UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE ASPARTAME ANTITRUST LITIGATION	:	MASTER DOCKET NO. 2:06-CV-1732
THIS DOCUMENT RELATES TO: ALL ACTIONS	:	

CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

1. Aspartame is a low-calorie artificial sweetener that is used in more than 6,000 products worldwide, including tabletop sweeteners, various foods, and carbonated beverages. The world market for Aspartame, an artificial "super" sweetener and very valuable commodity, evolved from the time of Aspartame's discovery in 1965 into a suppressed and monopolized market in which, beginning at least in 1992 and continuing to the present, the named Defendants and their unnamed Co-Conspirators unlawfully agreed to allocate the market and set the price for Aspartame at supra-competitive levels. Defendants' wrongful conduct, as alleged in this Complaint, deprived Plaintiffs and the other members of the Class of the benefit of a free and open market to purchase Aspartame.

2. Plaintiffs bring this class action to recover treble damages and injunctive relief for price fixing and other anticompetitive conduct, as alleged in this Complaint, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, on behalf of all persons and entities that purchased Aspartame in the United States, directly from any of the Defendants and their Co-conspirators or any predecessor, subsidiary, or affiliate of each (the "Class"), at any time during the period from no later than

January 1, 1992 to the present (the "Class Period"). During at least some of the relevant period, Defendants and their Co-Conspirators manufactured, produced or sold Aspartame, and entered into and implemented a continuing combination and conspiracy to allocate the Aspartame market and fix, raise, maintain or stabilize prices for Aspartame sold in the United States. As a result of Defendants' unlawful, anticompetitive conduct and conspiracy, Plaintiffs and the other members of the Class paid artificially high prices for Aspartame and have suffered antitrust injury to their business or property.

JURISDICTION AND VENUE

3. Plaintiffs bring this action pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, to obtain injunctive relief and to recover treble damages and the costs of this suit, including reasonable attorneys' fees, against Defendants for injuries sustained by Plaintiffs and the Class members as a result of Defendants' violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

5. This Court has *in personam* jurisdiction over each of the Defendants because each was engaged in an illegal price fixing scheme and conspiracy that was directed at and/or caused injury to persons and entities residing in, located in, or doing business in this District and throughout the United States.

6. Venue is proper in this Judicial District pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391(b), (c), and (d) because during the Class Period one or more of the Defendants resided, transacted business, was found, or had agents in this District, because a substantial part of the events giving rise to Plaintiffs' claims occurred in this District, and because a substantial portion

of the affected interstate trade and commerce described below has been carried out in this District.

7. No other forum would be more convenient for the parties and witnesses to litigate this case.

PLAINTIFFS

8. Plaintiff Hank's Beverage Company is a Pennsylvania corporation with its principal place of business at 4625 Street Road, Trevose, Pennsylvania 19053. During the Class Period, Hank's Beverage purchased Aspartame directly from at least one of the Defendants and has been injured in its business and property by reason of the antitrust violations alleged in this Complaint.

9. Plaintiff Nog, Inc. is a New York corporation with its principal place of business at 99 West 4th Street, Dunkirk, New York 14048. During the Class Period, Nog purchased Aspartame directly from one or more of the Defendants and has been injured in its business and property by reason of the antitrust violations alleged in this Complaint.

10. Plaintiff College Club Beverages Co., Inc., is a New York corporation with its principal place of business at 63 Grape Street, Rochester, New York 14608. During the Class Period, College Club purchased Aspartame directly from one or more of the Defendants and has been injured in its business and property by reason of the antitrust violations alleged in this Complaint.

11. Plaintiff Sorbee International Ltd. is a Pennsylvania corporation with its principal place of business at 9990 Global Road, Philadelphia, Pennsylvania 19115. During the Class Period, Sorbee purchased Aspartame directly from one or more of the Defendants and has been injured in its business and property by reason of the antitrust violations alleged in this Complaint.

12. Plaintiff Andorra Ridge is a Pennsylvania corporation with its principal place of business at 1103 Ridge Pike, Conshohocken, Pennsylvania 19428. During the Class Period, Andorra Ridge purchased Aspartame directly from one or more of the Defendants and has been injured in its business and property by reason of the antitrust violations alleged in this Complaint.

DEFENDANTS

13. Defendant Ajinomoto Company, Inc. ("Ajinomoto") is a Japanese corporation with its principal place of business at 15-1 Kyobashi, 1-chome, Chuo-ku Tokyo, 104-8315, Japan. Ajinomoto manufactured, sold or distributed Aspartame in the United States directly or through its subsidiaries or affiliates during the Class Period. Ajinomoto is the parent corporation of Defendants Ajinomoto USA, Inc., Ajinomoto Food Ingredients, Ajinomoto Euro-Aspartame S.A. and Ajinomoto Switzerland A.G. In addition to being liable for its own participation in the conspiracy alleged in this Complaint, Ajinomoto knowingly participated in the actions of its subsidiaries and affiliates or had knowledge of the actions of its subsidiaries and affiliates, and accordingly is liable for the actions of its subsidiaries and affiliates as alleged in this Complaint.

14. Defendant Ajinomoto USA, Inc. ("Ajinomoto USA") is a New York corporation with its principal place of business at 115 West Century Road, Paramus, NJ 07652. Ajinomoto USA is a wholly-owned subsidiary of Defendant Ajinomoto. Ajinomoto USA manufactured, sold or distributed Aspartame in the United States during the Class Period.

15. Defendant Ajinomoto Euro-Aspartame S.A ("Ajinomoto Euro-Aspartame") is a wholly-owned subsidiary of Ajinomoto, with its principal place of business in Gravelines, France. Ajinomoto Euro-Aspartame was formerly known as Euro-Aspartame S.A. Ajinomoto Euro-Aspartame manufactured, sold or distributed Aspartame during the Class Period.

16. Defendant Ajinomoto Food Ingredients LLC ("Ajinomoto Food Ingredients") is a Delaware corporation with its principal place of business at 8430 West Bryn Mawr Avenue, Suite 635, Chicago, IL 60631-3444. Ajinomoto Food Ingredients marketed Aspartame worldwide, including in the U.S. and this District during the Class Period.

