

**CANADIAN CHOCOLATE CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

Made as of October 2, 2009

Between

**DAVID OSMUN, METRO (WINDSOR) ENTERPRISES INC.,  
GAETAN ROY and JACOB STUART MAIN**

(the "Main Plaintiffs")

and

**CHRISTOPHER CONWAY, SHEILA DOBIE, MICHAEL LINDEBACH, VIKTORIYA  
SAMARINA DAVID WILLIAM COWAN, JEREMY MCINTYRE, GAVIN  
CRAWFORD, BRIAN KJELSHUS, ROSALYN GOLFMAN, DANIEL PAWLACHUK,  
BEVERLY BRANTH, AZIK EBERT, BARRETT THOMPSON, RICK THOMPSON,  
WILLIAM KELLY, AND GERALD LEDREW**

(the "Additional Plaintiffs")

and

**ITWAL LIMITED**

## TABLE OF CONTENTS

SECTION 1 – DEFINITIONS .....	3
SECTION 2 – SETTLEMENT APPROVAL .....	10
2.1 Best Efforts .....	10
2.2 Motions Approving Notice and Seeking Certification or Authorization.....	10
2.3 Motions for Approval of the Settlement .....	11
2.4 Pre-Motion Confidentiality .....	12
2.5 Sequence of Approval Motions .....	12
SECTION 3 – SETTLEMENT BENEFITS .....	12
3.1 Assignment of ITWAL’s Claims to Settlement Class .....	12
3.2 Cooperation – No Disclosure of Privileged Communications.....	12
3.3 Cooperation – Scope of Cooperation.....	13
SECTION 4 – OPTING-OUT .....	17
4.1 Procedure .....	17
4.2 Opt Out Report.....	18
SECTION 5 - RELEASES AND DISMISSALS.....	18
5.1 Release of Releasees .....	18
5.2 Covenant Not To Sue.....	18
5.3 No Further Claims.....	19
5.4 Dismissal of the Main Proceedings.....	19
5.5 Dismissal of the Additional Proceedings.....	19
5.6 Dismissal of the Other Actions.....	19
5.7 Claims Against Other Entities Reserved.....	20
5.8 Releases.....	20
SECTION 6 — ITWAL RELEASE .....	20
6.1 General Release .....	20
SECTION 7 - BAR ORDER AND OTHER CLAIMS .....	20
7.1 Ontario and British Columbia Bar Order.....	20
7.2 Quebec Bar Order .....	21
7.3 Material Term .....	22
SECTION 8 – EFFECT OF SETTLEMENT .....	22

8.1	No Admission of Liability .....	22
8.2	Agreement Not Evidence.....	23
8.3	No Further Litigation .....	23
SECTION 9 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY .....		24
9.1	Settlement Class and Common Issue.....	24
9.2	Certification or Authorization Without Prejudice.....	24
SECTION 10 – NOTICE TO SETTLEMENT CLASS .....		24
10.1	Notice Required .....	24
10.2	Form and Distribution of Notice.....	24
10.3	Costs of Notice.....	25
SECTION 11 – INFORMATION AND ASSISTANCE.....		25
SECTION 12 -TERMINATION OF SETTLEMENT AGREEMENT .....		25
12.1	Right of Termination.....	25
12.2	If Settlement Agreement is Terminated.....	27
12.3	Survival of Provisions After Termination.....	27
SECTION 13 - MISCELLANEOUS .....		28
13.1	Motions for Directions.....	28
13.2	Headings, etc.....	28
13.3	Computation of Time.....	28
13.4	Ongoing Jurisdiction.....	29
13.5	Governing Law .....	29
13.6	Entire Agreement.....	29
13.7	Amendments .....	30
13.8	Binding Effect.....	30
13.9	Counterparts.....	30
13.10	Negotiated Agreement .....	30
13.11	Translations.....	31
13.12	Transaction.....	31
13.13	Recitals.....	31
13.14	Schedules .....	31
13.15	Acknowledgements.....	31

13.16 Authorized Signatures.....	32
13.17 Notice.....	32
13.18 Date of Execution .....	33
SCHEDULE "A" .....	36
SCHEDULE "B" .....	37

**CANADIAN CHOCOLATE CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

**RECITALS**

A. WHEREAS the Main Plaintiffs have commenced the Main Proceedings in the Courts which allege that the Defendants, participated in an unlawful conspiracy to raise, maintain, fix, or stabilize the price of Chocolate Products in Canada and/or to allocate markets and customers for the sale of Chocolate Products in Canada and that ITWAL engaged in unlawful price maintenance, contrary to Part VI of the *Competition Act* and common law;

B. AND WHEREAS the Additional Plaintiffs have commenced the Additional Proceedings in the Ontario Court and a number of other courts in Canada which make similar allegations as against a number of the Defendants as well as against other parties relating to the sale of Chocolate Products in Canada;

C. AND WHEREAS the ITWAL Defendants believe that they are not liable in respect of the claims as alleged in the Main Proceedings and the Additional Proceedings, and whereas the ITWAL Defendants believe that they have good and reasonable defences in respect of the merits in the Canadian Proceedings;

D. AND WHEREAS the ITWAL Defendants assert that they would actively pursue these defences relating to the merits during the course of certification, during the course of discovery and at trial if the Canadian Plaintiffs continued the Canadian Proceedings against them;

E. AND WHEREAS, despite their belief that the ITWAL Defendants are not liable in respect of the claims as alleged in the Canadian Proceedings and have good defences thereto relating to the merits, ITWAL has negotiated and entered into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this litigation and any other present or future litigation arising out of the facts that gave rise to this litigation and achieve final resolutions of all claims asserted or which could have been asserted against the ITWAL Defendants by the Canadian Plaintiffs on their own behalf and on behalf of the classes they seek to represent, and to avoid the risks inherent in uncertain, complex and protracted litigation;

F. AND WHEREAS counsel for ITWAL and counsel for the Main Plaintiffs have engaged in extensive arm's-length settlement discussions and negotiations in respect of this Settlement Agreement;

G. AND WHEREAS as a result of these settlement discussions and negotiations, ITWAL and the Main Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between ITWAL and the Main Plaintiffs, both individually and on behalf of the Settlement Class, subject to approval of the Courts;

H. AND WHEREAS the Additional Plaintiffs and Additional Counsel have agreed to join and abide by this Settlement Agreement on the basis that the terms of this Settlement Agreement are in the best interests of the Settlement Class;

I. AND WHEREAS the Main Plaintiffs and Additional Plaintiffs have agreed to accept this settlement, in part, because of the value of the assignment by ITWAL to the Settlement Class of its claims as against the Non-Settling Defendants relating to any conduct alleged in the Canadian Proceedings and the value of the cooperation ITWAL has agreed to render or make available to the Main Plaintiffs and/or Class Counsel pursuant to this Settlement Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by the ITWAL Defendants;

J. AND WHEREAS the Main Plaintiffs and Additional Plaintiffs recognize the benefits of ITWAL's early cooperation in respect of the Main Proceedings;

K. AND WHEREAS the ITWAL Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Canadian Proceedings;

L. AND WHEREAS the Main Plaintiffs, Additional Plaintiffs, Class Counsel, and ITWAL agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the ITWAL Defendants or evidence of the truth of any of the Canadian Plaintiffs' allegations against the ITWAL Defendants;

M. AND WHEREAS the Main Plaintiffs, the Additional Plaintiffs, Class Counsel and Additional Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Main Plaintiffs' and Additional

Plaintiffs' claims, and having regard to the burdens and expense in prosecuting the Canadian Proceedings, including the risks and uncertainties associated with trials and appeals, the Main Plaintiffs, the Additional Plaintiffs, Class Counsel and Additional Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Main Plaintiffs, the Additional Plaintiffs and the classes they seek to represent;

N. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the Canadian Proceedings as against the ITWAL Defendants;

O. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification or authorization of the Main Proceedings as class proceedings and have consented to a Settlement Class and a Common Issue in each of the Main Proceedings;

P. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Main Plaintiffs have consented to a dismissal of the Main Proceedings as against ITWAL, and the Additional Plaintiffs have consented to a dismissal of the Additional Proceedings as against the ITWAL Defendants;

Q. AND WHEREAS the Main Plaintiffs assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs in their respective Main Proceedings;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Canadian Proceedings be settled and dismissed on the merits with prejudice as to the ITWAL Defendants and certain other related entities only, without costs as to the Canadian Plaintiffs, the classes they seek to represent or the ITWAL Defendants, subject to the approval of the Courts, on the following terms and conditions:

## **SECTION 1 – DEFINITIONS**

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) ***Additional Counsel*** means counsel for the Additional Plaintiffs.
- (2) ***Additional Plaintiffs*** mean the individuals and entities named as plaintiffs in the Additional Proceedings.
- (3) ***Additional Proceedings*** mean the actions or proceedings listed in Schedule "B" to this Settlement Agreement.
- (4) ***Approval Hearings*** mean the hearings to approve the motions brought by Class Counsel for the Courts' approval of the settlement provided for in this Settlement Agreement.
- (5) ***BC Counsel*** means Camp Fiorante Matthews and Branch MacMaster.
- (6) ***BC Court*** means the Supreme Court of British Columbia.
- (7) ***BC Proceeding*** means the proceeding commenced by Jacob Stuart Main in the form of an action filed in the B.C. Court (Vancouver registry), Court File No. S078807, filed on December 24, 2007.
- (8) ***BC Settlement Class*** means all Persons resident in British Columbia who, during the Settlement Class Period, purchased Chocolate Products in Canada, except the Excluded Persons.
- (9) ***Canadian Plaintiffs*** mean the Main Plaintiffs and the Additional Plaintiffs.
- (10) ***Canadian Proceedings*** mean the Main Proceedings and the Additional Proceedings.
- (11) ***Chocolate Products*** mean any and all chocolate confectionary products of the Non-Settling Defendants sold in Canada.
- (12) ***Class Counsel*** means Ontario Counsel, Quebec Counsel and BC Counsel who act as class counsel in the Main Proceedings.
- (13) ***Class Counsel Fees*** include the fees, disbursements, costs, interest, GST and other applicable taxes or charges of Class Counsel.



