appendix "D".

9. Settlement Benefits shall be paid to Quebec Class Members pursuant to the Distribution Protocol provided for in Appendix "E".

10. All obligations assumed by each of the Settling Defendants pursuant to this Settlement Agreement are, and shall remain, several and not joint. No Settling Defendant shall have any liability for the default of any other Settling Defendant pursuant to this Settlement Agreement.

#### **CLAIMS ADMINISTRATOR**

11. Class Counsel in Ontario and British Columbia shall propose a Claims Administrator, to be agreed upon by the Settling Defendants, and whose appointment shall be subject to Court approval in Ontario and British Columbia, for the purpose of facilitating the implementation of the Distribution Protocol provided for at Appendix "D".

12. The Claims Administrator appointed under paragraph 11 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 "D".

13. The Claims Administrator appointed under paragraph 11 shall be bilingual in English and French.

14. The Claims Administrator appointed under paragraph 11 shall report to and be subject to and under the direction of the Ontario and British Columbia Courts.

15. Class Counsel in Quebec shall implement the Distribution Protocol provided for at Appendix "E" and shall be required to administer the Settlement Benefits in accordance with this Settlement Agreement, including the provisions and procedures set forth in the Distribution Protocol.

#### **OPTING OUT**

16. 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 file an opt out form in the form set out in the Distribution Protocol with the Claims Administrator or, for Quebec Class Members, with the Clerk of the Quebec Superior Court for the district of Montreal 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 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. 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.

17. In the event that a Class Member who is a Distributor or Manufacturer as defined in Appendices B and D opts out, the Settling 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 Settling 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 Settling Defendant(s) who sold Sorbates 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 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.

18. Opt Out Refunds shall be paid by the Claims Administrator to each individual Settling Defendant claiming the Opt Out Reduction.

19. 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**

20. Notice of the hearing in Quebec for the Approval Order shall be disseminated at least 30 days prior to that hearing and shall be in the form outlined in Appendix "G" and pursuant to the protocol outlined in Appendix "H" to this Settlement Agreement.



## **APPROVAL ORDER**

21. 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 "C" to this Settlement Agreement.

## **NOTICE OF CERTIFICATION AND SETTLEMENT AGREEMENT APPROVAL**

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

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

23. If the Settlement Agreement is not approved by all three Courts, then, at the option of the Settling Defendants;
- (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 Settling Defendants, the British Columbia Class, the Ontario Class and the Quebec Class and Class Counsel, all of whom shall be restored to their respective positions existing immediately before the Agreement;
  - (c) the Settlement Agreement, the fact of 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 shall not constitute any admission by the Settling Defendants or be used against the Settling Defendants 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 an 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 Settling Defendants (with accrued interest) shall be returned to the Settling Defendants within seven (7) business days of the execution of the option referred to in paragraph 23(a). If the Settling Defendants invoke this provision, they shall be responsible solely for any out-of-pocket expenses including Notice (excluding party and party costs, solicitor and client costs and any form of counsel fee whatsoever) incurred by the Class and Class Counsel for seeking approval of this Settlement Agreement, such payment to be made by each Settling Defendant in proportion to such Settling Defendant's contribution toward the Settlement Benefits.

## **RELEASE**

24. In consideration for the Settlement Benefits set out in this Settlement Agreement, the Class Members hereby release and forever discharge the Settling Defendants, Hoechst AG, Eastman Chemical Company, Daicel Chemical Industries, Ltd., and Nippon Gohsei, and each of their past, present and future parents, predecessors, successors, subsidiaries, assigns, affiliates, sales agents, intermediaries, and directors, officers, shareholders, 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 Settling Defendants and/or their past, present and future parents, successors, subsidiaries, assigns, affiliates, and 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 or anti-competitive behaviour.

25. 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 any of the Settling Defendants, the Released Parties, or the Non-Settling Defendants in connection with the claims released in this Settlement Agreement.

26. The Plaintiffs and the Class Members undertake and covenant not to make any claims, or take or continue any proceedings, including the Actions, against the Non-Settling Defendants in any way connected with the claims that were or could have been asserted in the Actions or from which the Settling Defendants have been released in accordance with the terms of the Settlement Agreement with respect to damages incurred by the Plaintiffs and the Class Members as a customer of the Settling Defendants or as a result of purchasing or being supplied with Sorbates, directly or indirectly, including, without limiting the generality of the foregoing, any claims, however

arising, asserting the tort of conspiracy, breaches of the *Competition Act*, price-fixing or anti-competitive behaviour.