17. Defendant Ajinomoto Switzerland A.G. ("Ajinomoto Switzerland") is a wholly-owned subsidiary of Defendant Ajinomoto, with its principal place of business in Zug, Switzerland. Ajinomoto Switzerland was formerly known as NutraSweet A.G. Ajinomoto Switzerland has manufactured, sold or distributed Aspartame during the Class Period.

18. Defendant Daesang Corporation f/k/a Miwon Company Ltd. ("Daesang") is a Korean corporation with its principal place of business at 52-1, Kayang-dong, Kangseo-ku, Seoul, South Korea. Daesang manufactured, sold or distributed Aspartame in the United States directly or through its subsidiaries or affiliates during the Class Period. Daesang is the parent corporation of Defendant Daesang America, Inc. In addition to being liable for its own participation in the conspiracy alleged in this Complaint, Daesang knowingly participated in the actions of its subsidiaries and affiliates or had knowledge of the actions of its subsidiaries and affiliates, and accordingly is liable for the actions of its subsidiaries and affiliates as alleged in this Complaint.

19. Defendant Daesang America, Inc., f/k/a Miwon America, Inc. ("Daesang America") is a New Jersey corporation with its principal place of business at One University Plaza, Hackensack, NJ. Daesang America is a wholly-owned subsidiary of Defendant Daesang and manufactured, sold or distributed Aspartame in the United States during the Class Period.

20. Defendant Monsanto Company is a Delaware corporation with its principal place of business at 800 N. Lindbergh Blvd., St. Louis, MO 63167. In 1985, Monsanto acquired G.D.

Searle & Co. along with Searle's rights to its patented Aspartame product, NutraSweet, and Searle's Aspartame business, then a division of Searle known as The NutraSweet Group. From 1985 until mid-2000, Monsanto operated Defendant NutraSweet Co. as part of Monsanto's Life Sciences Division. Monsanto, through NutraSweet Co., entered into a joint venture with Defendant Ajinomoto to form Defendants Euro-Aspartame S.A. and NutraSweet A.G. In 2000, Monsanto merged with Pharmacia & Upjohn to form Pharmacia Corporation. Shortly thereafter, Monsanto sold its interest in NutraSweet Co. to J.W. Childs Equity Partners II, L.P. and sold its interests in the two joint ventures, Euro-Aspartame S.A. and NutraSweet A.G., to Defendant Ajinomoto. Monsanto manufactured, sold or distributed Aspartame in the United States during the Class Period. In addition to being liable for its own participation in the conspiracy alleged in this Complaint, Monsanto knowingly participated in the actions of its subsidiaries and affiliates or had knowledge of the actions of its subsidiaries and affiliates, and accordingly is liable for the actions of its subsidiaries and affiliates as alleged in this Complaint.

21. Defendant The NutraSweet Company ("NutraSweet Co.") is a Delaware corporation with its principal place of business at 200 World Trade Center, 222 Merchandise Mart, Ste. 936, Chicago, IL 60654. From 1985 until mid-2000, NutraSweet Co. operated as part of the Monsanto Company's Life Sciences Division. Prior to 1985, NutraSweet Co. was owned by G.D. Searle & Co. and was operated as a separate division of G.D. Searle known as The NutraSweet Group. In mid-2000, NutraSweet Co. was purchased by J.W. Childs Equity Partners II, L.P. NutraSweet Co. manufactured, sold or distributed Aspartame in the United States during the Class Period. In addition to being liable for its own participation in the conspiracy alleged in this Complaint, NutraSweet Co. entered into a joint venture with Defendant Ajinomoto to form Defendants Euro-Aspartame S.A. and NutraSweet A.G. NutraSweet Co. knowingly participated

in the actions of its affiliates or had knowledge of the actions of its affiliates, and accordingly is liable for the actions of its subsidiaries and affiliates as alleged in this Complaint.

22. Defendant NutraSweet A.G. ("NutraSweet A.G.") was a joint venture between Defendants NutraSweet Co. and Ajinomoto, through which NutraSweet Co. and Ajinomoto manufactured, sold and distributed Aspartame during the Class Period. Defendant Monsanto sold its interest in NutraSweet AG. to Ajinomoto in 2000. Ajinomoto has since changed the name of NutraSweet A.G. to Ajinomoto Switzerland.

23. Defendant NutraSweet Property Holdings, Inc. ("NutraSweet Holdings") is a U.S.-based holding company headquartered at 222 Merchandise Mart Plaza, Chicago, IL 60654. On information and belief, at all relevant times NutraSweet Holdings owned, dominated and controlled the business of Defendant NutraSweet Co. Through NutraSweet Co., NutraSweet Holdings produced and marketed Aspartame worldwide during the Class Period, including into the U.S. and this District. Moreover, Defendant NutraSweet Holdings knowingly participated in the actions of its affiliates or had knowledge of the actions of its affiliates, and accordingly is liable for the actions of its subsidiaries and affiliates as alleged in this Complaint.

24. Defendant Euro-Aspartame S.A. ("Euro-Aspartame") was a joint venture between Defendants NutraSweet Co. and Ajinomoto, through which NutraSweet Co. and Ajinomoto manufactured, sold and distributed Aspartame during the Class Period. Monsanto/NutraSweet Co. sold its interest in Euro-Aspartame S.A. to Ajinomoto in 2000. Ajinomoto has since changed the name to Ajinomoto Euro-Aspartame S.A.

25. Defendant Holland Sweetener Company V.O.F. ("Holland Sweetener") is a Netherlands corporation with its principal place of business at Koestraat 1,6167 RA Geleen, The Netherlands. Holland Sweetener is a joint venture with Netherlands-based DSM NY and Japan-

based Tosoh Corporation. Holland Sweetener manufactured, sold or distributed Aspartame in the United States directly or through its subsidiaries or affiliates during the Class Period. Holland Sweetener is the parent corporation of Defendant Holland Sweetener North America, Inc. In addition to liability for its own participation in the conspiracy alleged in this Complaint, Holland Sweetener knowingly participated in the actions of its subsidiaries and affiliates or had knowledge of the actions of its subsidiaries and affiliates, and accordingly is liable for the actions of its subsidiaries and affiliates as alleged in this Complaint.