- (14) **Common Issue** in each Main Proceeding means: Did ITWAL conspire to raise, maintain, fix or stabilize the prices of, or allocate markets and customers for, Chocolate Products in Canada during the Settlement Class Period? If so, what damages did Settlement Class Members suffer?
- (15) **Courts** mean the Ontario Court, the Quebec Court and the BC Court.
- (16) **Defendants** mean the individuals and entities named as defendants in the Main Proceedings as set out in Schedule "A".
- (17) **Documents** mean all papers, computer or electronic records, or other materials within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.
- (18) **Effective Date** means the date when Final Orders have been received from the Courts approving this Settlement Agreement.
- (19) **Excluded Person** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing. For greater certainty, Excluded Persons shall not include a Person that receives an assignment of rights pursuant to section 3.1 of this Settlement Agreement, and shall not include ITWAL members and/or shareholders.
- (20) **Final Order** means a final order entered by a Court in respect of the approval of this Settlement Agreement once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement upon a final disposition of all appeals.
- (21) **ITWAL** means ITWAL Limited.
- (22) **ITWAL Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated,

damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, including for certainty, that the ITWAL Entities, or any of them, whether directly, indirectly, derivatively, or in any other capacity; ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing or distributing of Chocolate Products, or relating to any conduct alleged (or which could have been alleged) in the Canadian Proceedings or the Other Actions including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or combination or as a result of or in connection with any other alleged unlawful horizontal or vertical anti-competitive conduct in connection with the purchase, sale, pricing, discounting, marketing or distributing of Chocolate Products in Canada and including, without limitation, any claims for consequential, subsequent or follow-on harm that arises after the date hereof in respect of any agreement or conduct that occurred prior to the date hereof.

- (23) ***ITWAL Defendants*** mean ITWAL Limited and Glenn Stevens.
- (24) ***ITWAL Entities*** mean, jointly and severally, individually and collectively, the ITWAL Defendants and their respective parents, subsidiaries, predecessors, successors, purchasers, heirs, executors, administrators, insurers, and assigns. For greater certainty, current and former members and/or shareholders of ITWAL are not ITWAL Entities.
- (25) ***Main Plaintiffs*** mean the individuals and entities named as plaintiffs in the Main Proceedings.
- (26) ***Main Proceedings*** means the Ontario Proceeding, the Quebec Proceeding and the BC Proceeding listed in Schedule "A" to this Settlement Agreement.
- (27) ***Non-Settling Defendants*** mean the Defendants in the Main Proceedings other than ITWAL.

- (28) ***Notice of Certification and Approval Hearings*** means the form of notice, agreed to by the Main Plaintiffs and ITWAL, or such other form as may be approved by the Courts, which informs the Settlement Class of: (i) the certification or authorization of the Main Proceedings; (ii) the dates and locations of the Approval Hearings; (iii) the principal elements of this Settlement Agreement; (iv) the process by which they may opt out of the Main Proceedings; and (v) the Opt Out Deadline.
- (29) ***Notice of Settlement Approval*** means the form of notice, agreed to by the Main Plaintiffs and ITWAL, or such other form as may be approved by the Courts, which informs the Settlement Class of the approval of this Settlement Agreement.
- (30) ***Notices*** mean the Notice of Certification and Approval Hearings, the Notice of Settlement Approval, and notice of termination.
- (31) ***Ontario Counsel*** means Sutts, Strosberg LLP and Siskinds LLP.
- (32) ***Ontario Court*** means the Ontario Superior Court of Justice.
- (33) ***Ontario Proceeding*** means the proceeding commenced by David Osmun and Metro (Windsor) Enterprises Inc. in the form of a Notice of Action and Statement of Claim filed in the Ontario Court (Toronto registry), Court File No. 08-CV-347263PD2 (Toronto), filed on January 17, 2008 and on February 4, 2008.
- (34) ***Ontario Settlement Class*** means all Persons in Canada who, during the Settlement Class Period, purchased Chocolate Products in Canada, except the Excluded Persons and Persons who are included in the Quebec Class and the BC Class.
- (35) ***Opt Out*** means a member of the Settlement Class who has submitted a timely and valid written election to opt out of the Main Proceedings in accordance with orders of the Courts.
- (36) ***Opt Out Administrator*** means the person proposed by Class Counsel and appointed by the Courts to receive Opt Out Forms and report on the opt out process.
- (37) ***Opt Out Deadline*** means the date which is sixty (60) days after the date on which the Notice of Certification and Approval Hearings is first published.

- (38) ***Opt Out Form*** means the form set out at Schedule "E" to this Settlement Agreement;
- (39) ***Other Actions*** mean actions or proceedings, other than the Main Proceedings and Additional Proceedings, relating to the Released Claims commenced by a Settlement Class Member either before or after the Effective Date;
- (40) ***Parties*** mean the Main Plaintiffs, the Additional Plaintiffs, the Settlement Class Members and ITWAL.
- (41) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (42) ***Purchase Price*** means the purchase price actually paid by Settlement Class Members for Chocolate Products purchased during the Settlement Class Period, less any rebates, delivery or shipping charges, taxes and any other form of discounts.
- (43) ***Quebec Counsel*** means Siskinds Desmeules s.e.n.c.r.l.
- (44) ***Quebec Court*** means the Superior Court of Quebec.
- (45) ***Quebec Proceeding*** means the proceeding commenced by Gaetan Roy in the form of an application for authorization (la Requête pour obtenir l'autorisation d'exercer un recours collectif) in the Quebec Court (Québec City registry), Court File No. 200-06-000094-071, filed on November 28, 2007.
- (46) ***Quebec Settlement Class*** means all individuals resident in Quebec who, during the Settlement Class Period, purchased Chocolate Products in Canada, as well as any legal person resident in Quebec established for a private interest, partnership or association which, at all times between November 28, 2007 and November 28, 2008, had under its direction or control no more than 50 persons bound to it by a contract of employment, who, during the Settlement Class Period, purchased Chocolate Products in Canada, except the Excluded Persons.

- (47) ***Released Claims*** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing or distribution of Chocolate Products, or relating to any conduct alleged (or which could have been alleged) in the Canadian Proceedings or the Other Actions including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or combination or as a result of or in connection with any other alleged unlawful horizontal or vertical anti-competitive conduct in connection with the purchase, sale, pricing, discounting, marketing or distributing of Chocolate Products in Canada and including, without limitation, any claims for consequential, subsequent or follow-on harm that arises after the date hereof in respect of any agreement or conduct that occurred prior to the date hereof.
- (48) ***Releasees*** mean, jointly and severally, individually and collectively, Glenn Stevens, ITWAL, ITWAL's distributor members and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants and any affiliates of the Non-Settling Defendants.
- (49) ***Releasors*** mean, jointly and severally, individually and collectively, the Main Plaintiffs, the Additional Plaintiffs and the Settlement Class Members except Opt Outs and their respective

parents, subsidiaries, predecessors, successors, heirs, executors, administrators, insurers, and assigns.

- (50) ***Settlement Agreement*** means this agreement, including the recitals and schedules.
- (51) ***Settlement Class*** means all Persons included in the Ontario Settlement Class, the Quebec Settlement Class and the BC Settlement Class.
- (52) ***Settlement Class Member*** means a member of the Settlement Class who does not validly opt out of the Settlement Class in accordance with orders of the Courts.
- (53) ***Settlement Class Period*** means February 1, 2001 to December 31, 2008.
- (54) ***U.S. Proceedings*** means the class action proceeding pending in the United States District Court for the Middle District of Pennsylvania under the caption *In re Chocolate Confectionary Antitrust Litigation*, MDL 1935 (M.D. Penn.), and including all actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, and all actions that may be transferred in the future.

## **SECTION 2– SETTLEMENT APPROVAL**

### **2.1 Best Efforts**

The Parties shall use their best efforts to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the Canadian Proceedings as against the ITWAL Defendants.

### **2.2 Motions Approving Notice and Seeking Certification or Authorization**

(1) At a time mutually agreed to by the Parties after the Settlement Agreement is executed, the Main Plaintiffs shall bring motions before the Courts for orders approving the Notice of Certification and Approval Hearings described in section 10.1, adding ITWAL Limited as a respondent in the Quebec Proceeding and certifying or authorizing each of the Main Proceedings commenced in their respective jurisdictions as a class proceeding for settlement purposes.

(2) The Ontario order approving the Notice of Certification and Approval Hearings and certifying the Ontario Proceeding referred to in section 2.2(1) shall be in the form attached hereto as

Schedule "C1" except that paragraphs 1, 4, and 6-11 of the Ontario order need only be substantially in the form set out in Schedule "C1".

(3) The Quebec and British Columbia orders approving the Notice of Certification and Approval Hearings and certifying or authorizing the Quebec and BC Proceedings referred to in section 2.2(1) shall be in the form attached hereto respectively in Schedule "C2" and "C3" except that paragraphs 1-10, 12, 15, and 17-23 of the Quebec order and paragraphs 1, 4 and 6-11 of the British Columbia order need only be substantially in the form set out respectively in Schedule "C2" and "C3". The Quebec and British Columbia orders shall mirror the substance and, where possible, the form of the Ontario order.

### **2.3 Motions for Approval of the Settlement**

(1) As soon as practicable after the orders referred to in section 2.2 (2) and (3) are granted, after the Notice of Certification and Approval Hearings has been published and upon expiration of the Opt Out Deadline, the Main Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.

(2) The Ontario order approving this Settlement Agreement referred to in section 2.3(1) shall be in the form attached hereto as Schedule "D1" except that paragraphs 1, 4, and 18-21 of the Ontario order need only be substantially in the form set out in Schedule "D1".

(3) The Quebec and British Columbia orders approving the Settlement Agreement referred to in section 2.3(1) shall be in the form attached hereto respectively in Schedule "D2" and "D3" except that paragraphs 1-7, 9, 12-13, and 23-25 of the Quebec order and paragraphs 1, 4, and 16-19 of the British Columbia order need only be substantially in the form set out respectively in Schedule "D2" and "D3". The Quebec and British Columbia orders shall mirror the substance and, where possible, the form of the Ontario order.

(4) As soon as practicable after issuance of the Ontario, British Columbia and Quebec orders approving the Settlement Agreement and dismissing the Main Proceedings, the Additional Plaintiffs shall bring motions for dismissal of all of the Additional Proceedings against the ITWAL Defendants.

## **2.4 Pre-Motion Confidentiality**

Until the first of the motions required by section 2.2(1) is brought, the Parties shall keep all of the terms of this Settlement Agreement, and any information or Documents related thereto, confidential and shall not disclose them without the prior written consent of counsel for the ITWAL and Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements) or as otherwise required by law.

## **2.5 Sequence of Approval Motions**

(1) The Main Plaintiffs in Quebec and British Columbia shall not proceed with a motion to certify or authorize the Quebec and BC Proceedings unless and until the Ontario Court certifies the Ontario Proceeding. The certification or authorization motions may be filed in Quebec and British Columbia, but, if necessary, Quebec and BC Counsel will seek an adjournment of their hearings to permit the Ontario Court to render its decision on the certification motion. ITWAL may agree to waive this provision.