27. 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**

28. Following the issuing and entering of the Approval Orders or at the occasion thereof, Class Counsel shall bring motions before their respective Courts on notice to the Settling Defendants for payment of any legal fees or disbursements which the Court may deem are payable by the Class Members.

29. 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 proceedings referred to in the preambles herein. Moreover, no Class Counsel or anyone 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, to anyone for any purpose.

30. 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 employed by Class Counsel shall disclose any information regarding the negotiation and settlement of the Actions or this Settlement Agreement.

#### **ENTIRE AGREEMENT**

31. 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. 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**

32. The Ontario, British Columbia and Quebec courts 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 Defendants. Further, the Ontario, British Columbia and Quebec courts 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, except as provided for in paragraph 33. Notwithstanding the

foregoing, none of the courts mentioned herein will 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 or courts with jurisdiction over such other Class Members that may be affected thereby.

33. The Distribution Protocol provided for in Appendix "D" governs the claims of Ontario and British Columbia Class Members only. The Parties want this process 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. It is the intention of the Parties that the Ontario Court, with the concurrence of the British Columbia Court, shall adjudicate any matters arising from the implementation of the Protocol provided for in Appendix "D" including but not limited to supervision of the Claims Administrator.

34. The Distribution Protocol provided for in Appendix "E" governs the claims of the Quebec Class Members only. Matters which arise from the implementation of that Protocol will be the exclusive jurisdiction of the Quebec Court.

#### **APPLICABLE LAW**

35. 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

36. 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 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 Class Members

**Unterberg, Labelle, Lebeau & Morgan**  
Barristers & Solicitors  
700-1980 rue Sherbrooke o.  
Montreal, Quebec H3H 1E8  
Counsel for the Quebec Class Members

**Sylvestre, Charbonneau, Fafard**  
740 av. Atwater  
Montreal Quebec H4C 2G9  
Counsel for the Quebec Class Members

**Poyner Baxter Poyner**  
Barristers & Solicitors  
Lonsdale Quay Plaza  
408 - 145 Chadwick Court  
North Vancouver, British Columbia V7M 3K1  
Counsel for the British Columbia Class Members

**Stikeman Elliott**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario M5L 1B9  
Counsel for the Defendant, Hoechst AG

**Blake, Cassels & Graydon** <sup>LLP</sup>  
Barristers & Solicitors  
Box 25, Commerce Court West  
199 Bay Street  
Toronto, Ontario M5L 1A9  
Ontario Counsel for the Defendant, Eastman Chemical Company

**Blake, Cassels & Graydon** <sup>LLP</sup>  
Barristers & Solicitors  
2600-595 Burrard St., 3 Bentall Ctr.  
PO Box 49314, Stn. Bentall Ctr  
Vancouver, British Columbia V7X 1L3  
B.C. Counsel for the Defendant, Eastman Chemical Company

**Cassels, Brock & Blackwell** <sup>LLP</sup>  
Barristers & Solicitors  
Scotia Plaza  
Suite 2100 - 40 King Street West  
Toronto, Ontario M5H 3C2  
Ontario Counsel for the Defendant, Daicel Chemical Industries, Ltd.

**Clark, Wilson**  
Patent & Trade-Mark Agents  
800-885 Georgia St. W.  
Vancouver, British Columbia V6C 3H1  
B.C. Counsel for the Defendant, Daicel Chemical Industries, Ltd.

**Lavery, deBilly**  
Ste. 4000 1 place Ville-Marie  
Montreal, Quebec H3B 4M4  
Quebec Counsel for the Defendant, Daicel Chemical Industries, Ltd.

**Fraser Milner Casgrain** <sup>LLP</sup>  
Barristers & Solicitors  
P.O.Box 100  
1 First Canadian Place  
100 King Street West  
Toronto, Ontario M5X 1B2  
Counsel for the Defendant, Nippon Gohsei



**EXECUTION AND PROCESSING OF SETTLEMENT AGREEMENT**

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

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

**FRENCH TRANSLATION**

39. 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 out of the Settlement Benefits.

**FRENCH LANGUAGE CLAUSE**

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

41. 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 05 day of 05, 2001.