26. Defendant Holland Sweetener North America, Inc. ("HS North America") is a wholly-owned subsidiary of Defendant Holland Sweetener, with its principal place of business at 1640 Powers Ferry Rd., Building 11, Suite 260, Marietta, GA 30067. HS North America manufactured, sold or distributed Aspartame in the United States during the Class Period.

27. Defendant J.W. Childs Associates, L.P. is a U.S.-based private investment firm headquartered at 111 Huntington Ave., Ste. 2900, Boston, MA 021997610. J.W. Childs wholly owns NutraSweet Co. Through Defendants NutraSweet Co. and NutraSweet Holdings, J.W. Childs has manufactured, sold or distributed Aspartame during the Class Period.

28. Whenever in this Complaint Plaintiffs refer to any act, deed or transaction of any corporation, it means that the corporation engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

CO-CONSPIRATORS

29. Various individuals, partnerships, corporations and associations not named as Defendants in this Complaint (the "Co-Conspirators") have participated as Co-Conspirators in

the violations of the federal antitrust laws alleged in this Complaint, and have performed acts and made statements in furtherance thereof.

INTERSTATE TRADE AND COMMERCE

30. The trade and commerce relevant to this action are the purchase and sale of Aspartame in the United States. Currently, the global market for Aspartame is over $1 billion.

31. During the Class Period, Plaintiffs and members of the Class throughout the United States purchased Aspartame directly from Defendants or their Co-Conspirators.

32. Defendants and their Co-Conspirators are located in various states throughout the United States.

33. The activities of Defendants and their Co-Conspirators that are the subject of this Complaint were within the flow of, and substantially affected, interstate trade and commerce. Specifically, during the Class Period, Defendants sold substantial amounts of Aspartame to Plaintiffs and members of the Class across state lines in a continuous and uninterrupted flow of interstate commerce. Defendants and their Co-Conspirators received many millions of dollars from such interstate trade and commerce.

CLASS ACTION ALLEGATIONS

34. Plaintiffs bring this action on their own behalf and as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of the following Class:

> All individuals or entities (excluding governmental entities, Defendants, and their parents, predecessors, subsidiaries, affiliates, and their Co-Conspirators) who purchased Aspartame in the United States directly from any of the Defendants or their Co-Conspirators or any predecessor, subsidiary, or affiliate of each, at any time during the period from January 1, 1992 to the present.

35. Plaintiffs do not know the exact number of Class members. Such information presently is in the exclusive control of Defendants and their Co-Conspirators. Given the trade and commerce involved, Plaintiffs believe Class members number at least in the hundreds or thousands and are sufficiently numerous and geographically dispersed throughout the United States so that joinder of all Class members is impracticable.

36. There are questions of law or fact common to the Class, including:

a. Whether Defendants and their Co-Conspirators combined or conspired among themselves to fix, raise, maintain, and/or stabilize Aspartame prices charged in the United States;

b. Whether Defendants and their Co-Conspirators combined or conspired to allocate among themselves markets and customers of Aspartame in the United States;

c. The duration and scope of the conspiracy alleged in this Complaint, the nature and character of the acts performed by Defendants and their Co-Conspirators to further the conspiracy, and the identity of the participants in the conspiracy;

d. Whether each Defendant participated in the combination or conspiracy alleged in this Complaint;

e. Whether Defendants' conspiracy violated Section 1 of the Sherman Act;

f. Whether Defendants' conduct as alleged in this Complaint injured the businesses or property of Plaintiffs and the Class;

g. The effect of Defendants' conspiracy on the Aspartame prices in the United States during the Class Period;

h. Whether Plaintiffs and the Class are entitled to declaratory or injunctive relief; and

i. The appropriate measure of damages sustained by Plaintiffs and the Class.

These and other questions of law and fact common to Class members predominate over any questions that may affect only individual members.

37. Plaintiffs are members of the Class. Plaintiffs' claims are typical of the claims of other Class members, because Plaintiffs and all Class members were damaged by the same wrongful conduct of Defendants and their Co-Conspirators as alleged in this Complaint.

38. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs directly purchased Aspartame from one or more Defendants, and their interests are coincident with and not antagonistic to those of other Class members. Plaintiffs are represented by counsel competent and experienced in the prosecution of antitrust and class action litigation.

39. A class action is superior to other methods for the fair and efficient adjudication of this controversy. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who otherwise could not afford to litigate an antitrust claim such as is asserted in this Complaint. This class action presents no difficulties in management that would preclude maintenance as a class action. Finally, the Class is readily definable and is one for which records of the names and addresses of the members of the Class exist in the files of Defendants.

40. Defendants have acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

ASPARTAME IS A GLOBAL COMMODITY

41. Important characteristics of the Aspartame market facilitate anticompetitive collusion among Defendants and their Co-Conspirators and promote the successful effects of that

collusion, which is the inflation of prices above competitive levels. Those characteristics include the following facts:

a. Defendants are principal competitors with each other in this global Aspartame market.

b. Aspartame is a commodity product that is fungible in the sense that Aspartame produced or sold by any one producer generally is readily substitutable for Aspartame produced or sold by any other producer;

c. Aspartame is a homogenous product sold by producers and other sellers, including Defendants, to purchasers, including Plaintiffs and the members of the Class, primarily based on price;

d. The market for Aspartame is highly concentrated, with Defendants controlling nearly all Aspartame sales in the United States and worldwide;

e. Barriers to entry in this market are high due to the capital-intensive nature of the business and the complex processes involved in manufacturing Aspartame; and

f. Because of their high collective market shares, Defendants collectively can exercise market power, including the ability to raise prices and erect barriers to entry into the market.