(2) The Main Plaintiffs in Quebec and British Columbia shall not proceed with a motion to approve this Settlement Agreement unless and until the Ontario Court approves the Settlement Agreement. The approval motions may be filed in Quebec and British Columbia, but, if necessary, Quebec and BC Counsel will seek an adjournment of their hearings to permit the Ontario Court to render its decision on the settlement approval motion. ITWAL may agree to waive this provision.

## **SECTION 3 – SETTLEMENT BENEFITS**

### **3.1 Assignment of ITWAL's Claims to Settlement Class**

ITWAL hereby absolutely and unconditionally assigns and transfers to the Settlement Class the ITWAL Claims. This assignment by ITWAL is not intended to affect any other claim, including any claims by ITWAL members or shareholders.

### **3.2 Cooperation – No Disclosure of Privileged Communications**

Nothing in this Settlement Agreement shall require, or shall be construed to require ITWAL to disclose or produce any Documents or information prepared by or for counsel for ITWAL, or to



disclose or produce any Documents or information in breach of any order, regulatory directive, regulatory policy, regulatory agreement or law of any jurisdiction, or subject to solicitor-client privilege, litigation privilege, attorney-client privilege, work product doctrine, common interest privilege, joint defence privilege or any other privilege, or to disclose or produce any information or Documents they obtained on a privileged or co-operative basis from any party to any action or proceeding.

### **3.3 Cooperation – Scope of Cooperation**

(1) To the extent not previously provided to the Main Plaintiffs and subject to the limitations set forth in this Settlement Agreement, ITWAL agrees to provide cooperation to Class Counsel, as specifically set forth in subsections (a) to (d) inclusive below. Within thirty (30) days of dismissal of all of the Canadian Proceedings against the ITWAL Defendants, or at a time mutually agreed upon by Class Counsel and counsel for ITWAL, ITWAL shall provide:

- (a) Copies of the following Documents in the possession, custody or control of ITWAL: correspondence between ITWAL and the Non-Settling Defendants regarding the "TAN [Take Action Now] notices" as they relate to the purchase, sale, pricing, discounting, marketing and/or distributing of Chocolate Products in Canada;
- (b) A set of existing transactional data relating to purchase, sale and/or transfer of Chocolate Products in Canada during the Settlement Class Period by ITWAL, including Purchase Price and volume information. ITWAL represents that it is in the possession of existing transactional data relating to the purchase and sale of Chocolate Products in Canada by ITWAL, including but not limited to purchases of Chocolate Products from one or more Non-Settling Defendants, during the Settlement Class Period, which data includes Purchase Price and volume information. ITWAL makes no representation on the completeness of that data. Counsel for ITWAL agrees to be reasonably available as necessary to respond to Class Counsel's questions regarding the transactional data produced by ITWAL.
- (c) Upon reasonable and specific requests by Class Counsel, and within a reasonable time frame, copies of such other Documents which are relevant to the Main Plaintiffs' claims in the Main Proceedings and which may be reasonably necessary for the prosecution of

the Main Proceedings. A request by Class Counsel will only be considered reasonable and specific where such request includes a description of the specific document sought, the time frame within which it is believed the Document was authored, and the name of the person believed to have authored the Document. Any Document requested by Class Counsel which was not also a Document seized from ITWAL by the Competition Bureau shall only be provided to Class Counsel after the final disposition of the Canadian Competition Bureau investigation and any proceedings arising thereafter against the ITWAL Defendants.

- (d) A material factor influencing ITWAL's decision to execute this Settlement Agreement is its desire to limit the burden and expense of ongoing cooperation relating to the Main Proceedings. Accordingly, Class Counsel undertake to exercise good faith in seeking cooperation from ITWAL and to avoid requesting information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burden or expense on ITWAL.
- (2) If any Documents protected by any privilege, and/or any privacy law or other rule or law of this jurisdiction are accidentally or inadvertently produced, such Documents shall be promptly returned to ITWAL and the Documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of ITWAL, and the production of such Documents shall in no way be construed to have waived in any manner any privilege or protection attached to such Documents.
- (3) Upon reasonable notice, and subject to any legal restrictions, Glenn Stevens, the President and Chief Executive Officer of ITWAL shall make himself available for an interview with Class Counsel and/or experts retained by Class Counsel in the Main Proceedings, at a location agreed to by Class Counsel and ITWAL. If the interview is to be conducted outside of Toronto, the reasonable costs incurred by, and the reasonable expenses of, Glenn Stevens in relation to such interview shall be the responsibility of the Main Plaintiffs. The interview shall not occur until after the final disposition of the Canadian Competition Bureau investigation and any proceedings arising thereafter against the ITWAL Defendants.
- (4) Subject to the rules of evidence, any court order with respect to confidentiality, and the other provisions of this Settlement Agreement, and after completion of the Competition Bureau

investigation and any proceedings arising thereafter against the ITWAL Defendants, ITWAL agrees to engage reasonable efforts to make available for testimony at trial in the Main Proceedings in Canada, or to be available to provide an affidavit or declaration and attend at a cross examination in support of the certification or authorization motion in the Main Proceedings or in the event of a summary judgment or other motion brought against the Main Plaintiffs in the Main Proceedings, such current directors, officers or employees of ITWAL as Class Counsel and counsel to ITWAL, acting reasonably, agree would be reasonably necessary to support the submission into evidence of any information or Documents produced by ITWAL in accordance with this Settlement Agreement that Class Counsel and ITWAL, acting reasonably, agree may be reasonably necessary for the prosecution of the Main Proceedings and may be presented to the Courts. The reasonable costs incurred by, and the reasonable expenses of, the current directors, officers or employees in relation to such cooperation shall be the responsibility of ITWAL and/or the current directors, officers or employees. If any person refuses to cooperate under this section, ITWAL shall use its reasonable efforts to make such person available to provide testimony or otherwise cooperate with the Main Plaintiffs. Except as provided herein, the failure or refusal of any current director, officer or employee to agree to make him or herself available, to provide testimony, to provide an affidavit or declaration, to attend at a cross-examination or to otherwise cooperate with the Main Plaintiffs shall not constitute a breach or violation of the obligations of ITWAL under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement.

(5) In connection with its provision of information, testimony, and Documents, ITWAL shall have the right to assert solicitor-client privilege, litigation privilege, and/or any other privilege, or to assert a right to refuse production on the basis of privacy law, regulatory directive, regulatory policy, regulatory agreement or other rule or law of this jurisdiction.

(6) It is understood and agreed that the Main Plaintiffs, the Settlement Class Members, and Class Counsel shall not, without the express written consent of ITWAL, directly or indirectly use or disclose any information or Documents provided by ITWAL for any purpose other than the investigation or prosecution of the claims in the Main Proceedings, nor, except as expressly permitted herein, share with any other Persons, including, but not limited to, the Additional Plaintiffs, Additional Counsel, other plaintiffs or their counsel in any action on behalf of purchasers of Chocolate Products, any information or Documents obtained from ITWAL in connection with this Settlement Agreement, except in the event that a court in Canada expressly orders such information

or Documents to be disclosed. In no circumstances, however, may the Main Plaintiffs, the Settlement Class Members and/or Class Counsel apply for or consent to such an order, and promptly upon becoming aware of an application for such an order Class Counsel shall immediately notify ITWAL of the application in order that ITWAL may intervene in such proceedings. The disclosure restrictions set forth in this subsection do not apply to otherwise publicly available Documents and information.

(7) It is understood and agreed that the Main Plaintiffs, the Settlement Class Members and Class Counsel shall not, without the express written consent of ITWAL, directly or indirectly disclose any information or Documents provided by ITWAL to the plaintiffs in the U.S. Proceedings, except in the event that a court in Canada expressly orders such information or Documents to be disclosed.

(8) If the Main Plaintiffs, the Settlement Class Members and/or Class Counsel intend to take steps to provide Documents or information obtained from ITWAL, which are not otherwise publicly available Documents or information, to the Non-Settling Defendants, or any affiliates of the Non-Settling Defendants, or to file such Documents or information in the Main Proceedings, and such disclosure is not otherwise prohibited by this Settlement Agreement, then the Plaintiffs, the Settlement Class Members and/or Class Counsel shall provide ITWAL with an advance written description of the Documents or information that is to be provided to the Non-Settling Defendants or their affiliates or filed with the Courts at least thirty (30) days in advance of the proposed disclosure. If requested by ITWAL, the Main Plaintiffs shall, prior to any disclosure, bring a motion for the purposes of obtaining a sealing or confidentiality order or similar relief, and shall consent to ITWAL intervening on any such motion. In the event that ITWAL intervenes for these purposes, neither the Main Plaintiffs, Settlement Class Members and/or Class Counsel shall oppose positions taken by ITWAL.

(9) ITWAL's obligation to cooperate as particularized in this section 3.3 shall not be affected by the release provisions contained in section 6 of this Settlement Agreement. ITWAL's obligation to cooperate under this Settlement Agreement shall cease at the date of final judgment in the Main Proceedings against all Defendants. In the event ITWAL materially breaches this section 3.3, Class Counsel may move before the Courts to either enforce the terms of this Settlement Agreement or seek to set aside the approval of this Settlement Agreement. Class Counsel may effect service of such motion on ITWAL by service on counsel of record for ITWAL in the Ontario Proceedings.

(10) The provisions set forth in section 3.3 of this Settlement Agreement shall constitute the exclusive means by which the Main Plaintiffs, Settlement Class Members and Class Counsel may obtain discovery from the ITWAL Defendants, ITWAL's current and former officers, directors or employees and the Releasees, and the Main Plaintiffs, Settlement Class Members and Class Counsel shall pursue no other means of discovery against the ITWAL Defendants, ITWAL's current and former directors, officers, or employees and the Releasees, whether under the laws or rules of any jurisdiction.

#### **SECTION 4- OPTING-OUT**

##### **4.1 Procedure**

(1) A Person may opt out of the Main Proceedings by completing and signing the Opt Out Form, and by sending the Opt Out Form, by pre-paid mail, courier or fax to the Opt Out Administrator at an address and coordinates to be identified in the Notice of Certification and Approval Hearing contemplated by section 10.1 of this Settlement Agreement.

(2) A Person who wishes to opt out of the Main Proceedings must provide the following to the Opt Out Administrator as part of the Opt Out Form:

- (a) an executed statement requesting that the Person opting out be excluded from the Settlement Class in the Canadian Chocolate Class Action National Settlement;
- (b) the full name, current address and telephone number of the Person who is opting out and any former names which are relevant to its purchase of Chocolate Products in Canada during the Settlement Class Period;
- (c) the name(s) of each entity from whom the Person purchased Chocolate Products in Canada during the Settlement Class Period; and
- (d) particulars of the Purchase Price and volume of Chocolate Products purchased from each such entity during the Settlement Class Period.

(3) An election to opt out will only be effective if the Opt Out Form is postmarked on or before the Opt Out Deadline.