Date:

05/2001

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

Per: 

Solicitors for the Ontario Class Members

Date:

November 12/01

**UNTERBERG, LABELLE, LEBEAU & MORGAN**

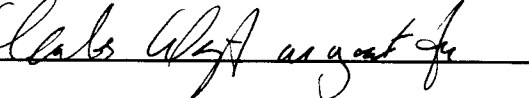
Per: 

Solicitors for the Quebec Class Members

Date:

November 12/01

**SYLVESTRE, CHARBONNEAU, FAFARD**

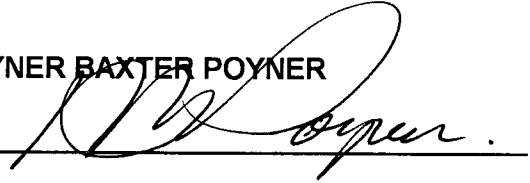
Per: 

Solicitors for the Quebec Class Members

Date:

Nov. 8/01

**POYNER BAXTER POYNER**

Per: 

Solicitors for the British Columbia Class Members

Date:

November 8, 2001

**STIKEMAN ELLIOTT**

Per: 

Solicitors for the Defendant, Hoechst AG

Date:

Oct 12 2007

**BLAKE, CASSELS & GRAYDON LLP**

Per: 

ON Solicitors for the Defendant, Eastman Chemical Company

Date:

Oct 12 2007

**BLAKE, CASSELS & GRAYDON LLP**

Per: 

B.C. Solicitors for the Defendant, Eastman Chemical Company

Date:

October 5, 2001

**CASSELS, BROCK & BLACKWELL LLP**

Per:

[Signature]  
ON Solicitors for the Defendant, Daicel Chemical Industries, Ltd.

Date:

October 15, 2001

**CLARK WILSON**

Per:

[Signature] as agent for Clark Wilson  
B.C. Solicitors for the Defendant, Daicel Chemical Industries, Ltd.

Date:

October 5, 2001

**LAVERY, deBILLY**

Per:

[Signature] as agent for Lavery deBilley  
QB Solicitors for the Defendant, Daicel Chemical Industries, Ltd.

Date:

October 26, 2001

**FRASER MILNER CASGRAIN LLP**

Per:

[Signature]  
Solicitors for the Defendant, Nippon Gohsei

**APPENDIX "A"**  
**RELEASED PARTIES**

Hoechst AG, Eastman Chemical Company, Daicel Chemical Industries, Ltd., and Nippon Gohsei, and each of their past, present and future parents, predecessors, successors, subsidiaries, assigns, affiliates, sales agents, intermediaries, and directors, officers, shareholders, attorneys, employees, agents, consultants, advisors and other representatives of any type.

## APPENDIX "B"

### Notice of Certification and Settlement Agreement Approval

#### IN THE MATTER OF **Sorbates** CLASS ACTION LITIGATION IN ONTARIO BRITISH COLUMBIA AND QUEBEC

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

**TO:** All persons or entities in Canada, who purchased Sorbates, which are defined in the Settlement Agreement and referred to in this Notice, meaning all sorbate products, including all types of sorbates (dry and liquid), potassium sorbates and sorbic acid, and products containing or derived from sorbates, in Canada between January 1, 1979 and December 31, 1996, excluding physical persons in Quebec.

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**1 Purpose of this Notice** Class Proceeding lawsuits have been initiated in Ontario, British Columbia, and Quebec against Hoechst AG, Eastman Chemical Company Inc., Daicel Chemical Industries, Ltd., Ueno Fine Chemicals Industry, Ltd., Chisso Corporation, Nippon Gohsei, and Cheminova Agro A/S, in which it is alleged that the Defendants conspired to fix, raise, maintain or stabilize the prices of and allocate markets or customers for Sorbates in Canada.

An Agreement has been reached between the Plaintiffs (the individuals who brought the lawsuit) and the Defendants, Hoechst AG, Eastman Chemical Company Inc., Daicel Chemical Industries, Ltd. and Nippon Gohsei (hereafter the "Settling Defendants"). The Agreement has been approved and the lawsuit has been certified as a Class Action by the Court as against the Settling Defendants only, and only with respect to the Agreement.

This Notice is to advise you of the Agreement and inform you of your rights as a Class Member under the Agreement. You will be bound by the terms of the Agreement unless you decide to exclude yourself by opting out of the 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, British Columbia, and Quebec, on \_\_\_\_\_, and \_\_\_\_\_.

A separate Notice concerning Quebec consumers was published on \_\_\_\_\_.

