

**CANADIAN CHOCOLATE CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made as of October 14, 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

**CADBURY ADAMS CANADA INC. and
CADBURY HOLDINGS LIMITED**

(the “Settling Defendants”)

TABLE OF CONTENTS

SECTION 1 – DEFINITIONS.....	5
SECTION 2 - SETTLEMENT APPROVAL	14
2.1 Best Efforts	14
2.2 Motions Approving Notice and Seeking Certification or Authorization.....	14
2.3 Motions for Approval of the Settlement	15
2.4 Pre-Motion Confidentiality.....	16
2.5 Sequence of Motions.....	16
SECTION 3 – SETTLEMENT BENEFITS	16
3.1 Payment of Settlement Amount.....	16
3.2 Taxes and Interest	17
3.3 Cooperation – No Disclosure of Privileged Communications.....	18
3.4 Cooperation – No Disclosure of Confidential Regulatory Communications	18
3.5 Cooperation – No Disclosure of Confidential Information under License.....	18
3.6 Cooperation – Limited to Canada.....	18
3.7 Cooperation – Scope of Cooperation.....	19
SECTION 4 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST.....	26
4.1 Distribution Protocol.....	26
4.2 No Responsibility for Administration or Fees	26
SECTION 5 – OPTING-OUT	26
5.1 Procedure	26
5.2 Opt Out Report.....	27
5.3 Right to Terminate Based on Opt Outs.....	28
5.4 Opt Out Refund.....	28
SECTION 6 – ITWAL SETTLEMENT AGREEMENT	29
6.1 The ITWAL Settlement Agreement.....	29
6.2 Conditions Precedent relating to The ITWAL Settlement Agreement.....	29
SECTION 7 - RELEASES AND DISMISSALS.....	30
7.1 Release of Releasees	30
7.2 Covenant Not To Sue.....	30
7.3 No Further Claims.....	31

7.4	Scope of Released Claims.....	31
7.5	Dismissal of the Main Proceedings.....	31
7.6	Dismissal of the Additional Proceedings.....	31
7.7	Dismissal of the Other Actions.....	32
7.8	Claims Against Other Entities Reserved.....	32
7.9	No Assistance to U.S. Plaintiffs.....	32
7.10	Releases.....	33
SECTION 8 - BAR ORDER AND OTHER CLAIMS		33
8.1	Ontario and British Columbia Bar Order.....	33
8.2	Quebec Bar Order	34
8.3	Material Term	35
SECTION 9 – EFFECT OF SETTLEMENT		35
9.1	No Admission of Liability	35
9.2	Agreement Not Evidence.....	36
9.3	No Further Litigation	36
SECTION 10 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY		37
10.1	Settlement Class and Common Issue.....	37
10.2	Certification or Authorization Without Prejudice.....	37
SECTION 11 – NOTICE TO SETTLEMENT CLASS		37
11.1	Notice Required	37
11.2	Form and Distribution of Notice.....	38
11.3	Notice of Distribution	38
SECTION 12 – ADMINISTRATION AND IMPLEMENTATION.....		38
12.1	Mechanics of Administration.....	38
12.2	Information and Assistance.....	38
SECTION 13 – CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES		39
SECTION 14 -TERMINATION OF SETTLEMENT AGREEMENT		39
14.1	Right of Termination.....	39
14.2	If Settlement Agreement is Terminated.....	42
14.3	Allocation of Monies in the Trust Account Following Termination	42

14.4	Survival of Provisions After Termination.....	43
SECTION 15 - MISCELLANEOUS		43
15.1	Releasees Have No Liability for Administration.....	43
15.2	Motions for Directions.....	43
15.3	Headings, etc.....	43
15.4	Computation of Time.....	44
15.5	Ongoing Jurisdiction.....	44
15.6	Governing Law	45
15.7	Entire Agreement.....	45
15.8	Amendments	46
15.9	Binding Effect.....	46
15.10	Counterparts.....	46
15.11	Negotiated Agreement	46
15.12	Language.....	46
15.13	Transaction.....	47
15.14	Recitals.....	47
15.15	Schedules	47
15.16	Acknowledgements.....	47
15.17	Authorized Signatures.....	48
15.18	Notice.....	48
15.19	Date of Execution	50

**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, including Cadbury Adams Canada and Cadbury Holdings Limited as the successor to Cadbury Schweppes PLC, 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, 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, the BC 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 Cadbury Holdings Limited asserts that it does not conduct business in Canada and has specifically reserved its rights to move to quash service *ex jure* and to challenge the jurisdiction of the Courts and other courts in Canada over Cadbury Holdings Limited;

D. AND WHEREAS Cadbury Adams Canada and Cadbury Holdings Limited believe that they are not liable in respect of the claims as alleged in the Canadian Proceedings, and whereas Cadbury Adams Canada and Cadbury Holdings Limited believe that they have good and reasonable defences in respect of jurisdiction and the merits in the Canadian Proceedings;

E. AND WHEREAS Cadbury Adams Canada and Cadbury Holdings Limited assert that they would actively pursue these defences in respect of jurisdiction and 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;

F. AND WHEREAS, despite their belief that they are not liable in respect of the claims as alleged in the Canadian Proceedings and have good and reasonable defences in respect of jurisdiction and the merits, Cadbury Adams Canada and Cadbury Holdings Limited have 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 to achieve final resolutions of all claims asserted or which could have been asserted against them 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, and thereby to put to rest this controversy involving Cadbury Adams Canada's valued business customers in Canada;

G. AND WHEREAS counsel for Cadbury Adams Canada and Cadbury Holdings Limited and counsel for the Main Plaintiffs have engaged in extensive arm's-length settlement discussions and negotiations in respect of this Settlement Agreement relating to Canada;

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

I. 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;

J. AND WHEREAS the Main Plaintiffs and Additional Plaintiffs have agreed to accept this settlement, in part, because of the value of the Settlement Amount to be paid by Cadbury Adams Canada and Cadbury Holdings Limited under this Settlement Agreement and the value of the cooperation Cadbury Adams Canada and Cadbury Holdings Limited have made and agree 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 Cadbury Adams Canada and Cadbury Holdings Limited;

K. AND WHEREAS the Main Plaintiffs and Additional Plaintiffs recognize the benefits of Cadbury Adams Canada and Cadbury Holdings Limited's early cooperation in respect of the Main Proceedings;

L. AND WHEREAS Cadbury Adams Canada and Cadbury Holdings Limited do not admit, through the execution of this Settlement Agreement, any allegation of unlawful conduct alleged in the Canadian Proceedings;

M. AND WHEREAS the Main Plaintiffs, Additional Plaintiffs, Class Counsel, Cadbury Adams Canada and Cadbury Holdings Limited 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 Cadbury Adams Canada and Cadbury Holdings Limited or evidence of the truth of any of the Canadian Plaintiffs' allegations against Cadbury Adams Canada and Cadbury Holdings Limited;

N. 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;

O. AND WHEREAS Cadbury Adams Canada and Cadbury Holdings Limited are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against them by the Main Plaintiffs and the Additional Plaintiffs in the Canadian Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

P. AND WHEREAS as a necessary and integral part of this final and nation-wide resolution, Cadbury Adams Canada and Cadbury Holdings Limited are entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against them by ITWAL in the Canadian Proceedings or in any other proceedings, taking into account that ITWAL was a purchaser of Chocolate Products during the Settlement Class Period and that ITWAL, as a defendant in the Canadian Proceedings, is not a member of the Settlement Class;

Q. AND WHEREAS the Main Plaintiffs and Class Counsel have entered into the ITWAL Settlement Agreement with the ITWAL Defendants, which is subject to court approval;

R. AND WHEREAS as of the date of the execution of this agreement, the content of the ITWAL Settlement Agreement remains confidential as between the Main Plaintiffs, Class Counsel and the ITWAL Defendants, and the Settling Defendants have not received or reviewed the ITWAL Settlement Agreement;

S. AND WHEREAS, to ensure that a final and nation-wide resolution is achieved, this Settlement Agreement is subject to the condition, among other conditions, that the ITWAL Entities shall have absolutely and unconditionally assigned and transferred to the Settlement Class any and all right, title and interest that the ITWAL Entities have ever held, now hold or may hereafter hold in respect of the ITWAL Claims on the ITWAL Effective Date;

T. AND WHEREAS following the implementation of this assignment and transfer on the ITWAL Effective Date, the Main Plaintiffs, the Additional Plaintiffs and the Settlement Class intend to fully and completely settle and resolve all of their claims, including the ITWAL Claims, as against Cadbury Adams Canada and Cadbury Holdings Limited on the Effective Date pursuant to this Settlement Agreement;