## **4.2 Opt Out Report**

The Opt Out Administrator shall use the information provided by ITWAL pursuant to section 11.2 to supplement and confirm the information received pursuant to section 4.1(2) of this Settlement Agreement. Within twenty-one (21) days of the Opt Out Deadline, the Opt Out Administrator shall provide to ITWAL and Class Counsel, to the extent that such information is known by the Opt Out Administrator, the following information in respect of each Person, if any, who has opted out of the Main Proceedings:

- (a) the Person's full name, current address and telephone number;
- (b) the reasons for opting out, if given;
- (c) the name(s) of each entity from whom the Person purchased Chocolate Products during the Settlement Class Period;
- (d) for each such entity, the Purchase Price and volume of Chocolate Products purchased during the Settlement Class Period; and
- (e) a copy of all information provided in the opt out process by the Person electing to opt out.

## **SECTION 5- RELEASES AND DISMISSALS**

### **5.1 Release of Releasees**

Upon the Effective Date, and in consideration of payment of the cost of publication and distribution as provided in section 10.3, and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release the Releasees from the Released Claims.

### **5.2 Covenant Not To Sue**

Notwithstanding section 5.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any claim in any way or to

threaten, commence, participate in, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

### **5.3 No Further Claims**

The Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasees or against any other Person who may claim contribution or indemnity from any Releasees in respect of any Released Claim or any matter related thereto, except for the continuation of the Main Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees.

### **5.4 Dismissal of the Main Proceedings**

Upon the Effective Date, the Main Proceedings and the Additional Proceeding in British Columbia shall be dismissed with prejudice and without costs as against the ITWAL Defendants.

### **5.5 Dismissal of the Additional Proceedings**

(1) As soon as practical after the Effective Date, the remaining Additional Proceedings listed in Schedule "B" shall be dismissed with prejudice and without costs against the ITWAL Defendants and the other Releasees. The Additional Plaintiffs shall take all steps necessary to secure the dismissal of all of the Additional Proceedings.

(2) Upon the Effective Date, each member of the Ontario Settlement Class and the BC Settlement Class who does not opt out shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Additional Proceedings against the Releasees.

### **5.6 Dismissal of the Other Actions**

(1) Upon the Effective Date, those Other Actions which were commenced in Ontario, Quebec, British Columbia or any other jurisdiction in Canada by any Settlement Class Member who does not opt out in accordance with the provisions of section 4.1 shall be dismissed against the Releasees without costs and with prejudice.

(2) Upon the Effective Date, each member of the Settlement Class who does not opt out in accordance with the provisions of section 4.1 shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.

#### **5.7 Claims Against Other Entities Reserved**

Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any Person other than the Releasees.

#### **5.8 Releases**

The releases contemplated in this section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to section 12 of this Settlement Agreement.

### **SECTION 6 — ITWAL RELEASE**

#### **6.1 General Release**

(1) ITWAL shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on its own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Non-Settling Defendant(s) or any other Person who may claim contribution or indemnity from any Non-Settling Defendant(s) in respect of any Released Claim or any matter related thereto, subject to section 3.1.

(2) Upon the Effective Date, ITWAL hereby forever and absolutely releases the Non-Settling Defendants from the Released Claims, subject to section 3.1.

### **SECTION 7- BAR ORDER AND OTHER CLAIMS**

#### **7.1 Ontario and British Columbia Bar Order**

(1) The Plaintiffs in the Ontario Proceeding and the BC Proceeding shall seek a bar order from the Ontario and BC Courts providing for the following:



- (a) all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Ontario Proceedings or the BC Proceedings or otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Section (unless such claim is made in respect of a claim by an Opt Out);
- (b) a Non-Settling Defendant may, upon motion, seek an order from one or more of the Ontario and BC Courts providing for discovery from ITWAL as deemed appropriate by said Court(s). ITWAL may oppose any such motion. To the extent that such order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall timely be provided by ITWAL to the Main Plaintiffs and Class Counsel; and
- (c) a Non-Settling Defendant may effect service of the motion(s) referred to in section 7.1(1)(b) on ITWAL by service on counsel of record for ITWAL in the Main Proceedings.

(2) If the Courts ultimately determine there is a right of contribution and indemnity between co-conspirators, the Plaintiffs and Settlement Class Members in the Ontario Proceeding and the BC Proceeding shall restrict their joint and several claims against the Non-Settling Defendants such that the Plaintiffs and Settlement Class Members in the Ontario Proceeding and the BC Proceeding shall be entitled to claim and recover from the Non-Settling Defendants on a joint and several basis, only those damages, if any, arising from and allocable to the conduct of and the sales by the Non-Settling Defendants.

## **7.2 Quebec Bar Order**

(1) The Plaintiffs in the Quebec Proceeding shall seek a bar order from the Quebec Court providing for the following:

- (a) the Plaintiffs and the Settlement Class Members in the Quebec Proceeding expressly waive the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds of ITWAL;
- (b) the Plaintiffs and the Settlement Class Members in the Quebec Proceeding shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of and sales by the Non-Settling Defendants;
- (c) any action in warranty or other joinder of parties to obtain any contribution or indemnity from ITWAL or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding;
- (d) the Quebec Court retains an ongoing supervisory role for the purposes of executing this section 7.2, as well as all procedural aspects of the Quebec Proceeding, and all issues regarding this section 7.2 or any other procedural issues shall be resolved under special case management and according to the Quebec Code of civil procedure, and ITWAL shall acknowledge the jurisdiction of the Quebec Court for such purposes.

### **7.3 Material Term**

The form and content of the bar orders contemplated in this section 7 shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the bar orders contemplated herein shall give rise to a right of termination pursuant to section 12 of this Settlement Agreement.

## **SECTION 8- EFFECT OF SETTLEMENT**

### **8.1 No Admission of Liability**

The Canadian Plaintiffs and the ITWAL Defendants expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, the Canadian Plaintiffs and the ITWAL Defendants agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action

taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any Settling Defendant or by any Releasee, or of the truth of any of the claims or allegations contained in the Canadian Proceedings or any other pleading filed by the Canadian Plaintiffs or any other Settlement Class Member.

## **8.2 Agreement Not Evidence**

The Canadian Plaintiffs and the ITWAL Defendants agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

## **8.3 No Further Litigation**

(1) Except as provided in section 8.3(2) of this Settlement Agreement, no Class Counsel, no Additional Counsel, no Main Plaintiff, no Additional Plaintiff, no Settlement Class Member, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel or Additional Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims. Moreover, these Persons may not divulge to anyone for any purpose any information, including, without limitation, any cooperation materials and documents provided pursuant to section 3.3, obtained in the course of the Main Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a court in Canada.

(2) Section 8.3(1) does not apply to the involvement of any Person in the continued prosecution of the Main Proceedings against any Non-Settling Defendants or unnamed co-conspirators who are not Releasees.

## **SECTION 9 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY**

### **9.1 Settlement Class and Common Issue**

(1) The Parties agree that the Main Proceedings shall be certified or authorized as class proceedings solely for purposes of settlement of the Canadian Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Main Plaintiffs agree that, in the motions for certification or authorization of the Main Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only class that they will assert is the Settlement Class. The Main Plaintiffs and Additional Plaintiffs acknowledge that ITWAL agrees to the definition of the Common Issue for purposes of settlement only.

### **9.2 Certification or Authorization Without Prejudice**

In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect, the Parties agree that any prior certification or authorization of a Main Proceeding as a class proceeding, including the definition of the Settlement Class and the statement of the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Canadian Proceedings or any other litigation.

## **SECTION 10 – NOTICE TO SETTLEMENT CLASS**

### **10.1 Notice Required**

The proposed Settlement Class shall be given the following Notices: (i) Notice of Certification and Approval Hearings; (ii) Notice of Settlement Approval; and (iii) termination of this Settlement Agreement if it is terminated after notice provided in accordance with (i) above or as otherwise ordered by the Courts.

### **10.2 Form and Distribution of Notice**

The form of the Notices referred to in section 10.1 and the manner of publication and distribution shall be as agreed to by the Main Plaintiffs and ITWAL and approved by the Courts.

### **10.3 Costs of Notice**

Following approval of this Settlement Agreement by the Ontario Court and upon being presented with an invoice relating to the publication and distribution of the Notices referred to in section 10.1, ITWAL shall pay to Class Counsel the costs of publication and distribution of said Notices to a maximum of \$25,000. ITWAL shall not be responsible for any other costs or expenses in regard to this Settlement Agreement, its approval, or its implementation.

## **SECTION 11- INFORMATION AND ASSISTANCE**

(1) ITWAL will make reasonable efforts to compile a list of the names and addresses of Persons in Canada who purchased Chocolate Products from ITWAL in Canada during the Settlement Class Period.

(2) The information required by section 11(1) shall be delivered to Class Counsel within thirty (30) business days of the date of execution of this Settlement Agreement.

(3) Class Counsel may use the information provided under section 11(2) to advise Persons in Canada who purchased Chocolate Products from ITWAL in Canada during the Settlement Class Period of this Settlement Agreement and the date of the Approval Hearings before the Courts and for the purposes of any future claims or distribution process that may hereinafter arise in the Main Proceedings.

(4) If this Settlement Agreement is terminated, all information provided by ITWAL pursuant to section 11(2) shall be returned or destroyed forthwith, no record of the information so provided shall be retained by Class Counsel in any form whatsoever, and the information so provided may not be used or disclosed, directly or indirectly, in any form or manner by Class Counsel or by any Person to whom Class Counsel has disclosed such information.

## **SECTION 12-TERMINATION OF SETTLEMENT AGREEMENT**

### **12.1 Right of Termination**

(1) In the event that:

(a) any Court declines to certify the Settlement Class;

- (b) any Court declines to approve this Settlement Agreement or any material term or part hereof;
- (c) any Court approves this Settlement Agreement in a materially modified form; or
- (d) any orders approving this Settlement Agreement made by the Ontario Court, the BC Court or the Quebec Court do not become Final Orders;

this Settlement Agreement shall be terminated and, except as provided for in section 12.3, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(2) Any order, ruling or determination made by any Court that is not substantially in the form of its respective order annexed as Schedule "C1", "C2", "C3", "D1", "D2" or "D3" shall be deemed to be a material modification of this Settlement Agreement and shall provide a basis for the termination of this Settlement Agreement, provided however that ITWAL may agree to waive this provision.

(3) Any order, ruling or determination made by any Court with respect to Class Counsel Fees and disbursements shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

(4) In the event that any Court declines to dismiss any of the Additional Proceedings against either of the ITWAL Defendants, ITWAL may elect to terminate this Settlement Agreement, and if ITWAL so elects, except as provided for in section 12.3, this Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(5) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Main Plaintiffs, the Additional Plaintiffs and ITWAL agree that any prior certification or authorization of a Main Proceeding as a class proceeding, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Canadian Proceedings or any other litigation.