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**2 Class Member Categories**

Class Members fall into four categories:

1. Distributors - Class Members who purchased Sorbates and who resold the Sorbates to a further purchaser. Distributors should review Section 3 of this Notice which outlines the Claim Program.
  2. Manufacturers - Class Members who purchased Sorbates and manufactured a product of which the Sorbates was a component part. Manufacturers should review Section 3 of this Notice, which outlines the Claim Program.
  3. Intermediaries - Class Members who purchased products which contain Sorbates as a component part, and resold the same or virtually the same product to a further purchaser. Intermediaries should review Section 4 of this Notice which outlines the Compensation Plan.
  4. Consumers - Class Members (except Quebec consumers) who purchased products which contain Sorbates as a component part, and consumed that product. Consumers should review Section 4 of 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 \$1,712,085 plus accrued interest less (a) applicable class counsel fees and disbursements, (b) costs of Notice and Administration, and (c) 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. In the case of claims based on purchases from Eastman Chemical Company Inc., compensation will be paid only with respect to purchases made during the period January 1, 1995 to December 31, 1996.

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 submitted to the Claims Administrator no later than four (4) months after the Approval Date. Claim forms are available by telephoning the Claims Administration at 1-800-\_\_\_\_\_.

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- 4 Compensation Plan - Intermediaries and Consumers (except Quebec Consumers)** A Settlement Fund of at least \$733,751 plus accrued interest less (a) applicable class counsel fees and disbursements, (b) costs of Notice and Administration, and (c) applicable opt out credits, shall be available to compensate intermediaries and consumers. 50% of the Settlement Fund will be available to compensate intermediaries, and 50% of the Settlement Fund will be available to compensate consumers (except Quebec 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:

Intermediaries

1. The Canadian Federation of Independent Grocers will receive 50% of the funds available to compensate intermediaries; and
2. The Canadian Council of Grocery Distributors will receive 50% of the funds available to compensate intermediaries.

Consumers (outside of Quebec)

1. The Consumers Association of Canada shall receive 33.3% of the funds available to compensate consumers;
2. The Canadian Association of Food Banks shall receive 33.3% of the funds available to compensate consumers; and
3. The University of Guelph, Ontario Agricultural College, shall receive 33.3% of the funds available to compensate consumers.

- 
- 5 Release of claims and the effect on other proceedings** You will be bound by the terms of the 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 Settling Defendants in connection with Sorbates, unless you “opt out”.

- 
- 6 Opting out of the Agreement** If you would like to exclude yourself from the Agreement, 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 60 days following the date of first publication of this Notice.

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*<sup>LP</sup> represents the Class in Ontario, class members in provinces other than British Columbia and Quebec and non-physical persons in Quebec. Ontario Class Counsel can be reached toll-free at **1-800-461-6166**.

The law firm of *Poyner Baxter Poyner* represents the Class in British Columbia. British Columbia Class Counsel can be reached at **604-988-6321**.

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The law firms of *Unterberg, Labelle, Lebeau & Morgan* and *Sylvestre, Charbonneau, Fafard* represent the Class in Quebec. Quebec Class Counsel can be reached at **514-934-0841**.

The entitlement of plaintiffs' counsel to legal fees and costs of class counsel will be determined by the Court and will be deducted from the Settlement Benefits.

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- 8 Questions About the Agreement** If you would like a copy of the Agreements 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 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, THE SUPREME COURT OF BRITISH COLUMBIA AND THE QUEBEC (COUR SUPERIEURE) SUPERIOR COURT.



**APPENDIX "C"**

Order - Certification & Settlement Approval - Ontario

Court File No. 33817/00

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

The Honourable Mr. ) \_\_\_\_\_ day, the \_\_\_\_ day  
Justice )  
) of \_\_\_\_\_, 2001

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

**ALFRESH BEVERAGES CANADA CORP.**

**Plaintiff**

**-and-**

**HOECHST AG, EASTMAN CHEMICAL COMPANY INC.,  
DAICEL CHEMICAL INDUSTRIES, LTD,  
UENO FINE CHEMICALS INDUSTRY, LTD.,  
CHISSO CORPORATION, NIPPON GOHSEI, and  
CHEMINOVA AGRO A/S.**

**Defendants**

***Proceeding under Class Proceedings Act, 1992***

**ORDER**

THIS MOTION made by the representative Plaintiff, Alfresh Beverages Canada Corp. for an Order that the within proceeding be certified as a class proceeding with respect to the defendants, Hoechst AG, Eastman Chemical Company Inc., Daicel Chemical Industries, Ltd., and, Nippon Gohsei, (the "Settling Defendants"), and that the settlement of this action as against the Settling Defendants, be approved, and that \_\_\_\_\_ 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 Settling 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 with respect to the defendants, Hoechst AG, Eastman Chemical Company Inc., Daicel Chemical Industries, Ltd., and, Nippon Gohsei, only.
  