THE HISTORY OF ASPARTAME IS THE HISTORY OF DEFENDANTS' COLLUSION

42. Aspartame is a low-calorie sweetening ingredient. It is made from L-aspartic acid and L-phenylalanine, two amino acids, together with a small amount of methanol. It has the same caloric content as sugar of the same weight but is approximately 200 times sweeter. Aspartame is used in products such as carbonated soft drinks, juices, puddings, breakfast cereals, tabletop sweeteners, chewing gum, fruit preserves, jams, dairy products, and frozen desserts, among other things. It has been approved in more than 120 countries and regions to be used in over 6,000 beverages, foods, and drugs. It is used in more than 1,500 products in the U.S. alone.

43. Aspartame was discovered in 1965 by a research scientist at G.D. Searle & Co. Searle obtained two key patents on Aspartame: the "use" patent, obtained in 1970, which

covered any use of Aspartame as a sweetening ingredient, and the "blend" patent, obtained in 1973, which covered combinations of Aspartame and saccharin. The use patent was extended in the U.S. until December 14, 1992, and the blend patent was extended in the U.S. until November 4, 1996.

44. In July 1981, the FDA gave final approval for dry use of Aspartame. In July 1983, the FDA approved Aspartame for wet use such as for soft drinks.

45. To manufacture Aspartame on a commercial scale, G.D. Searle entered into an agreement with Defendant Ajinomoto, a major Japanese chemical and food company. Then and now, Ajinomoto was a leading player in amino acid research and production. Searle agreed to pay royalties to Ajinomoto for access to the process technology, and the two parties further agreed to share information on subsequent process improvements. Ajinomoto and G.D. Searle also entered into a cross-licensing agreement under which Ajinomoto was given the exclusive right to sell Aspartame in the Japanese market, and G.D. Searle retained sole rights to sell Aspartame in the North American market. The market allocation was ancillary to and not necessary for the patent licensing agreement.

46. In October 1981, G.D. Searle launched its first Aspartame product, a tabletop sweetener under the brand name Equal. At that time, U.S. tabletop sweeteners were an approximately $110 million market, dominated by the saccharin-based product, Sweet 'N Low. Although approximately three times the price of Sweet 'N Low, Equal gained significant success in the marketplace.

47. In December 1982, G.D. Searle established The NutraSweet Group as a separate operating division responsible for manufacturing and marketing Aspartame as an ingredient in food and beverages. Upon receiving FDA approval for wet use of Aspartame in 1983,

Aspartame, under the brand name NutraSweet, was made available to food and beverage manufacturers. In 1992 and 1993, the FDA approved Aspartame for use in malt beverages, breakfast cereals, refrigerated puddings and fillings, hard and soft candies, nonalcoholic flavored beverages, tea beverages, fruit juices and concentrates, baking goods and baking mixes, and frostings, toppings and fillings for baked goods. The NutraSweet Group eventually expanded the range of Aspartame's applications to include use in powdered drink mixes, frozen desserts, chewing gum, cereals, and over-the-counter pharmaceuticals, among other things.

48. The NutraSweet Group also sought to develop the Aspartame markets outside the U.S. In 1984, The NutraSweet Group and Ajinomoto set up a Swiss-based joint venture called NutraSweet A.G. Its purpose was to market NutraSweet to European purchasers. The NutraSweet Group and Ajinomoto were also joint venture partners in the development of Euro-Aspartame, a manufacturing facility in France.

49. In the summer of 1985, Monsanto acquired G.D. Searle, including its Aspartame production plant, and named its newly-obtained Aspartame production subsidiary NutraSweet Co., which retained control of the North American Aspartame market. NutraSweet Co. then operated as part of Monsanto's Life Sciences Division. Ajinomoto was, and currently is, allowed to sell a small amount of Aspartame in the U.S. at prices agreed to by NutraSweet Co.

50. At that time, the two sole producers, Ajinomoto and Monsanto's NutraSweet Co., effectively divided the global market for Aspartame between themselves. For example, together in joint ventures, namely NutraSweet A.G. (Switzerland) and Euro-Aspartame S.A. (France), and through collusive and predatory pricing, these two producers gained control of the European Aspartame market. As part of their agreement, NutraSweet retained the sole right to sell

aspartame in the United States while Ajinomoto would control and profit from all sales in Europe.

51. Meanwhile, in April 1985, Tosoh Corporation and DSM formed Holland Sweetener as a joint venture in the Netherlands to enter the Aspartame market. Holland Sweetener claimed that its method of producing Aspartame was less costly and more flexible than NutraSweet Co.'s method of pricing Aspartame.

52. In anticipation of the 1987 expiration of NutraSweet Co.'s European production patents, in February 1986, Holland Sweetener began building an Aspartame plant in Geleen, the Netherlands, with a production capacity of 500 metric tons per year, which analysts then estimated would account for about 5% of the world market (NutraSweet Co.'s capacity alone was 5,000 metric tons). Holland Sweetener's goal was to challenge NutraSweet Co. in Europe and Canada once NutraSweet Co.'s patents expired in those countries in 1987.

53. Cognizant of the steep barriers to entry to Aspartame production facing Holland Sweetener, in the late 1980s NutraSweet Co. and Ajinomoto together fought Holland Sweetener's threat of competition into their territorial allocation by colluding to fix prices downward, from $70 to between $22-$30 per pound.

54. Due to this tactic, NutraSweet Co.'s profit margins dropped substantially, but not to the extent suffered by Holland Sweetener.

55. When Holland Sweetener discovered that NutraSweet Co. had exclusive contracts with Coca-Cola Company ("Coke") and PepsiCo, Inc. ("Pepsi"), it lodged a complaint with the European Commission ("EC"), alleging that the contracts were anti-competitive.

56. In 1990, Holland Sweetener lodged a dumping complaint with the EC against NutraSweet Co. and Ajinomoto. Although NutraSweet Co. responded, Ajinomoto refused to

participate in the EC dumping proceedings. In May 1991, the EC imposed preliminary anti-dumping duties on Aspartame imported from NutraSweet Co. in the U.S. and Ajinomoto in Japan. The duties were imposed because of the EC's finding that much lower prices were charged by these companies in the EC compared with prices charged in their respective countries, including the United States.