U. 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 Cadbury Adams Canada and Cadbury Holdings Limited;

V. 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;

W. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, Cadbury Holdings Limited is prepared to submit to the jurisdiction of the Courts for the sole purpose of approving, implementing, administering and enforcing this Settlement Agreement, and the Parties acknowledge and confirm that Cadbury Holdings Limited is not attorning to the Courts or any other court for any

other purpose or proceeding and that Cadbury Holdings Limited otherwise reserves all of its other jurisdictional rights;

X. 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 Cadbury Adams Canada, Cadbury Holdings Limited and other related entities, and the Additional Plaintiffs have consented to a dismissal of the Additional Proceedings as against Cadbury Adams Canada, Cadbury Holdings Limited and other related entities;

Y. 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 Cadbury Adams Canada, Cadbury Holdings Limited and certain other related entities only, without costs as to the Canadian Plaintiffs, the classes they seek to represent or Cadbury Adams Canada and Cadbury Holdings Limited, 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) **Administration Expenses** mean all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Main Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of Notices, the Escrow Agent, the Opt Out Administrator, the opt out process and claims administration but excluding Class Counsel Fees.
- (5) **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.
- (6) **BC Counsel** means Camp Fiorante Matthews and Branch MacMaster.
- (7) **BC Court** means the Supreme Court of British Columbia.
- (8) **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.
- (9) **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.
- (10) **Cadbury Adams Canada** means Cadbury Adams Canada Inc.
- (11) **Cadbury Holdings Limited** means Cadbury Holdings Limited, the successor to Cadbury Schweppes PLC.
- (12) **Canadian Plaintiffs** mean the Main Plaintiffs and the Additional Plaintiffs.
- (13) **Canadian Proceedings** mean the Main Proceedings and the Additional Proceedings.
- (14) **Chocolate Products** mean any and all chocolate confectionary products of the Defendants sold in Canada.
- (15) **Claims Administrator** means the Person proposed by Class Counsel and appointed by the Courts to administer the Settlement Agreement, including the claims process, in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such Person.

- (16) **Class Counsel** means Ontario Counsel, Quebec Counsel and BC Counsel who act as class counsel in the Main Proceedings.
- (17) **Class Counsel Fees** include the fees, disbursements, costs, interest, GST and other applicable taxes or charges of Class Counsel.
- (18) **Common Issue** in each Main Proceeding means: Did the Settling Defendant(s) 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?
- (19) **Courts** mean the Ontario Court, the Quebec Court and the BC Court.
- (20) **Defendants** mean the individuals and entities named as defendants in the Main Proceedings as set out in Schedule “A”.
- (21) **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.
- (22) **Distribution Protocol** means the plan developed by Class Counsel for distributing the Settlement Amount and accrued interest, in whole or part, as approved by the Courts.
- (23) **Effective Date** means the date immediately when (i) the Final Orders have been received from the Courts approving this Settlement Agreement and (ii) the ITWAL Effective Date has occurred.
- (24) **Escrow Agent** means the Person agreed to by the Settling Defendants and Class Counsel to hold and administer the Trust Account.
- (25) **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 Person shall not include a purchaser of Chocolate Products from the

ITWAL Defendants, and Excluded Person shall not include a Person that receives an assignment of rights under the terms of the ITWAL Settlement Agreement.

- (26) **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.
- (27) **Imputed Recovery** means the distribution that would have been paid to any Opt Out under this Settlement Agreement and pursuant to the Distribution Protocol, if such Opt Out had not validly opted out of the Main Proceedings and had otherwise qualified as a Settlement Class Member.
- (28) **ITWAL** means ITWAL Limited.
- (29) **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.

- (30) ***ITWAL Defendants*** means ITWAL and Glenn Stevens.
- (31) ***ITWAL Effective Date*** means the date when (i) the ITWAL Final Orders have been received from the Courts approving the ITWAL Settlement Agreement and (ii) the absolute and unconditional assignment by the ITWAL Entities of the ITWAL Claims to the Settlement Class under the ITWAL Settlement Agreement has become effective and binding on the ITWAL Entities and the Settlement Class.
- (32) ***ITWAL Entities*** mean, jointly and severally, individually and collectively, the ITWAL Defendants and their respective parents, subsidiaries, predecessors, successors, heirs executors, administrators, insurers and assigns.
- (33) ***ITWAL Final Order*** means a final order entered by a Court in respect of the approval of the ITWAL 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 the ITWAL Settlement Agreement upon a final disposition of all appeals.
- (34) ***ITWAL Settlement Agreement*** means the executed settlement agreement entered into between the Main Plaintiffs and the ITWAL Defendants, including the recitals and schedules.
- (35) ***Main Plaintiffs*** mean the individuals and entities named as plaintiffs in the Main Proceedings.
- (36) ***Main Proceedings*** mean the Ontario Proceeding, the Quebec Proceeding and the BC Proceeding listed in Schedule “A” to this Settlement Agreement.
- (37) ***Non-Settling Defendant*** means a Defendant in the Main Proceedings that is not a Settling Defendant.
- (38) ***Notice of Certification and Approval Hearings*** means the form or forms of notice, agreed to by the Main Plaintiffs and the Settling Defendants, or such other form or forms

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.

- (39) ***Notice of Settlement Approval and Claims Procedure*** means the form or forms of notice, agreed to by the Main Plaintiffs and the Settling Defendants, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the approval of this Settlement Agreement; and (ii) the process by which Settlement Class Members may apply to obtain compensation from the Settlement Amount.
- (40) ***Notices*** mean the Notice of Certification and Approval Hearings, the Notice of Settlement Approval and Claims Procedure, and notice of termination.
- (41) ***Ontario Counsel*** means Sutts, Strosberg LLP and Siskinds LLP.
- (42) ***Ontario Court*** means the Ontario Superior Court of Justice.
- (43) ***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 respectively on January 17, 2008 and on February 4, 2008.
- (44) ***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 Settlement Class and the BC Settlement Class.
- (45) ***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.
- (46) ***Opt Out Administrator*** means the Person proposed by Class Counsel and appointed by the Courts to receive the Opt Out Forms and report on the opt out process.

- (47) **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.
- (48) **Opt Out Form** means the form, to be mutually agreed to by the Parties after the Settlement Agreement is executed, that shall be used for the purpose of implementing the opting-out procedure set out in section 5 of this Settlement Agreement.
- (49) **Opt Out Threshold** means a threshold as agreed upon by the Main Plaintiffs and the Settling Defendants in a separate document delivered to the Courts under seal and kept confidential by the Parties and the Courts.
- (50) **Opt Out Refund** means in the event that the Settling Defendants claim a refund arising from the fact that a person elects to opt out of the Main Proceedings, the refund that is payable to the Settling Defendants pursuant to section 5.4 of this Settlement Agreement.
- (51) **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.
- (52) **Parties** mean the Main Plaintiffs, the Additional Plaintiffs, the Settlement Class Members and the Settling Defendants.
- (53) **Pre-Deposit Interest** means interest payable on the Settlement Amount at a rate per annum equal to two and a half percent (2½ %), calculated monthly from and after February 5, 2009 until such time as the Settlement Amount is paid into the Trust Account.
- (54) **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.

- (55) **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.
- (56) **Quebec Counsel** means Siskinds Desmeules s.e.n.c.r.l.
- (57) **Quebec Court** means the Superior Court of Quebec.
- (58) **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 Superior Court (Quebec City registry), Court File No. 200-06-000094-071, filed on November 28, 2007.
- (59) **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.
- (60) **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, 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 the ITWAL Claims that have been absolutely and unconditionally assigned to the Settlement Class under the ITWAL Settlement Agreement) that Releasers, 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.

- (61) **Releasees** mean, jointly and severally, individually and collectively, the Settling Defendants, Cadbury PLC, Cadbury Adams USA LLC, Cadbury Beverage Canada Inc. 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 (subject to such particular inclusions or exclusions of individuals as may be specified in writing by the Settling Defendants in their sole discretion prior to the Effective Date); 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.
- (62) **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.
- (63) **Settlement Agreement** means this agreement, including the recitals and schedules.
- (64) **Settlement Amount** means the sum of five million and seven hundred thousand Canadian dollars (CDN \$5.7 million).

- (65) **Settlement Class** means all Persons included in the Ontario Settlement Class, the Quebec Settlement Class and the BC Settlement Class.
- (66) **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.
- (67) **Settlement Class Period** means February 1, 2001 to December 31, 2008.
- (68) **Settling Defendants** means Cadbury Adams Canada and Cadbury Holdings Limited.
- (69) **Trust Account** means an interest bearing trust account at a Canadian Schedule 1 bank in Ontario under the control of the Escrow Agent for the benefit of Settlement Class Members.
- (70) **U.S. Proceedings** means the proceedings 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 class and individual actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, all actions that may be transferred in the future and any other actions involving similar allegations relating to Chocolate Products that are pending or that may be commenced before the federal or state courts of the United States.