## **12.2 If Settlement Agreement is Terminated**

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to certify or authorize any of the Main Proceedings as a class proceeding on the basis of this Settlement Agreement or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) any order certifying or authorizing a Main Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;
- (c) any prior certification or authorization of a Main Proceeding as a class proceeding, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Canadian Proceedings or any other litigation; and
- (d) the Parties shall negotiate in good faith to determine a new timetable, if the Canadian Proceedings are to continue against the ITWAL Defendants.

## **12.3 Survival of Provisions After Termination**

If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 3.3 (2) (6) (8), 8, 9.2, 10.1, 10.2, 11(4), and 12 shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of 3.3 (2) (6) (8), 8, 9.2, 10.1, 10.2, 11(4), and 12 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

## **SECTION 13 - MISCELLANEOUS**

### **13.1 Motions for Directions**

- (1) Class Counsel or ITWAL may apply to the Courts for directions in respect of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Main Plaintiffs and ITWAL.

### **13.2 Headings, etc.**

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement”, “hereof”, “hereunder”, “herein” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

### **13.3 Computation of Time**

In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.



### **13.4 Ongoing Jurisdiction**

- (1) Subject to section 13.4(4), each of the Courts shall retain exclusive jurisdiction over each Main Proceeding commenced in its jurisdiction, the parties thereto and Class Counsel Fees in that Main Proceeding.
- (2) Subject to section 13.4(4), the Main Plaintiffs and ITWAL agree that no Court shall make any order or give a direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.
- (3) Notwithstanding the above but subject to section 13.4(4) the Ontario Court shall exercise jurisdiction with respect to implementation, administration, and enforcement of the terms of this Settlement Agreement, and the Main Plaintiffs, the Additional Plaintiffs, the Settlement Class and ITWAL submit to the jurisdiction of the Ontario Court for purposes of implementing, administering, and enforcing the settlement provided for in this Settlement Agreement. Issues related to the administration of this Settlement Agreement, and other matters not specifically related to the claim of a BC Settlement Class Member or a Quebec Settlement Class Member shall be determined by the Ontario Court.
- (4) The Main Plaintiffs and ITWAL may apply to the Ontario Court for direction in respect of the implementation, administration and enforcement of this Settlement Agreement.

### **13.5 Governing Law**

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

### **13.6 Entire Agreement**

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or

representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

### **13.7 Amendments**

This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

### **13.8 Binding Effect**

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Canadian Plaintiffs, the ITWAL Defendants, the Settlement Class Members, the Releasors, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Canadian Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by ITWAL shall be binding upon all of the Releasees.

### **13.9 Counterparts**

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

### **13.10 Negotiated Agreement**

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

**13.11 Translations**

The cost of translating the Notices, claims form, Opt Out Form or other documents referenced to or flowing from this Settlement Agreement into French and/or any other language, in the event such translation is required, shall be paid by the Main Plaintiffs.

**13.12 Transaction**

The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the parties are hereby renouncing to any errors of fact, of law and/or of calculation.

**13.13 Recitals**

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

**13.14 Schedules**

The Schedules annexed hereto form part of this Settlement Agreement.

**13.15 Acknowledgements**

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

**13.16 Authorized Signatures**

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

**13.17 Notice**

Any and all notices, requests, directives, or communications required by this Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email .pdf files, and shall be addressed as follows:

If to: The Main Plaintiffs and for Class Counsel in respect of the Main Proceedings:

**Charles M. Wright**  
**Siskinds LLP**  
**Barristers and Solicitors**  
**680 Waterloo Street**  
**London, ON N6A 3V8**  
 Tel: 519-660-7753  
 Fax: 519-672-6065  
 Email: charles.wright@siskinds.com

**Harvey T. Strosberg, Q.C.**  
**Sutts, Strosberg LLP**  
**Barrister and Solicitors**  
**600-251 Goyeau Street**  
**Windsor, ON N9A 6V4**  
 Tel: 519-258-9333  
 Fax: 519-258-9527  
 Email: harvey@strosbergco.com

**J. J. Camp, Q.C.**  
**Camp Fiorante Matthews**  
**4<sup>th</sup> Floor, Randall Building**  
**555 West Georgia Street**  
**Vancouver, BC V6B 1Z6**  
 Tel: 604-689-7555  
 Fax: 604-689-7554  
 Email: jjcamp@cfmlawyers.ca

**Ward Branch**  
**Branch MacMaster**  
**1410-777 Hornby Street**  
**Vancouver, BC V7G 3E2**  
 Tel: 604-654-2966  
 Fax: 604-684-3429  
 Email: wbranch@branmac.com

Simon Hébert  
**Siskinds Desmeules s.e.n.c.r.l.**  
**Les promenades du Vieux-Quebec**  
**43 rue Beadle, bureau 320**  
**Quebec City, QC G1R 4A2**  
 Tel: 418-694-2009  
 Fax: 418-694-0281  
 Email: [simon.hebert@siskindsdesmeules.com](mailto:simon.hebert@siskindsdesmeules.com)

If to: The Additional Plaintiffs and for Additional Counsel in respect of the Additional Proceedings:

Ward Branch  
**Branch MacMaster**  
**1410-777 Hornby Street**  
**Vancouver, BC V7G 3E2**

Tel: 604-654-2966  
 Fax: 604-684-3429  
 Email: [wbranch@branmac.com](mailto:wbranch@branmac.com)

E.F.A. Merchant  
**Merchant Law Group LLP**  
**100 - 2401 Saskatchewan Drive**  
**Regina, SN S4P 4H8**

Tel: 306-359-7777  
 Fax: 306-522-3299  
 Email: [merchant@merchantlaw.com](mailto:merchant@merchantlaw.com)

If to: ITWAL:

Donald Houston  
**McCarthy Tétrault LLP**  
**44th Floor, Toronto Dominion Tower**  
**66 Wellington Street West**  
**Toronto, ON M5K 1E6**  
 Tel: 416-601-7506  
 Fax: 416-868-0673  
 Email: [dhouston@mccarthy.ca](mailto:dhouston@mccarthy.ca)

### **13.18 Date of Execution**

The Parties have executed this Settlement Agreement as of the date on the cover page.

DAVID OSMUN, METRO (WINDSOR)  
ENTERPRISES INC., GAETAN ROY and  
JACOB STUART MAIN, by their counsel

By: [REDACTED]

Name: Siskinds LLP

Title: Ontario Counsel

By: [REDACTED]

Name: Spits, Strosberg LLP

Title: Ontario Counsel

By: [REDACTED]

Name: Siskinds Desmeules s.e.n.c.r.l

Title: Quebec Counsel

By: [REDACTED]

Name: Camp Fiorante Matthews

Title: BC Counsel

By: [REDACTED]

Name: Branch MacMaster

Title: BC Counsel

CHRISTOPHER CONWAY, SHEILA DOBIE,  
MICHAEL LINDEBACH, VIKTORIYA  
SAMARINA DAVID WILLIAM COWAN,  
JEREMY MCINTYRE, GAVIN CRAWFORD,  
BRIAN KJELSHUS, ROSALYN GOLFMAN,  
DANIEL PAWLACHUK, BEVERLY BRANTH  
AZIK EBERT, BARRETT THOMPSON, RICK  
THOMPSON, WILLIAM KELLY, WILLIAM  
KELLY AND GERALD LEDREW, by their  
counsel

By: [REDACTED]

Name: Branch MacMaster

Title: Counsel in Additional Proceedings  
for B.C., Alberta, Saskatchewan, Manitoba,  
New Brunswick, Newfoundland and Nova  
Scotia

By:

[REDACTED]  
Name: Merchant Law Group LLP  
Title: Counsel in Additional Proceedings  
for B.C., Alberta, Saskatchewan and  
Manitoba

ITWAI, Limited by its counsel

By:

[REDACTED]  
Name: McCarthy Tétrault LLP  
Title: Donald B. Houston

**SCHEDULE "A"****Main Proceedings**

#	Court and File No.	Title of Main Proceedings	Settlement Class
1	Supreme Court of British Columbia (Vancouver Registry)  (Court File No. S078807)	<i>Jacob Stuart Main v. Cadbury Schweppes plc, Cadbury Adams Canada Inc., Mars, Incorporated, Mars Canada Inc. formerly known as Effem Inc., The Hershey Company, Hershey Canada Inc., Nestle S.A., Nestle Canada Inc. and ITWAL Limited</i>	All Persons resident in British Columbia who, during the Settlement Class Period, purchased Chocolate Products in Canada, except Excluded Persons
2	Quebec Superior Court (Quebec City)  (File No. 200-06-000094-071)	<i>Gaetan Roy v. Cadbury Adams Canada Inc., Hershey Canada Inc., Mars Canada Inc., Nestle Canada Inc.</i>	All individuals resident in Quebec who, during the Settlement Class Period, purchased Chocolate Products in Canada, as well as any legal person resident in Quebec established for a private interest, partnership or association which, at all times between November 28, 2007 and November 28, 2008, had under its direction or control no more than 50 persons bound to it by a contract of employment, who, during the Settlement Class Period, purchased Chocolate Products in Canada, except Excluded Persons
3	Ontario Superior Court of Justice (Toronto)  (Court File No. 08-CV-0347263 PD2)	<i>David Osmun and Metro (Windsor) Enterprises Inc. v. Cadbury Adams Canada Inc., The Hershey Company, Hershey Canada, Inc., Nestle Canada, Inc., Mars, Incorporated, Mars Canada Inc. and ITWAL Limited</i>	All Persons in Canada who, during the Settlement Class Period, purchased Chocolate Products in Canada, except the Excluded Persons and Persons who are included in the Quebec Class and the BC Class