2. **THIS COURT ORDERS** that the class be defined as:

All persons other than the defendants, who purchased Sorbates (as defined in the Settlement Agreement) in Canada, excluding Quebec and British Columbia class members, between January 1, 1979 and December 31, 1996.
  
3. **THIS COURT ORDERS** that Alfresh Beverages Canada Corp. 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 Issues:
  - (1) Did the Settling Defendants or any of them engage in conduct which is contrary to s. 45 of the *Competition Act* ?
  - (2) What damages, if any, are payable pursuant to s. 36 of the *Competition Act*?
  
5. **THIS COURT DECLARES** that the Settlement Agreement with its attached Appendices, annexed hereto and marked as Schedule "A" to this Order (the "Agreement"), is fair, reasonable and in the best interest 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 and appendices) 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 Settling Defendants.
8. **THIS COURT ORDERS** that the representative plaintiff, all members of the Class, and the Settling Defendants comply with the terms of the Agreement.
9. **THIS COURT ORDERS** that \_\_\_\_\_ be appointed as Claims Administrator in accordance with section 11 of the Settlement Agreement.
10. **THIS COURT ORDERS** that a Notice of Certification and Settlement Approval be published in accordance with section 22 of the Agreement and Appendix "B" to the Agreement.
11. **THIS COURT ORDERS** that this action be dismissed as against the Defendants, Hoechst AG, Eastman Chemical Company Inc., Daicel Chemical Industries, Ltd. and Nippon Gohsei without costs.
12. **THIS COURT ORDERS** that approval of this Order and the Settlement Agreement is contingent upon the approval of the British Columbia and Quebec Courts of the same Settlement Agreement and this Order shall be of no force and effect if such approval is not secured in both British Columbia and Quebec.

Date:

\_\_\_\_\_  
Cumming J.

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

The Honourable ) \_\_\_\_\_ day, the \_\_\_\_ day  
Justice )  
 ) of \_\_\_\_\_, 2001

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

PETER MURA

Plaintiff

and:

HOECHST AG, EASTMAN CHEMICAL COMPANY INC.,  
DAICEL CHEMICAL INDUSTRIES LTD.,  
UENO FINE CHEMICALS INDUSTRY, LTD.,  
CHISSO CORPORATION, NIPPON GOHSEI,  
and CHEMINOVA AGRO A/S

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. c..50

**ORDER**

**THIS MOTION** made by the representative Plaintiff, Peter Mura for an Order that the within proceeding be certified as a class proceeding, with respect to the defendants, Hoechst AG, Eastman Chemical Company Inc., Daicel Chemical Industries, Ltd., and, Nippon Gohsei (the "Settling Defendants"), and that the settlement of this action as against the Settling Defendants, be approved, and that \_\_\_\_\_ 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 Settling Defendants:

1. **THIS COURT ORDERS** that the within proceeding be certified as a class proceeding pursuant to the *Class Proceedings Act*, R.S.B.C. c. 50 with respect to the defendants, Hoechst AG, Eastman Chemical Company Inc., Daicel Chemical Industries, Ltd., and, Nippon Gohsei, only.
  
2. **THIS COURT ORDERS** that the class be defined as:

All persons other than the defendants, who purchased Sorbates (as defined in the Settlement Agreement) in British Columbia between January 1, 1979 and December 31, 1996.
  
3. **THIS COURT ORDERS** that Peter Mura be appointed as the representative Plaintiff for the Class;
  
4. **THIS COURT ORDERS** that the within proceeding is certified on the basis of the following Common Issues:
  - a. Did the Settling 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 Agreement with its attached appendices, annexed as Schedule "A" to this Order (the " Agreement"), is fair, reasonable and in the best interest of the members of the Class;
  
6. **THIS COURT ORDERS** that the Settlement Agreement be approved pursuant to section 35

of the *Class Proceedings Act.*, R.S.B.C. c. 50;

7. **THIS COURT DECLARES** that the Settlement Agreement in its entirety (including its preamble and appendices) 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 Settling Defendants;
8. **THIS COURT ORDERS** that the representative plaintiff, all members of the Class, and the Settling Defendants comply with the terms of the Agreement;
9. **THIS COURT ORDERS** that \_\_\_\_\_ be appointed as Claims Administrator in accordance with section 11 of the Settlement Agreement;
10. **THIS COURT ORDERS** that a Notice of Certification and Settlement Approval be published in accordance with section 22 of the Agreement, and Appendix "B" to the Agreement;
11. **THIS COURT ORDERS** that this action be dismissed against the Defendants, Hoechst AG, Eastman Chemical Company Inc., Daicel Chemical Industries, Ltd., and Nippon Gohsei without costs;
12. **THIS COURT ORDERS** that approval of this Order and the Settlement Agreement is contingent upon the approval of the Ontario and Quebec courts of the same Settlement

Agreement and this Order shall be of no force and effect if such approval is not secured in both Ontario and Quebec.