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 Settling 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 11.1 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, 6, 7, and 9-12 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, 17, 18, 21, 23 and 24 of the Quebec order and paragraphs 1, 4, 6, 7, 9-12 of the British Columbia order need only be substantially in the form set out respectively in Schedule “C2” and “C3”.

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, 17 and 19 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, 22, and 23 of the Quebec order and paragraphs 1, 13 and 15 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) The form and content of the orders approving this Settlement Agreement contemplated in this section 2.3 shall be considered a material term of this Settlement Agreement and the failure

of any Court to approve the orders contemplated herein shall give rise to a right of termination pursuant to section 14 of this Settlement Agreement.

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 Settling Defendants 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 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. The Settling Defendants 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. The Settling Defendants may agree to waive this provision.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) The Settling Defendants shall pay the Settlement Amount plus Pre-Deposit Interest in full satisfaction of the Released Claims against the Releasees.

(2) The Settling Defendants shall have no obligation to pay any amount in addition to the Settlement Amount plus Pre-Deposit Interest, for any reason, pursuant to or in furtherance of this Settlement Agreement, provided however that the Settling Defendants shall pay any costs of the Notices referred to in section 11.1 of this Settlement Agreement that are ordered by the Courts in the Main Proceedings and that exceed \$250,000.

(3) The Settling Defendants shall, within fifteen (15) business days of the date of execution, pay the Settlement Amount plus Pre-Deposit Interest to the Escrow Agent for deposit into the Trust Account. The Escrow Agent shall maintain the Trust Account as provided for in this Settlement Agreement. The Escrow Agent shall not pay out all or part of the monies in the Trust Account, except in accordance with the Settlement Agreement or in accordance with an order of the Courts obtained after notice to the Settling Defendants, and in any event, after all appeals related thereto have been disposed of.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount including Pre-Deposit Interest shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.

(2) Subject to section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Class. The Escrow Agent shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest.

3.3 Cooperation – No Disclosure of Privileged Communications

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

3.4 Cooperation – No Disclosure of Confidential Regulatory Communications

Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants to disclose or produce (i) any communications, discussions or agreements between the Settling Defendants and government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to Chocolate Products, (ii) any information or Documents created for or by government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to Chocolate Products and (iii) any notes, transcripts, testimony or other information or Documents relating to meetings or interviews with government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to Chocolate Products.

3.5 Cooperation – No Disclosure of Confidential Information under License

Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants to disclose or produce confidential information that the Settling Defendants hold under license or under other commercial arrangements where such disclosure or production would potentially result, in the reasonable judgment of the Settling Defendants, in a breach of contract.

3.6 Cooperation – Limited to Canada

The cooperation that is to be provided by the Settling Defendants under this Settlement Agreement shall be limited to allegations contained in the Main Proceedings and for greater

certainty shall be limited to alleged activity or conduct relating to the purchase, sale, pricing, discounting, marketing or distributing of Chocolate Products in Canada only.

3.7 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, the Settling Defendants agree to provide cooperation to Class Counsel, as specifically set forth in subsections (a) to (e) inclusive below. Within thirty (30) days of this Settlement Agreement having been approved by the last of the Courts or at a time mutually agreed upon by Class Counsel and the Settling Defendants, the Settling Defendants shall provide:

- (a) through a meeting between counsel for the Settling Defendants and Class Counsel, an evidentiary proffer, which will include information originating with Cadbury Adams Canada and being within its possession, custody or control relating to the allegations in the Main Proceedings including, without limitation, information with respect to dates, locations, subject matter, and participants in any meetings or discussions between competitors relating to the purchase, sale, pricing, discounting, marketing or distributing of Chocolate Products in Canada;
- (b) a set of existing electronic transactional data relating to sales of Chocolate Products made during the Settlement Class Period by Cadbury Adams Canada relating to Canada. Cadbury Adams Canada represents that it is in the possession of existing electronic transactional data relating to various sales of Chocolate Products by it relating to Canada for a substantial part of the Settlement Class Period, which data includes Purchase Price information in respect of purchases by Settlement Class Members who purchased Chocolate Products directly from Cadbury Adams Canada during the Settlement Class Period. Counsel for the Settling Defendants have informed Class Counsel that Cadbury Adams Canada does not have complete transactional data for the Settlement Class Period. Counsel for the Settling Defendants agrees to be reasonably available as necessary to respond to Class Counsel's questions regarding the set(s) of electronic transactional data produced by Cadbury Adams Canada. If counsel for the Settling Defendants is unable to provide an adequate response to Class Counsel's questions, the Settling Defendants shall

direct that a current employee of Cadbury Adams Canada be reasonably available to Class Counsel to respond to Class Counsel's questions. The inability of the employee to respond to Class Counsel's questions or the failure of the current employee to agree to make him or herself available to or otherwise cooperate with the Main Plaintiffs shall not constitute a breach or violation of the Settling Defendants' obligations under this Settlement Agreement;

- (c) Copies of the following categories of Documents originating with and being within the possession, custody or control of Cadbury Adams Canada: (i) price announcements for Chocolate Products during the Settlement Class Period; and (ii) Documents which Cadbury Adams Canada has provided and delivered to government authorities in Canada relating to the allegations in the Main Proceedings and which are reasonably necessary for the prosecution of the Main Proceedings.
 - (d) The obligation to produce Documents pursuant to this section shall be a continuing obligation to the extent Documents are identified following the initial productions.
 - (e) A material factor influencing the Settling Defendants' decision to execute this Settlement Agreement is their 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 the Settling Defendants and to avoid requesting information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burden or expense on the Settling Defendants.
- (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 the Settling Defendants and the Documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendants, 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, the Settling Defendants shall engage reasonable efforts to make available four (4) current directors, officers or employees

of Cadbury Adams Canada for interviews with Class Counsel and/or experts retained by Class Counsel in the Main Proceedings, at a location agreed to by Class Counsel and the Settling Defendants. The reasonable costs incurred by, and the reasonable expenses of, the current directors, officers or employees in relation to such interviews shall be the responsibility of the Settling Defendants. Furthermore, if Class Counsel and counsel for the Settling Defendants, acting reasonably, agree that such interviews are reasonably necessary for the Main Plaintiffs' prosecution of the Main Proceedings, Cadbury Adams Canada shall engage reasonable efforts to make available additional current directors, officers or employees of the Settling Defendants and/or Releasees specifically identified by Class Counsel as possessing information that would be reasonably necessary for the prosecution of the Main Proceedings. The reasonable costs incurred by, and the reasonable expenses of, the current directors, officers or employees in relation to such interviews shall be the responsibility of the Settling Defendants and/or the current directors, officers or employees. If any Person refuses to cooperate under this section, Cadbury Adams Canada shall engage its reasonable efforts to make such Person available for interviews with Class Counsel and/or experts retained by Class Counsel in the Main Proceedings. The failure or refusal of any current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Main Plaintiffs shall not constitute a breach or violation of the obligations of the Settling Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement.

(4) Subject to the rules of evidence, any court order with respect to confidentiality, and the other provisions of this Settlement Agreement, Cadbury Adams Canada 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 Cadbury Adams Canada as Class Counsel and the Settling Defendants, acting reasonably, agree would be reasonably necessary to support the submission into evidence of any information or Documents produced by Cadbury Adams Canada in accordance with this Settlement Agreement that Class Counsel and the Settling Defendants, 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 the Settling Defendants and/or the current directors, officers or employees. If any current director, officer or employee refuses to cooperate under this section, the Settling Defendants shall use their reasonable efforts to make such person available to provide testimony or otherwise cooperate with the Main Plaintiffs. 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 the Settling Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement.

(5) With respect to two (2) former directors, officers or employees of Cadbury Adams Canada who have direct knowledge of certain of the allegations in the Main Proceedings, Cadbury Adams Canada shall, in response to reasonable requests from Class Counsel, use reasonable efforts to make such former directors, officers or employees available to appear for interviews, trial testimony, cross-examination, and/or to provide declarations and/or affidavits, if the former director, officer or employee would have been requested by Cadbury Adams Canada to do so under this Settlement Agreement had they been a director, officer or current employee, and Class Counsel and the Settling Defendants, acting reasonably, agree their evidence is reasonably necessary for the prosecution of the Main Proceedings and may be presented to the Courts. Any former directors, officers or employees made available under this section shall be made available at a mutually agreeable time and place, except with respect to trial testimony, which shall be provided in Canada. The reasonable costs incurred by, and the reasonable expenses of, the former directors, officers or employees in relation to such cooperation shall be the responsibility of the Settling Defendants and/or the former directors, officers or employees. The failure or refusal of any former director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Main Plaintiffs shall not constitute a breach or violation of the obligations of the Settling Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement.