57. In January 1994, NutraSweet Co. requested the EC to review the anti-dumping duties. Despite the fact that Holland Sweetener sought and achieved the imposition of such duties on its competitor several years earlier, when the Commission asked Holland Sweetener for a response, Holland Sweetener not only did not oppose NutraSweet Co.'s challenge to the existing anti-dumping duties, it did not respond at all. Holland Sweetener's inaction in these circumstances was contrary to its independent economic self-interest. Since NutraSweet Co.'s request was unopposed, in August 1995 the EC reversed its decision and lifted the duties.

58. Upon Holland Sweetener's entry into the Canadian Aspartame market, NutraSweet Co. dramatically dropped its Aspartame prices in Canada, from $90 per pound to $40-$50 per pound, and required buyers to sign exclusive contracts with NutraSweet Co.; all of which was designed to drive Holland Sweetener from the Canadian market. Holland Sweetener thereupon filed a complaint against NutraSweet Co. in Canada. In October 1990, a Canadian court prohibited NutraSweet Co.'s use of: (1) exclusive contracts and (2) discounts in exchange for exclusivity and use of the NutraSweet logo on products. It also prohibited NutraSweet Co. from using "meet or release" clauses (which gave NutraSweet Co. the right to meet any price by a competitor) and required that "MFN" clauses (in which NutraSweet Co. guaranteed that the price charged to Coke or Pepsi would match the lowest price to the other competitor) had to be offered to all customers or none.

59. By 1991, Aspartame had the second-largest share worldwide of all high intensity sweeteners, after saccharin. In the United States, Aspartame had an estimated seventy percent of the market for high intensity sweeteners.

60. In December 1992, the patent on NutraSweet Co.'s Aspartame expired. Anticipating the expiration of this patent, Holland Sweetener announced in early 1992 that it planned to enter the U.S. Aspartame market. In preparation, Holland Sweetener expanded its manufacturing plant in Geleen, the Netherlands, quadrupling production capacity in 1993.

61. NutraSweet Co. and Ajinomoto undertook a joint venture to construct a $130 million Aspartame plant with nameplate capacity of 2,000 metric tons a year in Gravelines, France, in order to even more directly "compete" with Holland Sweetener. In mid-1993, the new production facility began producing Aspartame under the name Euro-Aspartame S.A.

62. Ajinomoto was later able to buyout NutraSweet Co.'s shares in both the European production ventures, NutraSweet A.G. and Euro-Aspartame S.A., which Ajinomoto renamed Ajinomoto Switzerland A.G. and Ajinomoto Euro-Aspartame S.A. This deal ensured that Ajinomoto was the only Aspartame marketing and production presence within Europe, but for Holland Sweetener, and imports from Korean producer Daesang.

63. Due to this price manipulation at the U.S. patent's expiration, the purchasers responsible for a vast majority of the world's Aspartame sales, Coke and Pepsi, did not broaden their Aspartame supplier base, but instead signed long-term exclusivity contracts with NutraSweet Co.

64. Thus the global and U.S. Aspartame markets are completely dominated by Defendants.

65. Monsanto announced on Feb. 25, 2000 that it had agreed to sell its interests in the NutraSweet Co. for $440 million to a group of investors called J.W. Childs Associates. In that same year, Monsanto also sold its interests in the two European sweetener-producing joint ventures -- NutraSweet A.G. (Switzerland) and Euro-Aspartame S.A. (France) for $67 million in cash to its joint venture partner Ajinomoto.

DEFENDANTS' CURRENT COLLUSION IN THE ASPARTAME MARKET

66. During the period January 1, 1992 to the present, Defendants engaged in a continuing combination and conspiracy, the substantial terms of which are set forth in this Complaint.

67. Currently, the Aspartame industry's worldwide sales amount to more than $1 billion yearly. Food companies and consumers around the world bought approximately $570 million worth of Aspartame in 2005. For example, in less than ten years, yogurts sweetened with NutraSweet garnered 30% of the total yogurt market. As of February 12, 2006, billions of dollars worth of products are sold containing Aspartame.

68. The majority of Aspartame is sold in the U.S.; the U.S. soft drink market alone is approximately 10 times the size of the European market. Diet soft drinks account for well over 20 percent of the U.S. soft drink market. Coke and Pepsi, whose flagship diet soft drinks use Aspartame exclusively, themselves account for over 60 percent of the soft drink industry's annual sales -- tens of billions of dollars at the retail level.

69. The world's retail tabletop sweetener market alone is estimated at $1.4 billion per year. In 2003, Aspartame accounted for around 40 percent of that market.

70. As a result of their global domination strategy, Defendants account for nearly all of this production and revenue.

71. Throughout Aspartame's lifetime, Defendants have together handled virtually all Aspartame production. Defendants are the world's top Aspartame producers, and together produce and market over 90 percent of the world's Aspartame.

72. As of 2001, NutraSweet Co.'s Aspartame manufacturing facility in Augusta, Georgia was the world's largest Aspartame plant -- and the only Aspartame plant based in the U.S.

73. In that year, the world's Aspartame production capacity stood at 16,000 metric tons per year ("MT/yr"). Capacity was allocated as follows:

Producer	*Country*	*Capacity in Use*	*Nameplate Capacity*
NutraSweet	U.S.	6,000 MT/yr	6,000 MT/yr
Ajinomoto	Japan	5,500 MT/yr	5,500 MT/yr
Holland Sweetener	Netherlands	2,500 MT/yr	2,500 MT/yr
Daesang	Korea	2,000 MT/yr	2,000 MT/yr
	TOTAL:	16,000 MT/yr	16,000 MT/yr

74. Also in 2001, just one year after their purchase of their partner NutraSweet Co.'s shares in their joint European Aspartame companies, Ajinomoto and its two new European subsidiaries filed a patent infringement lawsuit in The Hague against Daesang and its Dutch subsidiary, successfully banning Daesang's imports from major European markets.