## SCHEDULE "B"

### Additional Proceedings

#	Court and File No.	Title of Additional Proceeding
1	Supreme Court of British Columbia (Victoria Registry)  (Court File No. 08-0620)	<i>Christopher Conway and Sheila Dobie v. Hershey Canada Inc., The Hershey Company, Mars Canada Inc., Mars Incorporated., Nestle Canada Inc., Nestle Inc., Cadbury Adams Canada Inc., ITWAL Limited, Glenn Stevens, Robert Leonidas and Eric Lent</i>
2	Court of Queen's Bench of Alberta (Judicial District of Calgary)  (Court File No. 080101724)	<i>Michael Lindebach and Viktoriya Samarina v. Hershey Canada Inc., The Hershey Company, Mars Canada Inc., Mars Incorporated., Nestle Canada Inc., Nestle Inc., Cadbury Adams Canada Inc., Cadbury Schweppes PLC, ITWAL Limited, Glenn Stevens, Robert Leonidas and Eric Lent</i>
3	Court of Queen's Bench of Alberta (Judicial District of Edmonton)  (Court File No. 080302316)	<i>David William Cowan v. Cadbury Adams Canada Inc., Mars, Incorporated, Mars Canada Inc. formerly known as Effem Inc., The Hershey Company, Hershey Canada Inc., Nestle Canada Inc. and ITWAL Limited</i>
4	Court of Queen's Bench for Saskatchewan (Judicial Centre of Regina)  (Court File No. Q.B. No. 257 of 2008)	<i>Jeremy McIntyre and Gavin Crawford v. Hershey Canada Inc., The Hershey Company, Mars Canada Inc., Mars Incorporated., Nestle Canada Inc., Nestle Inc., Nestle S.A., Nestle USA Inc., Cadbury Adams Canada Inc., Cadbury Schweppes PLC, Cadbury Adams USA LLC, ITWAL Limited, Glenn Stevens, Robert Leonidas and Eric Lent</i>
5	Court of Queen's Bench for Saskatchewan (Judicial Centre of Melfort)  (Court File No. Q.B.G. No. 12 of 2008)	<i>Brian Kjelshus v. Cadbury Adams Canada Inc., The Hershey Company, Hershey Canada Inc., Nestle Canada Inc., Mars, Incorporated, Mars Canada Inc., and ITWAL Limited</i>
6	Court of Queen's Bench for Manitoba (Winnipeg Centre)  (Court File No. CI-08-01-55595)	<i>Rosalyn Golfman v. Cadbury Adams Canada Inc., Mars, Incorporated, Mars Canada Inc. formerly known as Effem Inc., The Hershey Company, Hershey Canada Inc., Nestle Canada Inc., and ITWAL Limited</i>
7	Court of Queen's Bench for Manitoba (Winnipeg Centre)	<i>Daniel Pawlachuk and Beverly Branth v. Hershey Canada Inc., The Hershey Company, Mars Canada Inc., Mars Incorporated., Cadbury Adams Canada Inc., Cadbury Schweppes PLC, Cadbury Adams USA</i>

#	Court and File No.	Title of Additional Proceeding
	(Court File No. CI-08-01-55648)	<i>LLC, ITWAL Limited, Glenn Stevens, Robert Leonidas and Eric Lent</i>
8	Ontario Superior Court of Justice (Toronto)  (Court File No. 08-CV-349126 CP)	<i>Azik Ebert v. Hershey Canada Inc, Mars Inc., Nestle Canada Inc., Cadbury Beverages Canada Inc.</i>
9	Supreme Court of Nova Scotia (Halifax)  (Court File No. 292103)	<i>Barrett Thompson v. Cadbury Adams Canada Inc. Mars, Incorporated, Mars Canada Inc. formerly known as Effem Inc., The Hershey Company, Hershey Canada Inc., Nestle Canada Inc. and ITWAL Limited</i>
10	Court of Queen's Bench for New Brunswick (Moncton)  (Court File #MC 0116008)	<i>Rick Thompson v. Cadbury Schweppes PLC, Cadbury Adams Canada Inc., Mars, Incorporated, Mars Canada Inc. formerly known as Effem Inc. The Hershey Company, Hershey Canada Inc., Nestle Canada Inc. and ITWAL Limited</i>
11	Supreme Court of Newfoundland and Labrador (Trial Division)(St. John's)  (Court File No. 2008-01-T0650 CP)	<i>William Kelly and Gerald Ledrew v. Cadbury Adams Canada Inc., Mars, Incorporated, Mars Canada Inc. formerly known as Effem Inc. The Hershey Company, Hershey Canada Inc., Nestle Canada Inc. and ITWAL Limited</i>

**SCHEDULE "C1"**

Court File No. 08-CV-347263PD2

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

The Honourable ) , the day  
Justice ) of , 2009

BETWEEN:

DAVID OSMUN and  
METRO (WINDSOR) ENTERPRISES INC.

## Plaintiffs

and

**CADBURY ADAMS CANADA INC.,  
THE HERSHEY COMPANY, HERSHEY CANADA INC.,  
NESTLÉ CANADA, INC., MARS, INCORPORATED,  
MARS CANADA INC. and ITWAL LIMITED**

## Defendants

Proceeding under the *Class Proceedings Act* 1992

## ORDER

**THIS MOTION** made by the Plaintiffs for an Order that the within proceeding be certified as a class proceeding for settlement purposes only as against the Defendant ITWAL Limited (the "Settling Defendant") and for an Order approving the short-form and long-form Notice of Certification and Settlement Approval Hearing to Ontario Settlement Class Members and approving the method of dissemination of the said notices, was heard this day at the Court House, 393 University Avenue, 10<sup>th</sup> Floor, Toronto, Ontario.

**ON READING** the materials filed, including the settlement agreement attached to this Order as Schedule "A" (the "Settlement Agreement") and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendant:

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that the within proceeding is certified as a class proceeding as against the Settling Defendant, for settlement purposes only.

3. **THIS COURT ORDERS** that the Ontario Settlement Class is defined as:

All persons in Canada who, during the Settlement Class Period, purchased Chocolate Products in Canada, except the Excluded Persons and Persons who are included in the Quebec Class or the BC Class.

4. **THIS COURT ORDERS** that David Osmun and Metro (Windsor) Enterprises Inc. are appointed as representative plaintiffs for the Ontario Settlement Class.

5. **THIS COURT ORDERS** that the following issue is common to the Ontario Settlement Class:

Did the Settling Defendant conspire to raise, maintain, fix or stabilize the prices of, or allocate markets and customers for, Chocolate Products in Canada during the Settlement Class Period?  
If so, what damages did Ontario Settlement Class Members suffer?

6. **THIS COURT ORDERS** that • be and is hereby appointed the Opt Out Administrator.

7. **THIS COURT ORDERS** that Ontario Settlement Class Members who wish to opt-out of this action must do so by sending a written election to opt-out, together with the

information required in the Settlement Agreement, to the Opt Out Administrator, postmarked on or before the date that is sixty (60) days from the date of the first publication of the Notice of Certification and Settlement Approval Hearing.

8. **THIS COURT ORDERS** that any Ontario Settlement Class Member who has validly opted-out of this action is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in this action.
9. **THIS COURT ORDERS** that any Ontario Settlement Class Member who has not validly opted-out of this action is bound by the Settlement Agreement and may not opt-out of this action in the future.
10. **THIS COURT ORDERS** that the short-form and long-form Notice of Certification and Settlement Approval Hearing are hereby approved substantially in the form attached hereto as Schedules "B" and "C".
11. **THIS COURT ORDERS** that the Plan of Dissemination of the Short-Form and Long-Form of the Notice of Certification and Settlement Approval Hearing is hereby approved in the form attached hereto as Schedule "D".

Date:

---

The Honourable Justice

CANADA

(recours collectif)  
COUR SUPÉRIEURE

PROVINCE DE QUÉBEC  
DISTRICT DE QUÉBEC  
NO: 200-06-000094-071

GAÉTAN ROY

Plaintiff ;

C/

CADBURY ADAMS CANADA INC., & AL

Respondents;

- [1] **WHEREAS** the parties are involved in class action proceedings;
- [2] **WHEREAS** the parties have reached a Settlement Agreement;
- [3] **WHEREAS** the Plaintiff is presenting a motion for authorization to institute a class proceeding for the purpose of settlement, approval of settlement and approval of the notice of hearing;
- [4] **CONSIDERING** the motion before the Court;
- [5] **CONSIDERING** that this motion is appropriate in this case;
- [6] **CONSIDERING** the Respondents shall rely on justice;
- [7] **CONSIDERING** the exhibits filed in the Court record, notably the Settlement Agreement;
- [8] **CONSIDERING** the submissions of the parties' attorneys and the representations made on all sides;
- [9] **CONSIDERING** Article 1025 of the *Code of Civil Procedure* ("C.C.P.") and Article 63 of the *Rules of practice of the Superior Court of Québec* in civil matters ("R.P.S.C.");
- [10] **AFTER REVIEW**, it is in order to grant the motion;

**FOR THESE REASONS, THE COURT:**

- [11] **GRANTS** the motion;
- [12] **DECLARES** that the definitions contained in the Settlement Agreement shall be used in this judgment and accordingly shall be deemed to form an integral part of the judgment;
- [13] **AUTHORIZES** the bringing of a class action against the respondent, ITWAL Limited, for settlement purposes only;
- [14] **ORDERS** that the class be defined as follows :

All persons and entities who, during the Settlement Class Period, purchased Chocolate Products in Canada, with the exception of the Excluded Persons and persons included in the British Columbia and Ontario classes. »

[15] **ASCRIBES** the status of Representative of the Quebec Class Members to the Plaintiff Gaétan Roy;

[16] **ORDERS** that a class action be instituted against the Respondent, ITWAL Limited, for settlement purposes only, on the basis of the following principal question that will be resolved collectively :

Did the Respondent, party to the Settlement Agreement, conspire to raise, maintain, fix or stabilize the prices, or agree to share the market or the clients, of the Chocolate Products, in Canada, during the Class Period? If so, did the Quebec Class Members suffer damages?

[17] **APPROVES** the form and content of the Notice of Hearing for Settlement Approval (the « Notice ») in its short and long forms, as found in Exhibit R-2;

[18] **APPROVES** the Notice Plan, as found in Exhibit R-3;

[19] **DECLARES** that each Member of the Quebec Class that wishes to exclude him/herself, and therefore not be bound by the Settlement Agreement, must do so in accordance with the procedure detailed in said Settlement Agreement, by way of written notice containing all the information requested in the Settlement Agreement;

[20] **DECLARES** that in order to be admissible, requests for exclusion must be sent by registered mail to the following address :

Québec Courthouse  
Clerk, Superior Court of Québec  
(200-06-000079-064)  
300, boul. Jean-Lesage, room 1.24  
Québec, Québec G1K 8K6

AND

to the administrator that has been designated to administer requests for exclusion

with all required information, within 60 days following the first publication of the Notice;

[21] **DECLARES** that all potential Member of the Quebec Class who chooses to opt out of the class proceeding will not be bound by the Settlement Agreement and will not be able to include him/herself in any new development related to this matter;

[22] **ORDERS** that the hearing for settlement approval and approval of class counsel's fees be heard by this Court at:

Québec Courthouse  
300, boul. Jean-Lesage  
Québec, Québec G1K 8K6

• , beginning at • , in room • .

[23] **DESIGNATES** the firm • to act as Administrator of requests for exclusion;

[24] THE WHOLE, without costs, except those payments specifically contemplated by the Settlement Agreement.

---

•, J.C.S.