(6) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, then within ten (10) days of the date of such termination or failure, Class Counsel shall return to the Settling Defendants all Documents or other materials provided by the Settling Defendants or

containing or reflecting information derived from such Documents or other materials received from the Settling Defendants or containing or reflecting information received from the Settling Defendants and, to the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendants to any other Person, then Class Counsel shall recover and return any Documents or materials containing or reflecting such Documents or information. The Main Plaintiffs and Class Counsel shall provide the Settling Defendants with a written confirmation of the return of such Documents or other materials to the Settling Defendants. In the event that any Documents or other materials are incapable of being physically returned to the Settling Defendants, Class Counsel shall destroy all such Documents or other materials and provide the Settling Defendants with a written confirmation of such destruction. Nothing contained in this section shall be construed to require Class Counsel to destroy any of their work product. The confidentiality requirements in this section 3.7 will continue to bind the Main Plaintiffs, Settlement Class Members and Class Counsel even in the event that the Settlement Agreement is terminated or otherwise fails to take effect for any reason.

(7) In connection with their provision of information, testimony, and Documents, the Settling Defendants 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.

(8) It is understood and agreed that the Main Plaintiffs, the Settlement Class Members and Class Counsel shall not, without the express written consent of the Settling Defendants, directly or indirectly use or disclose any information or Documents provided by the Settling Defendants 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 the Settling Defendants 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 the Settling Defendants of the application in order that the Settling Defendants may intervene in such proceedings. The

disclosure restrictions set forth in this subsection do not apply to otherwise publicly available Documents and information.

(9) It is understood and agreed that the Main Plaintiffs, the Settlement Class Members and Class Counsel shall not, without the express written consent of the Settling Defendants, directly or indirectly disclose any information or Documents provided by the Settling Defendants 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.

(10) If the Main Plaintiffs, the Settlement Class Members and/or Class Counsel intend to take steps to provide Documents or information obtained from the Settling Defendants 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 Main Plaintiffs, the Settlement Class Members and/or Class Counsel shall provide the Settling Defendants 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, in order that the Settling Defendants may intervene for the purposes of obtaining a sealing or confidentiality order or similar relief. In the event that the Settling Defendants intervene for these purposes, neither the Main Plaintiffs, Settlement Class Members and/or Class Counsel shall oppose positions taken by the Settling Defendants.

(11) The Settling Defendants' obligation to cooperate as particularized in this section 3.7 shall not be affected by the release provisions contained in section 7 of this Settlement Agreement. The Settling Defendants' 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 the Settling Defendants materially breach this section 3.7, 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.

(12) Notwithstanding their obligations to cooperate as set forth in this section 3.7, if the Settling Defendants reasonably believe that any of their applications or agreements with government authorities in Canada or elsewhere in connection with any regulatory or criminal

investigations relating to Chocolate Products (without admitting that any such applications or agreements exist) would be endangered by the production or disclosure of Documents or information which would otherwise be required to be produced to the Main Plaintiffs pursuant to the terms of this Settlement Agreement, the Settling Defendants may withhold such Documents or information. To the extent that the Settling Defendants withhold such Documents or information, pursuant to this section, the Settling Defendants shall provide to Class Counsel a written explanation of the type of Document or information to be withheld, and the basis for withholding such information. The Settling Defendants shall work in good faith with such government authorities to obtain permission to disclose the Documents or information being withheld. If, on the date the Main Plaintiffs would ordinarily be entitled to obtain documentary productions from any one of the Defendants pursuant to the Ontario *Rules of Civil Procedure* or on the date which is eighteen (18) months from the execution of this Settlement Agreement, whichever date is later, Documents or information continue to be withheld by the Settling Defendants pursuant to this section, the Settling Defendants shall forthwith provide such Documents or information to the Main Plaintiffs, unless any of the Courts, pursuant to motions filed by the Settling Defendants or otherwise, orders to the contrary. For greater certainty, nothing in this section shall limit or restrict the obligation of Cadbury Adams Canada to engage in reasonable efforts to make available current directors, officers or employees for interviews with Class Counsel and/or experts retained by Class Counsel pursuant to section 3.7(3) or to provide an affidavit in support of the certification or authorization motion in the Main Proceedings pursuant to section 3.7(4), for the purposes of providing information regarding the general operations of the business, including the distribution of Chocolate Products in Canada.

(13) The provisions set forth in section 3.7 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 Settling Defendants, their current and former directors, officers or employees and the Releasees, and the Main Plaintiffs, Settlement Class Members and Class Counsel shall pursue no other means of discovery against the Settling Defendants, their current and former directors, officers or employees and the Releasees, whether under the laws or rules of any jurisdiction.

(14) The Main Plaintiffs may, on motion with notice to the Settling Defendants only, seek Orders from the Ontario Court relating to their rights under section 3.7 should the Settling

Defendants not act reasonably in terms of their obligations under section 3.7 or act in a manner that is inconsistent with the spirit and intent of section 3.7.

(15) The Main Plaintiffs may effect service of the motion(s) referred to in section 3.7(14) on the Settling Defendants by service on counsel of record for the Settling Defendants in the Main Proceedings.

SECTION 4 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

4.1 Distribution Protocol

At a time wholly within the discretion of Class Counsel, Class Counsel will seek orders from the Courts approving the Distribution Protocol.

4.2 No Responsibility for Administration or Fees

The Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees, except for any costs contemplated by section 11.1 that relate to Notices ordered by the Courts in the Main Proceedings that exceed the sum of \$250,000.

SECTION 5 – OPTING-OUT

5.1 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 11.1 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.

5.2 Opt Out Report

The Opt Out Administrator shall use the information provided by the Settling Defendants pursuant to section 12.2 to supplement and confirm the information received pursuant to section 5.1(2) of this Settlement Agreement. Within twenty-one (21) days of the Opt Out Deadline, the Opt Out Administrator shall provide to the Settling Defendants 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.

5.3 **Right to Terminate Based on Opt Outs**

(1) The Settling Defendants may terminate this Settlement Agreement in the event that the volume of Chocolate Products purchased by Settlement Class Members who opt out of the Main Proceedings or the number and identity of Settlement Class Members who opt out of the Main Proceedings exceeds the Opt Out Threshold.

(2) To terminate the Settlement Agreement based on Opt Outs, the Settling Defendants shall give a written notice of termination to Class Counsel no later than twenty-one (21) days after the receipt of the report required by section 5.2.

5.4 **Opt Out Refund**

(1) In respect of each valid Opt Out, the Settling Defendants shall be entitled to claim an Opt Out Refund equal to such Opt Out's Imputed Recovery from the Settlement Amount. An Opt Out's Imputed Recovery shall be estimated as best as practicable on the basis of information that is acceptable to both Class Counsel and the Settling Defendants, including, if available, information provided by the Opt Out.

(2) The Settling Defendants may claim an Opt Out Refund by giving notice in writing to Class Counsel and the Claims Administrator within twenty-one (21) days of receiving notice in writing from the Claims Administrator that the distribution claims period has been initiated. The Settling Defendants shall provide their written computation of entitlement to an Opt Out Refund in respect of each Opt Out Refund claimed together with their written notice of claim.

(3) If Class Counsel are not satisfied with the accuracy of the Opt Out Refund claimed by the Settling Defendants, Class Counsel may, within twenty-one (21) days of receiving the notice referred to in section 5.4(2), provide the Settling Defendants with their alternative computation of the Opt Out Refund.

(4) If the Settling Defendants are not satisfied with the Opt Out Refund computed by Class Counsel, the Settling Defendants may, within twenty-one (21) days of receiving the alternative computation referred to in section 5.4(3), apply to the Court(s) in the appropriate Main Proceeding(s) for a determination of the appropriate amount of the Opt Out Refund.

(5) The Claims Administrator shall pay to the Settling Defendants the total Opt Out Refund to which the Settling Defendants are entitled immediately prior to distribution to Settlement Class Members.

SECTION 6 – ITWAL SETTLEMENT AGREEMENT

6.1 The ITWAL Settlement Agreement

(1) Following execution of this Settlement Agreement, the Main Plaintiffs and Class Counsel shall deliver the ITWAL Settlement Agreement to the Settling Defendants at the earliest possible time permitted under the terms of the ITWAL Settlement Agreement. To the extent that the Main Plaintiffs and Class Counsel are required to disclose and deliver the ITWAL Settlement Agreement concurrently to the Settling Defendants and the Non-Settling Defendants, the Main Plaintiffs and Class Counsel shall provide reasonable advance notice to the Settling Defendants before such disclosure and delivery occurs. At all times, the Parties shall remain subject to the pre-motion confidentiality obligations set out in sections 2.2, 2.3 and 2.4 in respect of this Settlement Agreement.

