

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: CHOCOLATE : **MDL DOCKET NO. 1935**
CONFECTIONARY ANTITRUST : **(Civil Action No. 1:08-MDL-1935)**
LITIGATION :
_____ : **(Judge Christopher C. Conner)**
:
THIS DOCUMENT APPLIES TO :
ALL DIRECT PURCHASER :
CLASS ACTIONS :
_____ :

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of this __ day of April, 2011 (the “Execution Date”), by and between Defendants Cadbury Holdings Ltd., Cadbury plc, and Cadbury Adams Canada, Inc. (the “Cadbury Defendants”) and plaintiff class representatives, Card & Party Mart II Ltd., Diane Chiger, Jones Vend and OCS Distributing, Inc., Marc and Jill Lavin, PITCO Foods, The Lorain Novelty Co., Inc., (collectively, “Plaintiffs”), both individually and on behalf of the Class of purchasers of Chocolate Candy (as

defined below), in the United States or for delivery into the United States directly from a Defendant or any predecessors, controlled subsidiaries, affiliates or divisions of any Defendant, at any time during the period from December 9, 2002 through and including December 20, 2007 (“Class Period”).

WHEREAS, Plaintiffs are prosecuting the Action on their own behalf and on behalf of the proposed Class (as defined below) against (among others) the Cadbury Defendants;

WHEREAS, Plaintiffs allege that the Cadbury Defendants participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the prices of Chocolate Candy sold in the United States at artificially high levels in violation of Section 1 of the Sherman Act;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding the Action and have concluded that a settlement with the Cadbury Defendants according to the terms set forth below is in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, arm’s-length settlement negotiations have taken place between Settlement Class Counsel and counsel for the Cadbury Defendants, and this Agreement has been reached as a result of those negotiations;

WHEREAS, the Cadbury Defendants deny that they bear any liability whatsoever to the Settlement Class as alleged by Plaintiffs but have agreed to enter

into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation.

NOW, THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice as to the Cadbury Defendants only, without costs as to Plaintiffs, the Settlement Class, or the Cadbury Defendants, subject to the approval of the Court, on the following terms and conditions.

A. Definitions

The following terms, as used in this Agreement, have the following meanings:

1. "Settlement Class" means all persons and entities who directly purchased Chocolate Candy from any Defendant or any predecessor, controlled subsidiary, affiliate or division of any Defendant, in the United States or for delivery into the United States during the period from December 9, 2002 through and including December 20, 2007. The Class is composed of two components of direct purchasers: the Wholesale Direct Purchaser Component (who directly purchased Chocolate Candy for re-sale) and the Consumer Direct Purchaser Component (who directly purchased Chocolate Candy for personal consumption and/or as gifts), as defined in Paragraph 37 of Direct Purchaser Plaintiffs' Consolidated Class Action Complaint. Excluded from the Settlement Class are

governmental entities, Defendants, or any present or former parent, subsidiary or affiliate thereof. Also excluded from the Settlement Class are Meijer, Inc. Meijer Distribution, Inc., Publix Supermarkets, Inc., CVS Pharmacy, Inc., Rite Aid Corporation, Rite Aid Hdqtrs Corp., Longs Drug Stores California, Inc., The Kroger Co., Safeway, Inc., Walgreen Co., Hy-Vee, Inc., Giant Eagle, Inc., Affiliated Foods, Inc., Food Lion, LLC, Hannaford Bros. Co., and Kash N' Karry Food Stores, Inc., HEB Grocery Company, LP, Albertson's LLC, Great Atlantic & Pacific Tea Company (A&P), Supervalu Inc., Golub Corp. d/b/a Price Chopper, Brookshire Grocery Co., and United Supermarkets LLC.

2. "Settlement Class Counsel" shall refer to H. Laddie Montague, Jr., Esquire of the law firm of Berger & Montague, P.C., 1622 Locust Street, Philadelphia, PA 19103 and Michael D. Hausfeld, Esquire, of the law firm of Hausfeld LLP, 1700 K Street, N.W., Suite 650, Washington, DC 20006.

3. "Settlement Class Member" means each member of the Settlement Class who does not timely and validly elect to be excluded from the Settlement Class.

4. "Settlement Classes" refers to the Settlement Class described in Paragraph 1 above and any additional classes certified in connection with settlements between the Cadbury Defendants and the Indirect End User Purchaser Class and Indirect Purchaser for Resale Class, respectively.

5. “Chocolate candy” means chocolate bars and other chocolate confectionery products packaged to be sold at retail.

6. “Action” means the above captioned case, which is currently pending in the United States District Court for the Middle District of Pennsylvania.

7. “Agreement” means this Settlement Agreement, as made and entered into on February __, 2011, by and between the Cadbury Defendants and Plaintiffs.

8. “Claims” shall mean any and all actions, suits, claims, rights, demands, assertions, allegations, causes of action, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, debts, liabilities, judgments, or remedies, which are set forth in the Direct Purchasers Class Plaintiffs’ Consolidated Class Action Complaint in the above-captioned Action.

9. “Settlement Administrator” means Heffler, Radetich & Saitta, LLC, 1515 Market Street, Suite 1700, Philadelphia, PA 19102.

10. “Class Period” means the period beginning on December 9, 2002 through and including December 20, 2007.