Me Simon Hébert – box 15  
Siskinds, Desmeules, Avocats  
Lawyer for the Plaintiff

Me Sylvain Lussier  
Osler, Hoskin & Harcourt  
1000, rue de la Gauchetière Ouest, bureau 2100  
Montréal (Québec) H3B 4W5  
Lawyer for the Respondent Cadbury Adams Canada Inc.

Me Éric Vallières  
McMillan, Binch, Mendelsohn  
1000, Sherbrooke Ouest, bureau 2700  
Montréal (Québec) H3A 3G4  
Lawyer for the Respondent Hershey Canada inc.

Me Nick Rodrigo  
Davies, Ward, Phillips & Vineberg  
1501, McGill College Avenue, 26ième étage  
Montréal (Québec) H3A 3N9  
Lawyer for the Respondent Mars Canada Inc.

Me Robert J. Torralbo  
Blake, Cassels & Graydon  
600, boulevard de Maisonneuve Ouest, bureau 2200  
Montréal (Québec) H3A 3J2  
Lawyer for the Respondent Nestlé Canada Inc.



### SCHEDULE "C3"

**No. S078807**

### Vancouver Registry

**In the Supreme Court of British Columbia**

**Between:**

JACOB STUART MAIN

**Plaintiff**

**and:**

**CADBURY SCHWEPPE'S PLC, CADBURY ADAMS CANADA INC., MARS, INCORPORATED, MARS CANADA INC. FORMERLY KNOWN AS EFFEM INC., THE HERSHEY COMPANY, HERSHEY CANADA INC., NESTLE S.A., NESTLE CANADA INC., and IT'WAL LIMITED**

## Defendants

BROUGHT UNDER THE CLASS PROCEEDINGS ACT, R.S.B.C. 1996, c. 50

## ORDER

BEFORE THE HONOURABLE ) , THE •TH DAY OF  
 )  
JUSTICE ) , 2009.

THE APPLICATION of the Plaintiff in the BC Proceeding coming on for hearing at the Courthouse at 800 Smithe Street, Vancouver, B.C., on the •th day of •, 2009, and on hearing [INSERT NAMES]

AND ON READING the material filed including the settlement agreement with the Defendant, ITWAL Limited (the "Settling Defendant"), attached to this Order as Schedule "A" (the "Settlement Agreement"):

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the within proceeding is certified as a class proceeding as against the Settling Defendant, for settlement purposes only.
3. **THIS COURT ORDERS** that the BC Settlement Class is defined as:

All persons resident in British Columbia who, during the Settlement Class Period, purchased Chocolate Products in Canada, except the Excluded Persons.
4. **THIS COURT ORDERS** that Jacob Stuart Main is appointed as the representative plaintiff for the BC Settlement Class.
5. **THIS COURT ORDERS** that the following issue is common to the BC Settlement Class:

Did the Settling Defendant conspire to raise, maintain, fix or stabilize the prices of, or allocate markets and customers for, Chocolate Products in Canada during the Settlement Class Period? If so, what damages did BC Settlement Class Members suffer?
6. **THIS COURT ORDERS** that • be and is hereby appointed the Opt Out Administrator.
7. **THIS COURT ORDERS** that BC Settlement Class Members who wish to opt-out of this action must do so by sending a written election to opt-out, together with the information required in the Settlement Agreement, to the Opt Out Administrator, postmarked on or

before the date that is sixty (60) days from the date of the first publication of the Notice of Certification and Settlement Approval Hearing.

8. **THIS COURT ORDERS** that any BC Settlement Class Member who has validly opted-out of this action is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in this action.
9. **THIS COURT ORDERS** that any BC Settlement Class Member who has not validly opted-out of this action is bound by the Settlement Agreement and may not opt-out of this action in the future.
10. **THIS COURT ORDERS** that the short-form and long-form Notice of Certification and Settlement Approval Hearing are hereby approved substantially in the form attached hereto as Schedules "B" and "C".
11. **THIS COURT ORDERS** that the Plan of Dissemination of the Short-Form and Long-Form of the Notice of Certification and Settlement Approval Hearing is hereby approved in the form attached hereto as Schedule "D".

BY THE COURT

DISTRICT REGISTRAR

APPROVED AS TO FORM:

---

David Jones  
Counsel for the Plaintiff, Jacob Stuart Main

---

[insert]  
Counsel for the Defendants Cadbury  
Schweppes plc and Cadbury Adams Canada  
Inc.

---

[insert]  
Counsel for the Defendants Mars, Incorporated  
and Mars Canada Inc. formerly known as  
Effem Inc.

---

[insert]  
Counsel for the Defendants The Hershey  
Company and Hershey Canada Inc.

---

[insert]  
Counsel for the Defendants Nestle S.A. and  
Nestle Canada Inc.

---

[insert]  
Counsel for the Defendant ITWAL Limited

718497

## SCHEDULE "D1"

**Court File No. 08-CV-347263PD2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

The Honourable ) , the day  
Justice ) of , 2008

BETWEEN:

DAVID OSMUN and  
METRO (WINDSOR) ENTERPRISES INC.

## Plaintiffs

- and -

**CADBURY ADAMS CANADA INC.,  
THE HERSHEY COMPANY, HERSHEY CANADA INC.,  
NESTLÉ CANADA, INC., MARS, INCORPORATED,  
MARS CANADA INC. and IT'WAL LIMITED**

## Defendants

Proceeding under the *Class Proceedings Act* 1992

## ORDER

**THIS MOTION** made by the Plaintiffs in the Ontario Proceeding for an Order approving the Settlement Agreement entered into with the Defendant, ITWAL Limited (the "Settling Defendant") was heard this day at the Court House, 393 University Avenue, 10<sup>th</sup> Floor, Toronto, Ontario.

**ON READING** the materials filed, including the settlement agreement attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiffs, counsel for the Settling Defendant and counsel for the Non-Settling Defendants in the Ontario Proceeding;

**AND ON BEING ADVISED** that a) the Plaintiffs in the Ontario Proceeding consent to this order; and b) the Settling Defendant consents to this order:

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
4. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiffs and all Ontario Settlement Class Members who have not validly opted-out of this action.
5. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Ontario Settlement Class Member who has not validly opted-out of this action shall consent and shall be deemed to have consented to the dismissal, as against the Releasees, of any Other Actions he, she or it has commenced, without costs and with prejudice.
6. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in Ontario by any Ontario Settlement Class Member who has not validly opted-out of this action shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
7. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each Ontario Settlement Class Member who has not validly opted-out of this action including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this action.

8. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Releasor who has not validly opted-out of this action has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that each Releasor who has not validly opted-out of this action shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees.
10. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, the Releasees have released and shall be conclusively deemed to have forever and absolutely released each of the other from any and all claims for contribution and indemnity with respect to the Released Claims.
11. **THIS COURT ORDERS AND DECLARES** that the use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those Ontario Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
12. **THIS COURT ORDERS AND DECLARES** that each Ontario Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
13. **THIS COURT ORDERS** that ITWAL shall be conclusively deemed to have forever and absolutely released the Non-Settling Defendants from the ITWAL Claims, subject to paragraph 15 below.

14. **THIS COURT ORDERS** that ITWAL shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Non-Settling Defendant or any other Person who may claim contribution or indemnity from any Non-Settling Defendant in respect of any ITWAL Claim or any matter related thereto, subject to paragraph 15 below.
15. **THIS COURT ORDERS** that ITWAL hereby absolutely and unconditionally assigns and transfers to the Settlement Class the ITWAL Claims.
16. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Main Proceeding or otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against any Non-Settling Defendant or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted-out of this action).
17. **THIS COURT ORDERS** that if the Courts ultimately determine that there is a right of contribution and indemnity between the Defendants, the Plaintiffs in the Ontario Proceeding and the Ontario Settlement Class Members shall restrict their joint and several claims against the Non-Settling Defendants such that the Plaintiffs in the Ontario Proceeding and the Ontario Settlement Class Members shall be entitled to claim and recover from the Non-Settling Defendants on a joint and several basis only those damages, if any, arising from and allocable to the conduct of and sales by the Non-Settling Defendants.
18. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to the Court determined as if the Settling Defendant remained party to this action, and on at least ten (10) days notice to counsel for the Settling Defendant, and not to be brought unless and until the action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek Orders for the following:



- (a) documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure* O.Reg. 194 from the Settling Defendant;
- (b) oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;
- (c) leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
- (d) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

The Settling Defendant retains all rights to oppose such motion(s). Notwithstanding any provision in this Order, on any motion brought pursuant to this paragraph 18, the Court may make such orders as to costs and other terms as it considers appropriate.

- 19. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 18 above on the Settling Defendant by service on counsel of record for the Settling Defendant in this action.
- 20. **THIS COURT ORDERS** that for purposes of enforcement of this Order, this Court will retain an ongoing supervisory role and the Settling Defendant will attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement.
- 21. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators who are not Releasees in this action.
- 22. **THIS COURT ORDERS AND ADJUDGES** that this action be and is hereby dismissed against the Settling Defendant without costs and with prejudice.
- 23. **THIS COURT ORDERS** that approval of the Settlement Agreement is contingent upon approval by the Quebec Court and the British Columbia Court and this Order shall have no force and effect if such approval is not secured in Quebec and British Columbia.