BY THE COURT

DISTRICT REGISTRAR

## APPENDIX "D"

### DISTRIBUTION PROTOCOL (for Ontario and British Columbia Class Members)

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 Sorbates as defined in the Settlement Agreement.

#### 1. QUALIFICATION CATEGORIES

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

- Distributors - Class Members who purchased Sorbates and who resold the Sorbates to a further purchaser between January 1, 1979 and December 31, 1996.
- Manufacturers - Class Members who purchased Sorbates and manufactured a product of which Sorbates was a component part between January 1, 1979 and December 31, 1996.
- Intermediaries - Class Members who purchased products containing or derived from Sorbates, and resold virtually the same product to a further purchaser between January 1, 1979 and December 31, 1996.
- Consumers - Class Members who purchased Sorbates or products containing or derived from Sorbates between January 1, 1979 and December 31, 1996.

#### 2. DISTRIBUTORS AND MANUFACTURERS SETTLEMENT FUND

2.1. A Settlement Fund equal to a maximum of \$1,712,085 plus accrued interest less (a) applicable class counsel fees and disbursements, (b) costs of Notice and Administration, and (c) 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 attached hereto as Exhibit "A". The Distributors and Manufacturers Claim Form must be submitted to the Claims Administrator within 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 Sorbates in Canada between January 1, 1979 and December 31, 1996; (b) the dollar amount of the Sorbates purchase; and (c) has not previously been compensated in respect of such purchases. In the case of claims based on purchases from Eastman Chemical Company, Inc., only purchases made during the period January 1, 1995 to December 31, 1996 will be eligible for compensation.

To be deemed sufficient to establish that a Distributor or Manufacturer purchased Sorbates between January 1, 1979 and December 31, 1996, or in the case of purchases from Eastman Chemical Company, Inc., between January 1, 1995 and December 31, 1996, and to be deemed sufficient to establish the dollar value of the Sorbates purchased, "Product Purchase Verification" in the following form shall be required:

- a. Proof of purchase confirming the Distributor or Manufacturer purchased Sorbates between January 1, 1979 and December 31, 1996; confirming the dollar value of the Sorbates purchased; and confirming that compensation in respect of such purchases has not previously been made.
- b. Sales Records confirming the Distributor or Manufacturer purchased Sorbates between January 1, 1979 and December 31, 1996; confirming the dollar value of the Sorbates purchased; and confirming that compensation in respect of such purchases has not previously been made.
- c. Seller's sales record, if available, verifying the sale of Sorbates to the Distributor or Manufacturer between January 1, 1979 and December 31, 1996; verifying the dollar value of the sale; and confirming that compensation in respect of such purchases has not previously been made; or
- d. If a Distributor or Manufacturer is unable to provide any of the documentation as specified above in subparagraphs a, b and c above, 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 the steps taken by the Distributor or Manufacturer to obtain the Product Purchase Verification outlined in subparagraph a, b and c above and the responses, if any, to those steps.

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

Distributors and Manufacturers who satisfy the eligibility requirements outlined in section 2.2 of this 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 Sorbates from a Defendant shall be entitled to the lesser of:

- a. \$0.0225 per dollar spent on Sorbates; and
  - b. a pro rata share of the Distributors and Manufacturers Settlement Fund with such share to be based upon a value equal to 15% of the Distributor's established purchases;
- B. A Distributor who does not establish to the satisfaction of the Claims Administrator that the Sorbates purchased was purchased from a Defendant shall be entitled to the lesser of:
- a. \$0.0045 per dollar spent on Sorbates; and
  - b. a pro-rata share of the Distributors and Manufacturers Settlement Fund with such share to be based upon a value equal to 3% of the Distributor's established purchases;
- C. A Manufacturer who establishes to the satisfaction of the Claims Administrator that it purchased Sorbates from a Defendant shall be entitled to the lesser of:
- a. \$0.15 per dollar spent on Sorbates; and
  - b. A pro-rata share of the Distributors and Manufacturer's Settlement Fund with such share to be based upon the full dollar value of the Manufacturer's established purchases;
- D. A Manufacturer that does not establish to the satisfaction of the Claims Administrator that it purchased Sorbates from a Defendant shall be entitled to the lesser of:
- a. \$0.03 per dollar spent on Sorbates; and
  - b. A pro-rata share of the Distributors and Manufacturers Settlement Fund with such share to be based upon a value equal to 20% 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 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 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 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 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 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 Distributors and Manufacturers Settlement Fund**

Following the expiration of all appeals periods, the Claims Administrator shall transfer any residue of the Distributors and Manufacturers Settlement Fund, to the Consumers and Intermediaries Settlement Fund, to be distributed in accordance with paragraph 3 of this Protocol.