(2) The Main Plaintiffs and Class Counsel shall engage their best efforts to obtain approval of the ITWAL Settlement Agreement from the Courts, and to ensure that the ITWAL Settlement Agreement shall provide and will continue to provide that the ITWAL Entities shall absolutely and unconditionally assign and transfer to the Settlement Class any and all right, title and interest that the ITWAL Entities have ever held, now hold or may hereafter hold in respect of the ITWAL Claims on the ITWAL Effective Date. For greater certainty, following execution of the ITWAL Settlement Agreement, the Main Plaintiffs and Class Counsel shall not take any steps to detract, diminish or further transfer the rights, titles and/or interests that have been or will be assigned and transferred to the Settlement Class under the ITWAL Settlement Agreement.

6.2 Conditions Precedent relating to The ITWAL Settlement Agreement

(1) The obligations of the Settling Defendants under this Settlement Agreement are subject to the conditions that:

- (a) under the terms of the ITWAL Settlement Agreement and subject to approval by the Courts, the ITWAL Entities shall absolutely and unconditionally assign and transfer

to the Settlement Class any and all right, title and interest that the ITWAL Entities have ever held, now hold or may hereafter hold in respect of the ITWAL Claims on the ITWAL Effective Date;

- (b) the assignment and transfer of rights, title and interest by the ITWAL Entities to the Settlement Class in respect of the ITWAL Claims contemplated in section 6.2(1)(a) is implemented and becomes effective on the ITWAL Effective Date;
- (c) the form and content of the ITWAL Settlement Agreement is acceptable to the Settling Defendants, as the Settling Defendants shall determine in their sole discretion;
- (d) the form and content of the orders approving the ITWAL Settlement Agreement in the Main Proceedings are acceptable to the Settling Defendants, as the Settling Defendants shall determine in their sole discretion; and
- (e) the form and content of the ITWAL Final Orders approving the ITWAL Settlement Agreement in the Main Proceedings are acceptable to the Settling Defendants, as the Settling Defendants shall determine in their sole discretion.

(2) The failure of any of the conditions set out in section 6.2(1) shall give rise to a right of termination by the Settling Defendants pursuant to section 14 of this Settlement Agreement.

SECTION 7 - RELEASES AND DISMISSALS

7.1 Release of Releasees

Upon the Effective Date, and in consideration of payment of the Settlement Amount and Pre-Deposit Interest, and for other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release the Releasees from the Released Claims.

7.2 Covenant Not To Sue

Notwithstanding section 7.1, 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 Releasers 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.

7.3 No Further Claims

The Releasers 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, or other claims over relief, 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.

7.4 Scope of Released Claims

For greater certainty, pursuant to the definition of Released Claims in Section 1 of this Settlement Agreement, the releases, covenants and undertakings granted and given by the Releasers in respect of the Released Claims on the Effective Date under sections 7.1, 7.2 and 7.3, shall include, without limitation, the ITWAL Claims that are held by the Settlement Class as Releasers on the Effective Date.

7.5 Dismissal of the Main Proceedings

The Main Proceedings shall be dismissed with prejudice and without costs as against the Settling Defendants.

7.6 Dismissal of the Additional Proceedings

(1) Upon the Effective Date, the Additional Proceedings listed in Schedule “B” shall be dismissed without costs and with prejudice against the Settling Defendants and the other Releasees.

(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.

7.7 Dismissal of the Other Actions

- (1) Upon the Effective Date, those Other Actions which were commenced in Ontario, British Columbia or any other jurisdiction in Canada except Quebec by any Settlement Class Member who does not opt out shall be dismissed against the Releasees without costs and with prejudice.
- (2) Upon the Effective Date, each member of the Ontario Settlement Class and the British Columbia 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 Other Actions against the Releasees.
- (3) Each member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his, her or its Other Actions against the Releasees.
- (4) Each Other Action commenced in Quebec by a member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed against the Releasees, without costs and without reservation.

7.8 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.

7.9 No Assistance to U.S. Plaintiffs

As of the date of the execution of this Agreement, the Main Plaintiffs, the Additional Plaintiffs, the Settlement Class Members, Class Counsel and Additional Counsel shall not, without the express written consent of the Settling Defendants, provide any direct or indirect assistance to the U.S. plaintiffs in respect of the U.S. Proceedings as against the Settling Defendants and/or any of the Releasees, except in the event that a court in Canada expressly directs the Main Plaintiffs, the Additional Plaintiffs, the Settlement Class Members, Class Counsel and Additional Counsel to provide such assistance. In no circumstances, however, may the Main Plaintiffs, the Additional Plaintiffs, the Settlement Class Members, Class Counsel and Additional 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 the Settling Defendants of the application in order that the Settling Defendants may intervene in such proceedings.

7.10 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 14 of this Settlement Agreement.

SECTION 8 - BAR ORDER AND OTHER CLAIMS

8.1 Ontario and British Columbia Bar Order

(1) The Main 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 (including, without limitation, the ITWAL Claims held and released by the Settlement Class as Released Claims), which were or could have been brought in the Main 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, 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 on at least ten (10) days notice to counsel for the Settling Defendants, 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 an order from one or more of the Ontario and BC Courts for the following:
 - (A) documentary discovery and an affidavit of documents in accordance with the relevant rules of civil procedure from Cadbury Adams Canada;

- (B) oral discovery of a representative of Cadbury Adams Canada, the transcript of which may be read in at trial;
- (C) leave to serve a request to admit on Cadbury Adams Canada in respect of factual matters; and/or
- (D) the production of a representative of Cadbury Adams Canada to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

Cadbury Adams Canada retains all rights to oppose such motion(s).

- (c) To the extent that that an order is granted pursuant to section 8.1(1)(b) 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 Cadbury Adams Canada to the Main Plaintiffs and Class Counsel; and
 - (d) a Non-Settling Defendant may effect service of the motion(s) referred to in section 8.1(1)(b) on Cadbury Adams Canada by service on counsel of record for Cadbury Adams Canada in the Main Proceedings.
- (2) If the Courts ultimately determine there is a right of contribution and indemnity between co-conspirators, the Main Plaintiffs in the Ontario Proceeding and the BC Proceeding and the 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 Main Plaintiffs in the Ontario Proceeding and the BC Proceeding and the 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/or sales by the Non-Settling Defendants.

8.2 Quebec Bar Order

- (1) The Main Plaintiffs in the Quebec Proceeding shall seek a bar order from the Quebec Court providing for the following:
 - (a) the Main Plaintiffs in Quebec and the Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds of the Settling Defendants;

- (b) the Main Plaintiffs in Quebec and the Quebec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of and/or sales by the Non-Settling Defendants;
- (c) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Settling Defendants or relating to the Released Claims (including, without limitation, the ITWAL Claims held and released by the Settlement Class as Released Claims) shall be inadmissible and void in the context of the Quebec Proceeding; and
- (d) that any future right by the Non-Settling Defendants to examine on discovery a representative of the Settling Defendants will be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendants shall reserve their right to oppose such an examination under the *Code of Civil Procedure*.

8.3 **Material Term**

The form and content of the bar orders contemplated in this section 8 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 14 of this Settlement Agreement.

SECTION 9 – EFFECT OF SETTLEMENT

9.1 **No Admission of Liability**

The Canadian Plaintiffs and the Settling 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 Settling 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.

9.2 **Agreement Not Evidence**

The Canadian Plaintiffs and the Settling 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.

9.3 **No Further Litigation**

(1) Except as provided in section 9.3(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 3.7, 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 9.3(1) does not apply to the involvement of any Person in the continued prosecution of the Main Proceedings against any Non-Settling Defendant or unnamed co-conspirators who are not Releasees.

SECTION 10 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

10.1 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 classes that they will assert is the Settlement Class. The Main Plaintiffs and Additional Plaintiffs acknowledge that the Settling Defendants agree to the definition of the Common Issue for purposes of settlement only.

10.2 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 11 – NOTICE TO SETTLEMENT CLASS

11.1 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 Claims Procedure; 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.

11.2 Form and Distribution of Notice

The form of the Notices referred to in section 11.1 and the manner of publication and distribution shall be as agreed to by the Main Plaintiffs and the Settling Defendants and approved by the Courts.

11.3 Notice of Distribution

Except to the extent provided for in this Settlement Agreement, the form of notice in respect to the administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

SECTION 12 – ADMINISTRATION AND IMPLEMENTATION

12.1 Mechanics of Administration

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

12.2 Information and Assistance

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

(2) The information required by section 12.2(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 12.2(2) to advise Persons in Canada who purchased Chocolate Products from the Settling Defendants in Canada during the Settlement Class Period of this Settlement Agreement and the date of the Approval Hearings before the Courts and to evaluate any claims for an Opt Out Refund made by the Settling Defendants.