75. In August 2003, NutraSweet Co. removed Ajinomoto's European import competition by entering into a long-term contract with Daesang so that Daesang would supply Aspartame products to NutraSweet Co. from Daesang's manufacturing facility in Kunsan, South Korea. The supply agreement would supplement Aspartame production at NutraSweet Co.'s

facility in Augusta, GA. As Daesang was under pressure to achieve a non-infringing large-scale production process, it looked for assistance to its only source, NutraSweet Co.

76. Also in 2003, NutraSweet Co. mothballed one production line at the plant, decreasing actual Aspartame capacity by 30 percent, or 2,000 MT/yr.

77. Thereafter, the global Aspartame producers and capacity were as follows:

Producer	*Country*	*Capacity in Use*	*Nameplate Capacity*
NutraSweet	U.S.	6,000 MT/yr	*8,000 MT/yr*
Ajinomoto	Japan	5,500 MT/yr	*5,500 MT/yr*
Holland Sweetener	Netherlands	2,500 MT/yr	*2,500 MT/yr*
	TOTAL:	14,000 MT/yr	*16,000 MT/yr*

78. In this way, NutraSweet Co. lessened global Aspartame production capacity and eliminated a competitor, namely Daesang. More important to Defendants' geographic allocation scheme, via the Daesang takeover, NutraSweet Co. entered Asia but only into Korea, thereby maintaining the Co-Conspirator's agreed-upon geographic allocation. In addition, via its simultaneous and parallel U.S. capacity restriction, NutraSweet Co. avoided increasing its global Aspartame production, thereby maintaining the cartel's global capacity and market share allocation.

79. Ajinomoto also broadened its Asian sales base, also without trespassing into NutraSweet Co.'s territory. Ajinomoto entered Thailand in 2003, via annexing a new subsidiary, Ajinomoto Co., (Thailand) Ltd.

80. Ajinomoto next announced further capacity expansions, which again did not encroach upon the NutraSweet Co. territorial allocation. In late 2004, Ajinomoto issued a press release announcing increases in its Aspartame production capacity, in Japan and France:

> **Ajinomoto Increases Aspartame Production Capacity in Japan and France**
>
> December 6th, 2004 - Tokyo - Ajinomoto Co., Inc. (Ajinomoto, President & CEO: Kunio Egashira, Headquarter: Tokyo, Japan) announced today that it is investing JPY 6 billion (US$ 58 million) to expand its Aspartame manufacturing plants in Yokkaichi, Japan and Gravelines, France, in order to meet growing demand from food and beverage manufacturers for Aspartame, an amino acid based sweetener.
>
> A series of expansions at the two locations, beginning early in 2005 and to be completed by March 2006, will result in Ajinomoto's global capacity reaching 10,000MT per year. The increased capacity will enable Ajinomoto, currently the market leader in Aspartame manufacturing to supply more than half of the rapidly growing Aspartame market.
>
> * * * *

http://www.ajinomoto.com/press/

81. To maintain the relative capacity balance, NutraSweet Co. followed Ajinomoto's lead in the U.S. As of early 2005, NutraSweet Co. planned to increase Aspartame production in the U.S. by restarting a mothballed production line at its Georgia plant.

82. Thus these two major producers simultaneously increased Aspartame production in the three largest markets, Japan, Europe and the U.S., while maintaining their allocated territorial and capacity shares.

83. These global territorial and capacity allocations affected Aspartame supply worldwide, thus restricting U.S.-based Aspartame purchasers' access to a competitive Aspartame market.

DEFENDANTS' CONCERTED PRICE INCREASES

84. Defendants' collusively maintained global territorial allocations and capacity restrictions rendered the U.S. Aspartame market uncompetitive.

85. Throughout the two decades-long history of commercial Aspartame production, the managers, officer and directors of NutraSweet Co. and Ajinomoto as well as the other Defendants have remained in constant communication and thereby colluded on all aspects of Aspartame technology and research, production, capacity, raw material supply and purchasing, Aspartame marketing, lobbying, licensing, and territorial allocation.

86. This constant collusive information flow also allowed Defendants to discuss and coordinate market prices for the Aspartame each sold worldwide, including in the U.S., throughout the class period.

87. For example, according to International Trade Administration data, in 2004, Japanese Aspartame, nearly all produced and/or exported by Ajinomoto, accounted for nearly half of all Aspartame imported into the U.S.

88. According to the same data, in 2005, after NutraSweet Co. increased its Aspartame production at its Georgia plant, Ajinomoto reduced its exports to the U.S. to nearly zero.

89. In 2005, despite increasing global Aspartame supply, U.S. prices for Aspartame tripled.

90. Defendants were thus able to, and did, collusively and artificially raise, fix, maintain, and/or stabilize the prices of Aspartame that purchasers, including Plaintiffs, paid for Aspartame in the U.S.

VIOLATIONS ALLEGED

91. During the Class Period, Defendants and their Co-Conspirators engaged in a continuing combination, agreement, understanding, and conspiracy with respect to the sale of Aspartame, in unreasonable restraint of interstate trade and commerce, to artificially raise, fix,

maintain, and/or stabilize the prices of Aspartame in the United States and throughout the world, all in violation of Section I of the Sherman Act, 15 U.S.C. § 1 and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

92. Defendants' combination and conspiracy consisted of a continuing agreement, understanding and concert of action by Defendants and their Co-Conspirators, the substantial terms of which were to raise, fix or maintain at artificially high and non-competitive levels the prices at which they sold Aspartame in the United States and worldwide. Defendants and their Co-Conspirators also agreed to allocate among themselves the volume of sales of Aspartame, and allocate the market and customers of Aspartame in the United States and worldwide.