**3. SETTLEMENT BENEFITS AVAILABLE TO INTERMEDIARIES AND CONSUMERS**

3.1. A Settlement Fund equal to a maximum of \$733,751 plus accrued interest less (a) applicable class counsel fees and disbursements, (b) costs of Notice and Administration, and (c) applicable opt out credits, shall be available to compensate Intermediaries and Consumers ("Consumers and Intermediaries Settlement Fund").

**3.2 Method of Distribution**

The Consumers and Intermediaries Settlement Fund shall be paid out in its entirety to the following representative consumer, grocers, and cosmetics associations as specified below:

**A. Intermediaries**

Fifty percent of the Consumers and Intermediaries Settlement Fund shall be available to compensate Intermediaries. The organizations specified below have been identified

as appropriate recipients of the Consumers and Intermediaries Settlement Fund. It is understood that the compensation paid to each of the recipient organizations will be used for the general benefit of their respective members.

1. The Canadian Federation of Independent Grocers shall receive 50% of funds allocated to compensate Intermediaries; and
2. The Canadian Council of Grocery Distributors shall receive 50% of funds allocated to compensate Intermediaries.

#### **B. Consumers**

Fifty percent of the Consumers and Intermediaries Settlement Fund shall be available to compensate consumers. The organizations specified below have been identified as appropriate recipients of the Consumers and Intermediaries Settlement Fund.

1. The Consumers Association of Canada shall receive 33.3% of the funds available to compensate Consumers;
2. The Canadian Association of Food Banks shall receive 33.3% of the funds available to compensate Consumers; and
3. The University of Guelph, Ontario Agricultural College, shall receive 33.3% of the funds available to compensate Consumers.

#### **3.3. Residue of the Distributors and Manufacturer's Settlement Fund**

The Claims Administrator shall pay out the residue of the Manufacturers Settlement Fund in the same manner, to the same organizations, and in the same proportions as specified in paragraphs 3.2 above.

## APPENDIX "E"

### QUEBEC CLASS ACTION DISTRIBUTION PROTOCOL

The Quebec Class will receive the total amount of \$209,907.00 plus accrued interest in satisfaction of all claims. The procedures set forth herein are intended to govern the administration of the settlement funds and costs in accordance with the Settlement Agreement in respect of the Quebec action.

1. **Fonds d'aide aux recours collectifs**

A sum of \$35,000.00 shall be paid to the Fonds d'aide aux recours collectifs.

2. **L'ACEF du Nord**

A sum of \$25,000.00 shall be paid to L'ACEF du Nord.

3. **Judicial fees and costs**

A sum of \$15,000.00 plus the costs of Notices and taxes thereon shall be paid to Unterberg, Labelle, Lebeau & Morgan and Sylvestre, Charbonneau, Fafard ("Quebec Class Counsel").

4. **Extra-judicial fees and costs**

A sum of \$26,981.40 plus disbursements and taxes shall be paid to Petitioners' Counsel.

5. **Regroupement des Magasins Partage de l'Île de Montréal**

The balance of the settlement funds payable to the Quebec Class namely, the sum of approximately \$101,770.00 less the cost of notices, disbursements, and extrajudicial costs plus taxes (the "Settlement Funds"), shall be paid to the *Regroupement des Magasins Partage de l'Île de Montréal* (the "Regroupement"), a non-profit organization of twenty-one (21) stores distributing food to persons in need. The Regroupement shall use twenty per cent (20%) of the Settlement Funds to help and assist covering its costs and eighty per cent (80%) of the Settlement Funds for foods and other necessities to be distributed to persons in need during its Christmas Campaign.

7. All amounts provided for above shall be paid by the Settling Defendants to Siskind, Cromarty, Ivey & Dowler LLP which shall forward the funds to counsel for the Quebec Class for distribution pursuant to this Protocol.