(4) If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant to section 12.2 shall be returned or destroyed forthwith in accordance with

section 3.7(6), 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 13 – CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

(1) The Escrow Agent shall pay the costs of the notices referred to in section 11.1 of this Settlement Agreement and any costs associated with receiving the written elections to opt out from the Trust Account, provided however if the costs of the Notices referred to in section 11.1 exceed \$250,000 then the Settling Defendants shall forthwith reimburse the Trust Account the portion of the costs of the Notices referred to in section 11.1 that are in excess of \$250,000.

(2) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneous with seeking approval of this Settlement Agreement, or at such other time as they shall determine in their sole discretion. The Settling Defendants shall not oppose Class Counsel's motion for payment of Class Counsel Fees.

(3) Except as provided in sections 13(1) and 13(2), Class Counsel Fees and Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(4) The Settling Defendants shall not be liable for any fees, disbursements or taxes, including but not limited to any fees, disbursements or taxes of Class Counsel's, Additional Counsel's, the Main Plaintiffs', the Additional Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.

SECTION 14 -TERMINATION OF SETTLEMENT AGREEMENT

14.1 Right of Termination

(1) The Settling Defendants, the Main Plaintiffs and Class Counsel shall respectively have the right to terminate this Settlement Agreement, 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; or
 - (e) the form and content of any of the Final Orders approved by the Ontario Court, the BC Court and the Quebec Court fails to comply with section 2.3 of this Settlement Agreement.
- (2) The Settling Defendants shall further have the right to terminate this Settlement Agreement in the event:
- (a) the Opt Out Threshold is exceeded and the Settling Defendants provide written notice of termination in accordance with section 5.3(2) of this Settlement Agreement;
 - (b) the form and content of any of the Final Orders approved by the Ontario Court, the BC Court and the Quebec Court fails to comply with sections 7.10, 8.1 or 8.2 of this Settlement Agreement;
 - (c) the conditions set out in section 6.2 relating to the ITWAL Settlement Agreement are not satisfied;
 - (d) the ITWAL Settlement Agreement is terminated for any reason;
 - (e) any Court declines to certify the proposed settlement class in the ITWAL Settlement Agreement;
 - (f) any Court declines to approve the ITWAL Settlement Agreement in the Main Proceedings or any material term or part thereof;
 - (g) any Court approves the ITWAL Settlement Agreement in the Main Proceedings in a materially modified form; or

- (h) any orders approving the ITWAL Settlement Agreement in the Main Proceedings made by the Ontario Court, BC Court or the Quebec Court do not become ITWAL Final Orders.
- (3) To exercise a right of termination under section 14.1(1) or 14.1(2), a terminating party shall deliver a written notice of termination pursuant to section 15.18 of this Settlement Agreement. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in section 14.4, 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.
- (4) 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 the Settling Defendants may agree to waive this provision.
- (5) Any order, ruling or determination made by any Court with respect to Class Counsel Fees 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.
- (6) 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 the Settling Defendants 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.
- (7) 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 the Settling Defendants agree that any appearance, attendance, filing or any other action or step taken by Cadbury Holdings Limited pursuant to or relating to this Settlement Agreement shall be without prejudice to any position that Cadbury Holdings Limited may later take in respect of the jurisdiction of the Courts or any other court, including a motion by Cadbury

Holdings Limited seeking to quash service *ex juris* or to otherwise challenge the jurisdiction of the Courts or any other court over Cadbury Holdings Limited in the Canadian Proceedings or any other litigation.

14.2 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 Settling Defendants.

14.3 Allocation of Monies in the Trust Account Following Termination

If the Settlement Agreement is terminated, the Escrow Agent shall return to the Settling Defendants all monies in the Trust Account including all accrued Pre-Deposit Interest, less the costs of the Escrow Agent, and the Opt Out Administrator, and less the costs of the Notices referred to in section 11.1 including any costs that exceed the sum of \$250,000 (to the extent that the Settling Defendants have not already paid such costs in accordance with section 13(1)), within thirty (30) business days of a final judgment being entered by a Court denying the certification or authorization of a Main Proceeding as a class proceeding or denying the approval

of the Settlement Agreement, whichever is earlier. The Settling Defendants, the Main Plaintiffs, and the Additional Plaintiffs expressly reserve all of their respective rights if this Settlement Agreement is terminated.

14.4 Survival of Provisions After Termination

If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 3.2, 3.7(6), 9, 10.2, 11, 12.2(4), 13(1) and 14 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 sections 3.2, 3.7(6), 9, 10.2, 12.2(4), 13 and 14 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 15 - MISCELLANEOUS

15.1 Releasees Have No Liability for Administration

The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or the Distribution Protocol.

15.2 Motions for Directions

- (1) Class Counsel or the Settling Defendants may apply to the Courts for directions in respect of this Settlement Agreement.
- (2) Class Counsel may apply to the Courts for directions in respect of the Distribution Protocol.
- (3) All motions contemplated by this Settlement Agreement shall be on notice to the Main Plaintiffs and the Settling Defendants, except for those motions concerned solely with the implementation and administration of the Distribution Protocol.

15.3 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.

15.4 **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.

15.5 **Ongoing Jurisdiction**

(1) Subject to section 15.5(4), each of the Courts shall retain exclusive jurisdiction over the Main Proceeding commenced in its jurisdiction, the parties thereto and Class Counsel Fees in that Main Proceeding.

(2) Subject to section 15.5(4), the Main Plaintiffs and the Settling Defendants 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 15.5(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 Cadbury Adams Canada 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, the Trust Account, 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) For the purposes of settlement only and contingent on the approvals by the Courts as provided for in this Settlement Agreement, Cadbury Holdings Limited agrees to submit to the jurisdiction of the Ontario Court, the Quebec Court and the BC Court solely for the purpose of implementing, administering and enforcing this Settlement Agreement. The Parties acknowledge and confirm that Cadbury Holdings Limited does not attorn to the Courts or any other court for any other purpose or proceeding and that Cadbury Holdings Limited otherwise reserves all of its other jurisdictional rights.

(5) The Main Plaintiffs and the Settling Defendants may apply to the Ontario Court for direction in respect of the implementation, administration and enforcement of this Settlement Agreement.

15.6 Governing Law

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

15.7 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.

15.8 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.

15.9 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Canadian Plaintiffs, the Settling Defendants, the Settlement Class Members, the Releasers, 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 Releasers and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

15.10 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.

15.11 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.

15.12 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.

Nevertheless, the Settling Defendants shall prepare a French translation of the Settlement Agreement including the Schedules at their own expense. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall be considered.

(2) The cost of translating the Notices, claims forms, Opt Out Forms or other documents referenced to or flowing from this Settlement Agreement into French and/or any other language shall, in the event such translation is required, be paid by the Settling Defendants.

15.13 **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.

15.14 **Recitals**

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

15.15 **Schedules**

The Schedules annexed hereto form part of this Settlement Agreement.

15.16 **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.

15.17 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.

15.18 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:

For the Main Plaintiffs and for Class Counsel in 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, STROSBURG 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
4th 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

For the Additional Plaintiffs and for Additional Counsel in 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

Tony 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

For the Settling Defendants:

Christopher P. Naudie

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50
1 First Canadian Place
Toronto, ON M5X 1B8
Tel: 416-862-6811
Fax: 416-862-8666
Email: cnaudie@osler.com

15.19 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: 


Name: Siskinds LLP
Title: Counsel in the Ontario Proceeding

By: 

Name: Sutts, Strosberg LLP
Title: Counsel in the Ontario Proceeding

By: 

Name: Siskinds Desmeules s.e.n.c.r.l.
Title: Counsel in the Quebec Proceeding

By: 

Name: Camp Fiorante Matthews
Title: Counsel in the BC Proceeding

By: 

Name: Branch MacMaster
Title: Counsel in the BC Proceeding

**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: _____

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

By: _____

Name: Merchant Law Group
Title: Counsel in the Additional Proceedings
for B.C., Alberta, Saskatchewan and
Manitoba

CADBURY ADAMS CANADA INC., by its counsel

By: _____

Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

CADBURY HOLDINGS LIMITED, by its counsel

By: _____

Name: Osler, Hoskin & Harcourt LLP
Title: Canadian 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:

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

By:

Name: Merchant Law Group
Title: Counsel in the Additional Proceedings
for B.C., Alberta, Saskatchewan and
Manitoba

CADBURY ADAMS CANADA INC., by its counsel

By:

Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

CADBURY HOLDINGS LIMITED, by its counsel

By:

Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

SCHEDULE “A”

Main Proceedings

#	Court and File No.	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 the 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 the 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 Settlement Class and the BC Settlement Class

SCHEDULE “B”

Additional Proceedings

#	Court and File No.	Title of Additional Proceedings
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) (Court File No. CI-08-01-55648)	<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 LLC, ITWAL Limited, Glenn Stevens, Robert Leonidas and Eric Lent</i>

#	Court and File No.	Title of Additional Proceedings
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

B E T W E E N:

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 Cadbury Adams Canada Inc. (the "Settling Defendant") and for an Order approving the short-form and long-form Notice of Certification and Approval Hearings 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, 10th 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 this action 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 Settlement Class or the BC Settlement 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 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 designated in the Notice of Certification and Approval Hearings, postmarked on or before the date that is sixty (60) days from the date of the first publication of the Notice of Certification and Approval Hearings.
7. **THIS COURT ORDERS** that any Ontario Settlement Class Member who has validly opted-out of this action shall no longer participate or have the opportunity in the future to participate in this action.
8. **THIS COURT ORDERS** that any Ontario Settlement Class Member who has not validly opted-out of this action may not opt-out of this action in the future.