93. To form and effectuate their conspiracy, Defendants and their Co-Conspirators have engaged in anti-competitive activities, the purpose and effect of which were to artificially raise, fix, maintain, and/or stabilize the prices of Aspartame. These activities included the following:

a. Met and otherwise communicated regarding the prices and volume of Aspartame sold in the United States and other markets across the world;

b. Agreed, during meetings or communications or elsewhere, to charge prices at certain levels and otherwise to increase and maintain prices of and avoid competition in the market for Aspartame sold in the United States and worldwide;

c. Agreed, during meetings or communications or elsewhere, to allocate among themselves markets and customers of Aspartame in the United States and worldwide;

d. Monitored the allocated sales and policed the compliance of their Co-Conspirators through developing and enforcing an agreement to financially penalize any Co-Conspirator that sold more than its allocated share;

e. Sold Aspartame at agreed-upon prices;

f. Signaled increases in the price of Aspartame by, *inter alia*, publicly issuing Aspartame price increase announcements and price quotations nearly simultaneously and in accordance with the agreements reached;

g. Moved prices of Aspartame in lock-step;

h. Entered into joint ventures and license agreements to help facilitate the combination and conspiracy to fix or raise Aspartame prices or allocate the Aspartame market;

i. Acted contrary to each Defendant's unilateral and independent economic self-interest in an effort to facilitate the combination and conspiracy to fix or raise Aspartame prices or allocate the Aspartame market; and

j. Agreed to conceal and keep secret their illegal agreement.

94. During the Class Period, Defendants increased, as a ratio to external costs -- and profits -- the price they charged for Aspartame. These relative increases in Aspartame cannot be explained by actual increases in Aspartame raw materials, or supply/demand forces, but rather were the result of anticompetitive conduct.

EFFECTS

95. Defendants' conspiracy as alleged in this Complaint has had, and will continue to have, the following effects, among others:

a. Prices for Aspartame sold by Defendants and their Co-Conspirators were artificially fixed, raised, stabilized, and maintained at artificially high and non-competitive levels;

b. Plaintiffs and the other Class members were deprived of the benefits of free and open competition in the purchase of Aspartame in the U.S. and global Aspartame market; and

c. Price competition in the sale of Aspartame in the U.S. and global Aspartame market has been restrained, suppressed, and/or eliminated.

96. During the Class Period, Plaintiffs and other Class members purchased Aspartame directly from Defendants (or their agents, subsidiaries, and/or controlled affiliates). As a

proximate result of Defendants' unlawful conduct, Plaintiffs and the other Class members purchased Aspartame at higher prices than they would have paid but for Defendants' anti-competitive conduct, and as a result have been injured in their business or property, and have suffered damages in an amount presently undetermined. Defendants' violations will continue unless preliminarily and permanently enjoined.

FRAUDULENT CONCEALMENT

97. Throughout the Class Period set forth in this Complaint, Defendants and their Co-Conspirators effectively, affirmatively, and fraudulently concealed their unlawful combination and conspiracy from Plaintiffs and the Class members.

98. Plaintiffs and other Class members did not discover, and could not have discovered through the exercise of reasonable diligence, that Defendants were violating the antitrust laws as alleged in this Complaint until shortly before this litigation was commenced. Nor could Plaintiffs and the members of the Class have discovered the violations earlier than that time because Defendants conducted their conspiracy in secret, concealed the nature of their unlawful conduct and acts in furtherance thereof, and fraudulently concealed their activities through various other means and methods designed to avoid detection. The conspiracy was by its nature self-concealing.

99. Defendants' wrongful conduct as alleged in this Complaint was carried out in part through means and methods which were designed and intended to avoid detection, and which, in fact, successfully precluded detection.

100. For example, many if not all of these Defendants were members of trade organizations, including the International Sweeteners Association and the International Food Information Council. The ability of Defendants to meet and otherwise communicate with each

other under the publicly legitimate aegis of such trade organizations, and their practice of doing so, created and facilitated additional opportunities for Defendants to meet and discuss collusive conduct in the Aspartame market.

101. Defendants also agreed among themselves not to discuss publicly, or otherwise reveal, the nature and substance of their acts and communications and gave false and pretextual reasons for their Aspartame price increases during the relevant period by describing such pricing falsely as being the result of legitimate and facially plausible factors rather than collusion, in furtherance of their illegal scheme.

102. Plaintiffs exercised all due diligence during the Class Period including, among other ways, by promptly investigating the facts giving rise to the claims asserted in this Complaint upon having a reasonable suspicion of the existence of Defendants' conspiracy alleged in this Complaint, and by seeking discovery as to the matters asserted herein, to the extent permitted by law. However, notwithstanding such diligence, Plaintiffs and the members of the Class could not possibly have discovered Defendants' unlawful scheme and conspiracy until shortly before the filing of this Complaint because of the successful deceptive practices and techniques of secrecy employed by Defendants and their Co-Conspirators to avoid detection of, and to affirmatively and fraudulently conceal, their wrongful conduct. Because Defendants' affirmative and fraudulent concealment as alleged in this Complaint was effective, there were no circumstances that should have led Plaintiffs to suspect the existence of Defendants' illegal price fixing scheme.

103. By virtue of the fraudulent concealment of their wrongful conduct by Defendants and their Co-Conspirators, the running of any statute of limitations has been tolled and

suspended with respect to any claims and rights of action that Plaintiffs and the other Class members have as a result of the unlawful combination and conspiracy alleged in this Complaint.

INJURY TO PLAINTIFFS AND THE CLASS

104. As a direct and proximate result of Defendants' illegal conspiracy as alleged in this Complaint, Plaintiffs and other Class members paid higher prices for Aspartame during the Class Period than they would have paid but for Defendants' conspiracy. As a result, Plaintiffs and the other Class members have been injured and damaged in their business and property in an amount to be determined.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that:

1. The Court determine that this action may be maintained as a class action under Rule Fed. R. Civ. P. 23(a), (b)(2), and (b)(3), that Plaintiffs are adequate and appropriate representatives of the Class, and that reasonable notice of this action be given to the Class;

2. The Court adjudge and decree the unlawful combination and conspiracy alleged in this Complaint to be a *per se* unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26;

3. Plaintiffs and the Class be awarded damages, as provided by law; that Defendants jointly and severally be held liable for the damages suffered by Plaintiffs and the Class; and that judgment in favor of Plaintiffs and the Class be entered against Defendants in an amount to be trebled in accordance with the antitrust laws;

4. Each of the Defendants, successors, assigns, parents, subsidiaries, affiliates and transferees, and their respective officers, directors, agents and employees, and all other persons acting or claiming to act on behalf of Defendants or in concert with them, be permanently enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the combinations, conspiracy, agreement, understanding or concert of action, or adopting any practice, plan, program or design having a similar purpose or effect in restraining competition;

5. The Court award Plaintiffs and the Class their costs of suit, including reasonable attorney fees and pre-judgment and post-judgment interest, as provided by law; and

6. The Court award Plaintiffs and the Class such other and further relief as the nature of the case may require or as may seem just and proper to this Court.