Date:

---

The Honourable Madam Justice

## **SCHEDULE "D2"**

**CANADA**

**(recours collectif)  
COUR SUPÉRIEURE**

**PROVINCE DE QUÉBEC  
DISTRICT DE QUÉBEC  
NO: 200-06-000094-071**

**GAÉTAN ROY**

***Plaintiff ;***

***C./***

**CADBURY ADAMS CANADA INC.,**

**& AL**

**Respondents**

- [1] **WHEREAS** the parties are involved in class action proceedings;
- [2] **CONSIDERING** the motion before the Court;
- [3] **CONSIDERING** that the Respondent, ITWAL Limited, consents to the motion;
- [4] **CONSIDERING** the exhibits filed in the Court record;
- [5] **CONSIDERING** the submissions of the parties' attorneys and the representations made on all sides;
- [6] **CONSIDERING** Articles 1025, 1045 and 1046 of the *Code of Civil Procedure* ("C.C.P.");
- [7] **AFTER REVIEW**, it is in order to grant the motion in respect of Respondent, ITWAL Limited;

### **FOR THESE REASONS, THE COURT:**

- [8] **GRANTS** the motion;
- [9] **DECLARES** that the definitions contained in the Settlement Agreement P- • shall be used in this judgment and accordingly shall be deemed to form an integral part of the judgment;
- [10] **DECLARES** that Settlement Agreement P-• (hereinafter the "ITWAL Transaction") entered into between the Petitioner and the Respondent, ITWAL Limited (hereinafter the "ITWAL Respondent"), together with the schedules attached thereto is valid, fair, reasonable and in the best interests of the Québec Settlement Class Members, and constitutes a transaction within the meaning of Article 2631 of the *Civil Code of Québec*;

- [11] **APPROVES** the ITWAL Transaction, subject to the following;
- [12] **DECLARES** that the ITWAL Transaction attached to this judgment as Schedule "A", in its entirety (including the preamble, the definitions and schedules) shall form an integral part of this judgment and shall be binding on all Parties and all Québec Settlement Class Members described therein;
- [13] **DECLARES** that the English version of the ITWAL Transaction constitutes the agreement among the Parties;
- [14] **ORDERS AND DECLARES** that, upon the Effective Date, each Releasor who has not validly opted-out of this action has released and shall conclusively be deemed to have fully, finally, irrevocably and forever released the Releasees from the Released Claims;
- [15] **DECLARES** that any Québec Settlement Class Member who makes a claim under any Transaction to occur in this action shall be deemed to have irrevocably consented to the full and final dismissal of all Other Actions he or she instituted against the Releasees, without costs and without reservation;
- [16] **THIS COURT ORDERS AND DECLARES** that each Other Action commenced in Québec by any Québec Settlement Class Member who makes a claim under any Transaction shall be and is hereby dismissed against the Releasees, without costs and without reservation;
- [17] **ORDERS AND DECLARES** that this judgment, including the ITWAL Transaction, shall be binding on every Québec Settlement Class Member who has not validly opted-out of the action or who has not been deemed to have opted-out of the action;
- [18] **ORDERS** that no Releasor who has not validly opted-out of the action or who has not been deemed to have opted-out of the action may, directly or indirectly, in Canada or elsewhere, either on his own behalf or on behalf of any class or other person, commence, continue, maintain or assert any suit, action, cause of action, claim or demand, or participate in any proceedings related in any manner whatsoever to the Released Claims against any of the Releasees or any other Person or Persons who formulate or commence or might formulate or commence, in connection with any such action or proceeding, any claim, claim over, counter-claim or demand for any contribution or indemnity or other relief from the Releasees, it being understood that nothing in this judgment shall affect the right of a Québec Settlement Class Member covered by the ITWAL Transaction to formulate a claim or pursue a claim already formulated against any Non-Settling Defendant or any person other than a Releasee pursuant to these Proceedings;
- [19] **ORDERS AND DECLARES** that, upon the Effective Date, the Releasees have released each other and shall be conclusively deemed to have fully and finally released each other forever from any demands for contribution or indemnity which the Releasees or any one of them now have, have had, may have, or might in future have, either directly, indirectly, by an oblique action or in any other manner relating howsoever to the Released Claims;
- [20] **DECLARES** that, pursuant to the ITWAL Transaction, the Petitioner and the Québec Settlement Class Members expressly waive the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds of the ITWAL Respondent;
- [21] **DECLARES** that the Petitioner and the Québec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of and sales by the Non-Settling Defendants;

- [22] **DECLARES** that any action in warranty or other joinder of parties to obtain any contribution or indemnity from the ITWAL Respondent or relating to the Released Claims shall be inadmissible and void in the context of this class action;
- [23] **ORDERS** that a Non-Settling Defendant may examine on discovery a representative of the ITWAL Respondent, whether at the authorization stage or in the course of the exercise of the recourse that has been authorized by this Court, with the supervisory role of this Court and to the extent that the CCP allow such examination;
- [24] **DECLARES** that a Non-Settling Defendant may validly serve the proceedings who may be necessary to meet CCP requirements on the ITWAL Respondent by serving such proceedings to that party's *ad litem* attorneys, as identified in this judgment;
- [25] **DECLARES** that it retains an ongoing supervisory role for purposes of executing this judgment and that the ITWAL Respondent shall acknowledge the jurisdiction of this Court solely for the purposes of implementing, administering and enforcing the Settlement Agreement.
- [26] **DECLARES** that the ITWAL Respondent shall have no responsibility for or involvement in the administration of the ITWAL Settlement Agreement;
- [28] **CONSIDER** that the ITWAL Transaction is contingent upon approval by the Ontario Court and the British Columbia Court and the ITWAL Transaction shall have no force and effect if such approval is not secured in Ontario and British Columbia;
- [29] **THE WHOLE** without costs and without reservation.

---

-, J.C.S.

**Mtre Simon Hébert**  
**SISKINDS, DESMEULES, ADVOCATES**  
43, rue de Buade, Suite 320  
Québec, Québec G1R 4A2  
Attorneys for the Petitioner

**SCHEDULE "D3"**

No. S078807  
Vancouver Registry

**In the Supreme Court of British Columbia**

Between:

JACOB STUART MAIN

Plaintiff

and:

CADBURY SCHWEPPE PLC, CADBURY ADAMS CANADA  
INC., MARS, INCORPORATED, MARS CANADA INC.  
FORMERLY KNOWN AS EFFEM INC., THE HERSHEY  
COMPANY, HERSHEY CANADA INC., NESTLE S.A.,  
NESTLE CANADA INC., and ITWAL LIMITED

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

**ORDER**

BEFORE THE HONOURABLE ) , THE •TH DAY OF  
JUSTICE ) , 2009.

THE APPLICATION of the Plaintiff in the BC Proceeding coming on for hearing at the Courthouse at 800 Smithe Street, Vancouver, B.C., on the •th day of •, 2009, and on hearing [INSERT NAMES]

AND ON READING the material filed including the settlement agreement with the Defendant, ITWAL Limited (the "Settling Defendant"), attached to this Order as Schedule "A" (the "Settlement Agreement"):

1. THIS COURT ORDERS AND DECLARES that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. THIS COURT DECLARES that the Settlement Agreement is fair, reasonable and in the best interests of the BC Settlement Class.
3. THIS COURT ORDERS that the attached Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, RSBC 1996, c. 50 and shall be implemented in accordance with its terms.
4. THIS COURT DECLARES that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiffs and all BC Settlement Class Members who have not validly opted-out of this action.
5. THIS COURT ORDERS AND DECLARES that, upon the Effective Date, each BC Settlement Class Member who has not validly opted-out of this action shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
6. THIS COURT ORDERS AND DECLARES that, upon the Effective Date, any Other Action commenced in British Columbia by any BC Settlement Class Member who has not validly opted-out of this action shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
7. THIS COURT ORDERS AND DECLARES that this Order, including the Settlement Agreement, is binding upon each BC Settlement Class Member who has not validly opted-out of this action including those persons who are minors or mentally incapable.
8. THIS COURT ORDERS AND DECLARES that instead of releasing the claims against the Releasees, upon the Effective Date, each Releasor resident in British Columbia covenants not to sue and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims. The use of the terms "Releasors", "Releasees" and "Released

Claims" in this Order is a matter of form only for consistency with the Settlement Agreement.

9. THIS COURT ORDERS that each Releasor who has not validly opted-out of this action shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Main Proceedings against the Non-Settling Defendants or unnamed co-conspirators who are not Releasees.
10. THIS COURT ORDERS AND DECLARES that, upon the Effective Date, the Releasees have released and shall be conclusively deemed to have forever and absolutely released each of the other from any and all claims for contribution and indemnity with respect to the Released Claims.
11. THIS COURT ORDERS that ITWAL shall be conclusively deemed to have forever and absolutely released the Non-Settling Defendants from the ITWAL Claims, subject to paragraph 13 below.
12. THIS COURT ORDERS that ITWAL shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Non-Settling Defendant or any other Person who may claim contribution or indemnity from any Non-Settling Defendant in respect of any ITWAL Claim or any matter related thereto, subject to paragraph 13 below.
13. THIS COURT ORDERS that ITWAL hereby absolutely and unconditionally assigns and transfers to the Settlement Class the ITWAL Claims.
14. THIS COURT ORDERS that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in



the Main Proceedings or otherwise, by any Non-Settling Defendants or any other Person or party, against a Releasee, or by a Releasee against any Non-Settling Defendants or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted-out of this action).

15. THIS COURT ORDERS that if the Courts ultimately determine that there is a right of contribution and indemnity between the Defendants, the Plaintiffs in the BC Proceeding and the BC Settlement Class Members shall restrict their joint and several claims against the Non-Settling Defendants such that the Plaintiffs in the BC Proceeding and the BC Settlement Class Members shall be entitled to claim and recover from the Non-Settling Defendants on a joint and several basis only those damages, if any, arising from and allocable to conduct of and sales by the Non-Settling Defendants.
16. THIS COURT ORDERS that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendant remained a party to this action and on at least ten (10) days notice to counsel for the Settling Defendant, and not to be brought unless and until the action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:
  - (a) documentary discovery and a list of documents in accordance with the *Rules of Court* from the Settling Defendant;
  - (b) oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;
  - (c) leave to serve a Notice to Admit on the Settling Defendant in respect of factual matters; and/or
  - (d) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

The Settling Defendant retains all rights to oppose such motion(s). Notwithstanding any provision in this Order, on any motion brought pursuant to this paragraph, the Court may make such orders as to costs and other terms as it considers appropriate.

17. THIS COURT ORDERS that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 13 above on the Settling Defendant by service on counsel of record for the Settling Defendant in this action.
18. THIS COURT ORDERS that for purposes of enforcement of this Order, this Court will retain an ongoing supervisory role and the Settling Defendant will attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement.
19. THIS COURT ORDERS that, except as provided herein, this Order does not affect any claims or causes of action that any BC Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators who are not Releasees in this action.
20. THIS COURT ORDERS AND ADJUDGES that, except as aforesaid, this action be and is hereby dismissed against the Settling Defendant without costs and with prejudice.
21. THIS COURT ORDERS AND ADJUDGES that the Supreme Court of British Columbia Action No. 08-0620 (Victoria Registry) be and is hereby dismissed against the Settling Defendant and Glenn Stevens without costs and with prejudice.
22. THIS COURT ORDERS that approval of the Settlement Agreement is contingent upon approval by the Ontario Court and the Quebec Court of the same Settlement Agreement and this Order shall have no force and effect if such approval is not secured in Ontario and Quebec.

BY THE COURT

DISTRICT REGISTRAR

APPROVED AS TO FORM:

---

David Jones  
Counsel for the Plaintiff, Jacob Stuart Main

---

[insert]  
Counsel for the Defendants Cadbury  
Schweppes plc and Cadbury Adams Canada  
Inc.

---

[insert]  
Counsel for the Defendants Mars, Incorporated  
and Mars Canada Inc. formerly known as  
Effem Inc.

---

[insert]  
Counsel for the Defendants The Hershey  
Company and Hershey Canada Inc.

---

[insert]  
Counsel for the Defendants Nestle S.A. and  
Nestle Canada Inc.

---

[insert]  
Counsel for the Defendant ITWAL Limited