9. **THIS COURT ORDERS** that the proposed short-form and long-form of the Notice of Certification and Approval Hearings are approved substantially in the form attached respectively hereto as Schedule “B” and “C”.
10. **THIS COURT ORDERS** that the proposed plan of dissemination for the short-form and long-form of the Notice of Certification and Approval Hearings (the “Plan of Dissemination”) is approved substantially in the form attached hereto as Schedule “D”.
11. **THIS COURT ORDERS** that notice of the certification of this action for settlement purposes, the date and location of the approval hearing, the principal elements of the Settlement Agreement and the process by which Ontario Settlement Class Members may opt out of the proposed settlement shall be given to the Ontario Settlement Class in accordance with Notice of Certification and Approval Hearing and the Plan of Dissemination.
12. **THIS COURT ORDERS** that ● is hereby appointed as the Opt Out Administrator.

Date:

THE HONOURABLE JUSTICE

SCHEDULE “C2”

CANADA

(recours collectif)
COUR SUPÉRIEURE

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

GAÉTAN ROY

Petitioner

C./

CADBURY ADAMS CANADA INC.,
HERSHEY CANADA INC., MARS
CANADA INC. and NESTLÉ
CANADA INC.

Respondents

- [1] **WHEREAS** the Parties are involved in class action proceedings;
- [2] **WHEREAS** the Petitioner has brought this Motion seeking Authorization to institute a class proceeding for settlement purposes only, as against the Respondent Cadbury Adams Canada Inc. (the “Cadbury Respondent”) only, pursuant to the Settlement Agreement entered into between the Petitioner and the Cadbury Respondent and others;
- [3] **WHEREAS** the Petitioner also seeks approval of the form of notice and method of dissemination of notice pursuant to the Settlement Agreement entered into between the Petitioner and the Cadbury Respondent and others;
- [4] **WHEREAS** having taken cognizance of the materials filed in relation to the Motion herein, including the Settlement Agreement and schedules thereto (the “Settlement Agreement”);
- [5] **WHEREAS** on being advised that the Petitioner and the Cadbury Respondent consent to this Judgment;
- [6] **WHEREAS** on hearing the submissions of counsel for the Petitioner and counsel for the Cadbury Respondent;

- [7] **CONSIDERING** the Motion before the Court;
- [8] **CONSIDERING** that this Motion is appropriate in this case;
- [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 of the Petitioner in respect of the Cadbury Respondent;

FOR THESE REASONS, THE COURT:

- [11] **GRANTS** the Petitioner’s Motion for Authorization to institute a class proceeding for settlement purposes only, as against the Respondent Cadbury Adams Canada Inc. (the “Cadbury Respondent”) only, and for approval of the form of notice and method of dissemination of notice pursuant to the Settlement Agreement;
- [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 institution of a class action against the Cadbury Respondent for settlement purposes only;
- [14] **ORDERS** that the Quebec Settlement Class shall be defined as follows :
- 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.
- [15] **ASCRIBES** the status of Representative of the Quebec Settlement Class to the Plaintiff Gaétan Roy;
- [16] **ORDERS** that a class action be instituted against the Cadbury Respondent for settlement purposes only, on the basis of the following principal question that will be resolved collectively:

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

- [17] **APPROVES** the form and content of the Notice of Certification and Approval Hearings in its short-form and long-form, as found at Exhibit ● ;
- [18] **APPROVES** the proposed plan of dissemination for the short-form and long-form of the Notice of Certification and Approval Hearings, as found at Exhibit ● ;
- [19] **DECLARES** that each Quebec Settlement Class Member that elects to exclude him/herself from the Quebec Settlement Class, 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 sixty (60) days following the first publication of the Notice of Certification and Approval Hearings;

- [21] **ORDERS** that any Quebec Settlement Class Member who has validly excluded him/herself from this class proceeding in the manner and time prescribed above shall no longer participate or have the opportunity in the future to participate in the Quebec Proceeding and will not be able to include him/herself in any new development related to this matter;
- [22] **ORDERS** that any Quebec Settlement Class Member who does not validly exclude him/herself from this class proceeding in the manner and time prescribed above shall be deemed to have elected to participate in the

Settlement Agreement entered with the Cadbury Respondent, and in the remainder of the Quebec Proceeding;

[23] ORDERS that the hearing for approval of the Settlement Agreement shall be heard by this Court at:

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

• , beginning at • , in room • .

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

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

• , J.C.S.

Me Simon Hébert
SISKINDS, DESMEULES
43, rue de Buade, bureau 320
Québec, Québec G1R 4A2
Lawyer for the Petitioner

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.

SCHEDULE "C3"

No. S078807
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

JACOB STUART MAIN

Plaintiff

And:

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

Defendants

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

ORDER

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

THE APPLICATION of the Plaintiff 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 OF COUNSEL**]

AND ON READING the material filed including the settlement agreement dated October 14, 2009 between the Plaintiff and Cadbury Holdings Limited (as the successor to the Defendant Cadbury Schweppes PLC) and the Defendant Cadbury Adams Canada Inc. (the "Settling Defendants"), 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 this action is certified as a class proceeding as against the Settling Defendants, 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 Defendants 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 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 designated in the Notice of Certification and Approval Hearings, postmarked on or before the date that is sixty (60) days from the date of the first publication of the Notice of Certification and Approval Hearings.
7. **THIS COURT ORDERS** that any BC Settlement Class Member who has validly opted-out of this action shall no longer participate or have the opportunity in the future to participate in this action.
8. **THIS COURT ORDERS** that any BC Settlement Class Member who has not validly opted-out of this action may not opt-out of this action in the future.

9. **THIS COURT ORDERS** that the proposed short-form and long-form of the Notice of Certification and Approval Hearings are approved substantially in the form attached respectively hereto as Schedule “B” and “C”.
10. **THIS COURT ORDERS** that the proposed plan of dissemination for the short-form and long-form of the Notice of Certification and Approval Hearings (the “Plan of Dissemination”) is approved substantially in the form attached hereto as Schedule “D”.
11. **THIS COURT ORDERS** that notice of the certification of this action for settlement purposes, the date and location of the approval hearing, the principal elements of the Settlement Agreement and the process by which BC Settlement Class Members may opt out of the proposed settlement shall be given to the BC Settlement Class in accordance with the Notice of Certification and Approval Hearings and the Plan of Dissemination.
12. **THIS COURT ORDERS** that ● is hereby appointed as the Opt Out Administrator.

BY THE COURT

DISTRICT REGISTRAR

APPROVED AS TO FORM:

David Jones
Counsel for the Plaintiff, Jacob Stuart Main

Christopher P. Naudie
Counsel for the Defendants Cadbury Holdings
Limited and Cadbury Adams Canada Inc.

SCHEDULE "D1"

Court File No. 08-CV-347263PD2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , the day
JUSTICE) of , 2009

B E T W E E N:

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 in the Ontario Proceeding for an Order approving the settlement agreement entered into with the Defendant Cadbury Adams Canada Inc. (the "Settling Defendant") and others, was heard this day at the Court House, 393 University Avenue, 10th 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** 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.
6. **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.
7. **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.
8. **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.

9. **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.
10. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims (including, without limitation, the ITWAL Claims held and released by the Ontario Settlement Class as Released Claims).
11. **THIS COURT ORDERS** that each Releasor 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, or other claims over relief, from any Releasee in respect of any Released Claim (including, without limitation, the ITWAL Claims held and released by the Ontario Settlement Class as Released Claims) 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.
12. **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.
13. **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 (including, without limitation, the ITWAL Claims held and released by the Ontario Settlement Class as Released 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 (including, without limitation, the ITWAL Claims held and released by the Ontario Settlement Class as Released Claims), which were or could have been brought in the Main Proceedings 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, 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 Court ultimately determines 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/or sales by the Non-Settling Defendants.

16. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to the 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 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, 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 16 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 administration of this Order, this Court will retain an ongoing supervisory role and the Settling Defendant and Cadbury Holdings Limited acknowledge the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in 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 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** that the Settling Defendant shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account.
21. **THIS COURT ORDERS** that the Settlement Amount, plus any Pre-Deposit Interest and any accrued interest, be held in trust by the Escrow Agent for the benefit of the Settlement Class, pending further order of the Courts.
22. **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.
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.

24. **THIS COURT ORDERS** that this Order shall be declared null and void in the event that the Settlement Agreement is terminated in accordance with its terms.

Date:

THE HONOURABLE JUSTICE

SCHEDULE "D2"

CANADA

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

(recours collectif)
COUR SUPÉRIEURE

GAÉTAN ROY

Petitioner

vs.

CADBURY ADAMS CANADA INC.,
HERSHEY CANADA INC., MARS
CANADA INC. and NESTLÉ
CANADA INC.

Respondents

- [1] **WHEREAS** the Parties are involved in class proceedings;
- [2] **WHEREAS** the Petitioner has brought this Motion seeking a judgment of this Court approving the Settlement Agreement entered into between the Petitioner and the Respondent Cadbury Adams Canada Inc. (the "Cadbury Respondent") and others;
- [3] **WHEREAS** having taken cognizance of the materials filed in relation to the Motion herein, including the Settlement Agreement and schedules thereto attached to this Judgment as "Schedule "A" (the "Settlement Agreement");
- [4] **WHEREAS** on being advised that the Petitioner and the Cadbury Respondent consent to this Judgment;
- [5] **WHEREAS** on hearing the submissions of counsel for the Petitioner and counsel for the Cadbury Respondent;
- [6] **CONSIDERING** Articles 1025, 1045 and 1046 of the *Code of Civil Procedure*;
- [7] **AFTER REVIEW**, it is in order to grant the Motion of the Petitioner in respect of the Cadbury Respondent;

FOR THESE REASONS, THE COURT:

- [8] **GRANTS** the Petitioner’s Motion for Approval of the Settlement Agreement;
- [9] **ORDERS AND DECLARES** that for the purposes of this Judgment, the definitions set out in the Settlement Agreement apply to and are incorporated into this Judgment and shall form an integral part thereof.
- [10] **DECLARES** that Settlement Agreement entered into between the Petitioner and the Cadbury Respondent (the “Cadbury Transaction”) 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] **ORDERS** that the Cadbury Transaction is hereby approved pursuant to Article 1025 of the *Code of Civil Procedure* and shall be implemented in accordance with its terms, subject to the terms of this Judgment;
- [12] **ORDERS AND DECLARES** that the Cadbury 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 Cadbury Transaction constitutes the agreement among the Parties, which they have consented to, and that the French version is just a translation, such that in the event of a discrepancy between the English version and the French version, the former shall supersede the latter, subject to the terms of this Judgment;
- [14] **ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall conclusively be deemed to have fully, finally, irrevocably and forever released the Releasees from the Released Claims (including, without limitation, the ITWAL Claims held and released by the Québec Settlement Class as Released Claims);
- [15] **DECLARES** that any Québec Settlement Class Member who makes a claim under the Cadbury Transaction 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] **ORDERS AND DECLARES** that each Other Action commenced in Québec by any Québec Settlement Class Member who makes a claim under the Cadbury Transaction shall be and is hereby dismissed against the Releasees, without costs and without reservation;

- [17] **ORDERS AND DECLARES** that this Judgment, including the Cadbury Transaction, shall be binding on every Québec Settlement Class Member who has not validly opted-out of the action;
- [18] **ORDERS** that the Releasers shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, either on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand, or participate in any proceedings related in any manner whatsoever to the Released Claims (including, without limitation, the ITWAL Claims held and released by the Québec Settlement Class as 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 any Releasee, it being understood that nothing in this Judgment shall affect the right of a Québec Settlement Class Member covered by the Cadbury 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] **DECLARES** that, pursuant to the Cadbury Transaction, the Petitioner and the Québec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds of the Cadbury Respondent;
- [20] **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/or sales by the Non-Settling Defendants;
- [21] **DECLARES** that any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Cadbury Respondent or relating to the Released Claims (including, without limitation, the ITWAL Claims held and released by the Québec Settlement Class as Released Claims) shall be inadmissible and void in the context of this class action;
- [22] **DECLARES** that any future right to examine a representative of the Cadbury Respondent will be determined according to the provisions of the *Code of Civil Procedure*;
- [23] **DECLARES** that a Non-Settling Defendant may validly serve the proceedings referred to in the preceding paragraph on the Cadbury Respondent by serving such proceedings to that party's *ad litem* attorneys, as identified in this Judgment;

- [24] **DECLARES** that this Court retains an ongoing supervisory role for purposes of executing this judgment and that the Cadbury Respondent and Cadbury Holdings Limited shall acknowledge the jurisdiction of this Court solely for the purposes of implementing, administering and enforcing the Cadbury Transaction, and subject to the terms and conditions set out in the Cadbury Transaction.
- [25] **ORDERS** that the Settlement Amount, plus any Pre-Deposit Interest and any accrued interest, be held in trust by the Escrow Agent for the benefit of the Settlement Class, pending a judgment by this Court following the filing of a motion containing such conclusions presented to this Court after having been served on the Respondents;
- [26] **DECLARES** that the Cadbury Respondent shall have no responsibility for or involvement in the administration, investment or distribution of the Trust Account;
- [27] **NOTES** that the Settlement Agreement states that approval of the Cadbury Transaction is contingent upon approval by the Ontario Court and the BC Court and this Judgment shall have no force and effect if such approval is not secured in Ontario and British Columbia;
- [28] **THE WHOLE** without costs and without reservation.

• , J.C.S.

Me Simon Hébert
SISKINDS, DESMEULES
43, rue de Buade, bureau 320
Québec, Québec G1R 4A2
Lawyer for the Petitioner

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.

SCHEDULE "D3"

No. S078807
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

JACOB STUART MAIN

Plaintiff

And:

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

Defendants

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

ORDER

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

THE APPLICATION of the Plaintiff 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 OF COUNSEL**]

AND ON READING the material filed including the settlement agreement dated October 14, 2009 between the Plaintiff and Cadbury Holdings Limited (as the successor to Cadbury Schweppes PLC) and Cadbury Adams Canada Inc. (the "Settling Defendants"), 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 plaintiff 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 (including, without limitation, the ITWAL Claims held and released

by the BC Settlement Class as Released Claims). The use of the terms "Releasers", "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 Releaser 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, or other claims over relief, from any Releasee in respect of any Released Claim (including, without limitation, the ITWAL Claims held and released by the BC Settlement Class as Released Claims) 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** 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 (including, without limitation, the ITWAL Claims held and released by the BC Settlement Class as 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, 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).
11. **THIS COURT ORDERS** that if the Court ultimately determines 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 the conduct of and/or sales by the Non-Settling Defendants.

12. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained parties to this action and on at least ten (10) days notice to counsel for the Settling Defendants, 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 Cadbury Adams Canada;
 - (b) oral discovery of a representative of Cadbury Adams Canada, the transcript of which may be read in at trial;
 - (c) leave to serve a Notice to Admit on Cadbury Adams Canada in respect of factual matters; and/or
 - (d) the production of a representative of Cadbury Adams Canada to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

The Settling Defendants retain 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.

13. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 12 above on the Settling Defendants by service on counsel of record for the Settling Defendants in this action.
14. **THIS COURT ORDERS** that for purposes of enforcement of this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement.

15. **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.
16. **THIS COURT ORDERS** that the Settling Defendants shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account.
17. **THIS COURT ORDERS** that the Settlement Amount, plus any Pre-Deposit Interest and any accrued interest, be held in trust by the Escrow Agent for the benefit of the Settlement Class, pending further order of the Courts, which shall be sought by the Main Plaintiffs on a motion made without notice.
18. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, this action be and is hereby dismissed against the Settling Defendants without costs and with prejudice.
19. **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.
20. **THIS COURT ORDERS** that this Order shall be declared null and void in the event that the Settlement Agreement is terminated in accordance with its terms.

BY THE COURT

DISTRICT REGISTRAR

APPROVED AS TO FORM:

David Jones
Counsel for the Plaintiff, Jacob Stuart Main

Christopher P. Naudie
Counsel for the Defendants Cadbury Holdings
Limited and Cadbury Adams Canada Inc.