JURY TRIAL DEMANDED

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all of the claims asserted in this Complaint so triable.

Respectfully submitted,

Dated: June 30, 2006

DMN1791

Dianne M. Nast
Joseph F. Roda
RODANAST, P.C.
801 Estelle Drive
Lancaster, Pennsylvania 17601
Tel: (717) 892-3000
Fax: (717) 892-1200

Acting Liaison Counsel for the Direct Purchaser Plaintiffs

W. Joseph Bruckner
Heidi M. Silton
Carmen B. Copher
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Avenue South
Suite 2200
Minneapolis, MN 55401
Tel: (612) 339-6900
Fax: (612) 339-0981

Daniel E. Gustafson
Karla M. Gluek
GUSTAFSON GLUEK PLLC
650 Northstar East
608 Second Avenue South
Minneapolis, MN 55402
Tel: (612) 333-8844
Fax: (612) 339-6622

Michael D. Hausfeld
Benjamin D. Brown
COHEN, MILSTEIN, HAUSFELD & TOLL P.L.L.C.
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, D.C. 20008
Tel: (202) 408-4600
Fax: (202) 408-4699

Mark I. Machiz
Brent W. Landau
COHEN, MILSTEIN, HAUSFELD & TOLL P.L.L.C.
1 South Broad Street
Suite 1850
Philadelphia, PA 19107
Tel: (215) 825-4016
Fax: (215) 825-4001

Eugene A. Spector
William G. Caldes
SPECTOR, ROSEMAN & KODROFF, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Tel: (215) 496-0300
Fax: (215) 496-6611

Steven A. Asher
Robert S. Kitchenoff
WEINSTEIN KITCHENOFF & ASHER, LLC
1845 Walnut Street
Suite 110
Philadelphia, PA 19103
Tel: (215) 545-7200
Fax: (215) 545-6535

Allan D. Black
Roberta D. Liebenberg
FINE, KAPLAN & BLACK, R.P.C.
1835 Market Street, 28th Floor
Philadelphia, PA 19103
Tel: (215) 567-6565
Fax: (215) 568-5872

Howard J. Sedran
LEVIN, FISHBEIN, SEDRAN & BERMAN
510 Walnut Street, Suite 500
Philadelphia, PA 19106-3697
Tel: (215) 592-1500
Fax: (215) 592-4663

Joseph Goldberg
FREEDMAN BOYD DANIELS
HOLLANDER GOLDBERG & CLINE, P.A.
20 First Plaza, Suite 700
Albuquerque, NM 87102
Tel: (505) 842-9960
Fax: (505) 842-0761

Gerald J. Rodos
Mark R. Rosen
BARRACK RODOS & BACINE
3300 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Tel: (215) 963-0600
Fax: (215) 963-0838

Joseph Kohn
KOHN, SWIFT & GRAF, P.C.
One South Broad Street,
Suite 2100
Philadelphia, PA 19107-3389
Tel: (215) 238-1700
Fax: (215) 238-1968

Dennis J. Stewart
HULETT, HARPER, STEWART, LLP
550 West C Street, Suite 1600
San Diego, CA 92101
Tel: (619) 338-1133
Fax: (619) 338-1139

Arthur N. Bailey
ARTHUR N. BAILEY & ASSOCIATES
111 West Second Street, Suite 4500
Jamestown, NY 14701
Tel: (716) 664-2967
Fax: (716) 664-2983

Michael L. Roberts
ROBERTS LAW FIRM, P.A.
PO Box 241790
20 Rahling Circle
Little Rock, AR 72223-1790
Tel: (501) 821-5575
Fax: (501) 821-4474

Lisa J. Rodriguez
TRUJILLO, RODRIGUEZ,
& RICHARDS, LLC
8 Kings Highway West
Haddonfield, NJ 08033
Tel: (856) 795-9002
Fax: (856) 795-9887

Mark Reinhardt
Garrett Blanchfield
REINHARDT, WENDORF,
& BLANCHFIELD
E-1250 First National Bank Building
332 Minnesota Street
St. Paul, Minnesota 55101
Tel: (651) 287-2100
Fax: (651) 287-2103

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of June 2006, served via first class mail and the Court's electronic case filing system, a true and correct copy of the foregoing Consolidated Amended Class Action Complaint.

/s/ Erin C. Burns

Patricia M. McDermott
Cleary, Gottlieb, Steen & Hamilton LLP
2000 Pennsylvania Avenue, N.W.
Suite 9000
Washington, District of Columbia
20006

Counsel for Defendant Ajinomoto U.S.A., Inc.

David Marx, Jr.
McDermott, Will & Emery
227 West Monroe
Chicago, Illinois 60606

Counsel for Defendant Monsanto Company and the NutraSweet Company

Carolyn H. Feeney
George Gordon
Dechert LLP
2929 Arch Street
Philadelphia, Pennsylvania 19104

Counsel for Defendants Monsanto Company and the NutraSweet Company

Gary A. Wilson
Post & Schell, P.C.
Four Penn Center, 1600 J.F.K. Boulevard
Philadelphia, Pennsylvania 19103

Counsel for Defendant Daesang America

Andrew Marovitz
Mayer, Brown, Rowe & Maw LLP
71 South Wacker Drive
Chicago, Illinois 60606

Counsel for Defendant Holland Sweetener North America, Inc.