## APPENDIX "F "

### METHOD OF DISSEMINATION OF NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL

#### 1. Publication in Newspapers

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

The Globe & Mail (National Edition)  
National Post  
Gazette  
La Presse

#### 2. Industry Publications

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

Food in Canada  
The Canadian Grocer  
Cosmetics  
Le Monde Alimentaire

#### 3. Other Methods of Dissemination

- a. The Notice of Certification and Settlement Approval shall be sent to all members of the Food Institute of Canada via e-mail from the Food Institute of Canada.
- b. To the extent possible, the Settling Defendants will provide contact information respecting their Sorbates customers to the Claims Administrator, and the Claims Administrator will mail the Notice of Certification and Settlement Approval to such customers.
- c. The Notice of Certification and Settlement Approval shall be posted on Class Counsel's web site(s).

**Exhibit "A "**

**DISTRIBUTORS AND MANUFACTURERS CLAIM FORM**  
**Sorbates Settlement**

TO BE ELIGIBLE FOR COMPENSATION YOUR COMPLETE APPLICATION TOGETHER WITH SUPPORTING DOCUMENTATION MUST BE SENT TO THE CLAIMS ADMINISTRATOR NO LATER THAN **XXX (insert claim deadline once known)**

You must complete all pages of this Form. Attach additional pages if space is insufficient.  
Please type or print legibly in black ink.

**Identification of Distributor or Manufacturer**

Name:

\_\_\_\_\_  
Name of Distributor or Manufacturer (full legal name)

\_\_\_\_\_  
Contact Person

Address:

\_\_\_\_\_  
No./Apt./Street

\_\_\_\_\_  
City

\_\_\_\_\_  
Province

\_\_\_\_\_  
Postal Code

Telephone :

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

Is the above identified entity a Distributor or a Manufacturer? \_\_\_\_\_

**Please Inform the Claims Administrator of all Address Changes in Writing**

1. Identification of person signing this Registration (check one only):

- I am an authorized employee, officer or director of the above-identified Distributor or Manufacturer. I am signing this Form to register the Distributor or Manufacturer for settlement benefits.
- I am the trustee, receiver or other representative of the above-identified Distributor or Manufacturer. I am signing this Form to register the Distributor or Manufacturer for benefits under 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).

2. The following supporting documentation must be submitted with this Claim Form:

A. Please list all Sorbates purchases made between January 1, 1979 and December 31, 1996:

	Date of Purchase	Volume Purchased	Dollar Value of purchase	Seller's Identity
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

Please attach additional sheets if required.

B. Product Purchase Verification:

- Proof of purchase and payment confirming the Distributor's or Manufacturer's purchase of Sorbates between January 1, 1979 and December 31, 1996, and confirming the dollar value of the Sorbates purchased;
- Seller's sales record(s) verifying the sale of Sorbates in raw form to the Distributor or Manufacturer between January 1, 1979 and December 31, 1996, and verifying the dollar value of the sale; or
- If a Distributor or Manufacturer is unable to provide any of the documentation as specified above, a Distributor or Manufacturer may submit to the Claims Administrator such other comparable 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:
  1. the steps taken by the Distributor or Manufacturer to obtain the Product Purchase Verification outlined in subparagraphs 1 and 2 above; and
  2. the responses, if any, to those steps.



C. If claiming as a Manufacturer, please list the products that you manufacture which contain Sorbates as a component part, and attach evidence demonstrating that the products listed are manufactured by you and contain Sorbates as a component part.

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D. I declare that the above-identified Distributor or Manufacturer has not previously received compensation in respect of the Sorbates purchases described herein.

3. I declare under penalty of perjury that the information on this Form is true, correct and complete to the best of my knowledge, information and belief.

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

\_\_\_\_\_  
Signature (Claimant or Representative)

\* To preserve eligibility for benefits under the settlement, your completed application, together with the required documentation must be submitted to the Claims Administrator no later than X date (insert claim deadline when known).

**THE INFORMATION PROVIDED IN THIS FORM WILL REMAIN CONFIDENTIAL  
AS PROVIDED IN THE SETTLEMENT AGREEMENT**

**Please mail this Form to the following address:**

**Sorbates Claims Administrator**

XXXXXXXXXXXX

XXXXXXXXXXXXXXXX

XXXXXXXXXXXX

EXHIBIT "B"

**OPT OUT FORM**  
**SORBATES 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)

Is the above identified Class Member a Distributor or a Manufacturer? \_\_\_\_\_

**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 Sorbates 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 XX, 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.

**THE INFORMATION PROVIDED IN THIS FORM WILL REMAIN CONFIDENTIAL**  
**AS PROVIDED IN THE SORBATES SETTLEMENT AGREEMENT.**

Please mail this Form to the CLAIMS ADMINISTRATOR at :

**1-800-xxx-xxxx**