11. “Class Representatives” or “Plaintiffs” means Card & Party Mart II Ltd., Diane Chiger, Jones Vend and OCS Distributing, Inc., Marc and Jill Lavin, PITCO Foods, and The Lorain Novelty Co., Inc. Card & Party Mart II, Jones Vend and OCS Distributing, Inc., PITCO Foods, and The Lorain Novelty Co., Inc. are class representatives for the Wholesale Direct Purchaser Component of the

Settlement Class. Diane Chiger and Marc and Jill Lavin are class representatives for the Consumer Direct Purchaser Component of the Settlement Class.

12. “Complaint” means the Direct Purchaser Class Plaintiffs’ Consolidated Class Action Complaint filed in the above-captioned Action.

13. “Court” means the United States District Court for the Middle District of Pennsylvania.

14. “Cadbury Defendants” means Cadbury Holdings Ltd., Cadbury plc, and Cadbury Adams Canada, Inc. (collectively and together with their past and present officers, directors, employees, parents, subsidiaries and affiliates; the past and present officers, directors, and employees of such parents, subsidiaries, and affiliates; and the predecessors, successors, heirs, executors, and assigns of each of the foregoing).

15. “Defendants” refers to the defendants in the Action, including The Hershey Company, Hershey Canada, Inc., Mars, Inc., Mars Snackfood U.S. LLC, Nestlé U.S.A., Inc., Cadbury Holdings Ltd., Cadbury plc, and Cadbury Adams Canada, Inc.

16. “Document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

17. "Effective Date" means the date on which all of the events identified in Paragraph 35, describing final judgment, have occurred and means the date on which this Agreement becomes final.

18. "Escrow Account" means the account, established by Settlement Class Counsel and administered in accordance with the terms of this Settlement Agreement, for receipt of the Settlement Fund paid by the Cadbury Defendants pursuant to this Settlement Agreement.

19. "Escrow Agent" means The Huntington National Bank, as set forth in the Escrow Agreement attached as Exhibit 1 hereto.

20. "Escrow Agreement" means the Escrow Agreement attached as Exhibit 1 hereto.

21. "Execution Date" shall mean the date of the execution of this Settlement Agreement as set forth in the first sentence of this Agreement.

22. "Person" means any individual, partnership, corporation, association or other business or legal entity.

23. "Released Claims" shall refer to the claims described in Paragraph 36 of this Agreement.

24. "Releasees" shall refer jointly and severally, individually and collectively to the Cadbury Defendants, and to their past and present officers, directors, employees, parents, subsidiaries, and affiliates; to the past and present

officers, directors, and employees of such parents, subsidiaries, and affiliates; and the predecessors, successors, heirs, executors, and assigns of each of the foregoing. Notwithstanding the foregoing, "Releasees" does not include any other Defendant currently named in the Action. "Releasees" also does not include any defendant subsequently added or joined in the Action or any subsequently identified co-conspirator of Defendants in the Action who is not or was not during the Settlement Class Period an officer, director, employee, parent, subsidiary, affiliate, heir, executor, or assign of the Cadbury Defendants.

25. "Releasers" shall refer jointly and severally and individually and collectively to the Class Representatives, the Settlement Class Members who do not elect to exclude themselves from the Settlement Class and their respective past and present parents, subsidiaries, affiliates, heirs, and assigns.

26. "Settlement Amount" means \$1,312,500.00.

27. "Notice and Administration Cost Fund", to be shared by the Direct Purchaser Class Plaintiffs, Indirect End User Plaintiffs and Indirect Purchasers for Resale Plaintiffs, means \$250,000.00 (in addition to the Settlement Amount) to be maintained in a separate Notice and Administration Escrow Account. The Notice and Administration Escrow Agreement is attached as Exhibit 2 hereto.

28. The "Settlement Fund" shall be the Settlement Amount plus any interest accrued on that Amount in the Escrow Account.

29. "Taxes" means any sums due to be paid to governmental taxing authorities from the Settlement Fund, including taxes, estimated taxes, interest and penalties.

30. "Tax Expenses" means any and all reasonable fees and costs due to be paid to tax preparers, tax consultants or others for determining the tax liability of the Settlement Fund and attorneys' fees, costs, and expenses and otherwise assisting Settlement Class Counsel in carrying out their responsibilities under this Settlement Agreement.

B. Stipulation to Certification of Settlement Class

31. Plaintiffs shall seek certification of a class for settlement purposes only, which certification is not intended to have any precedential value with respect to any litigated class, as follows:

All persons and entities who directly purchased Chocolate Candy from any Defendant or any predecessor, subsidiary, affiliate or division of any Defendant, in the United States or for delivery into the United States at any time from December 9, 2002 through and including December 20, 2007. The Class is composed of two components of direct purchasers: the Wholesale Direct Purchaser Component (who directly purchased Chocolate Candy for re-sale) and the Consumer Direct Purchaser Component (who directly purchased Chocolate Candy for personal consumption and/or as gifts), as defined in Paragraph 37 of Direct Purchaser Plaintiffs' Consolidated Class Action Complaint. Excluded from the Settlement Class are governmental entities, Defendants, or any present or former parent, subsidiary or affiliate thereof. Also excluded from the Settlement Class are Meijer, Inc. Meijer Distribution, Inc., Publix Supermarkets, Inc., CVS Pharmacy, Inc., Rite Aid Corporation, Rite Aid Hdqtrs Corp., Longs Drug Stores California, Inc., The Kroger Co., Safeway,

Inc., Walgreen Co., Hy-Vee, Inc., Giant Eagle, Inc., Affiliated Foods, Inc., Food Lion, LLC, Hannaford Bros. Co., Kash N' Karry Food Stores, Inc., HEB Grocery Company, LP, Albertson's LLC, Great Atlantic & Pacific Tea Company (A&P), Supervalu Inc., Golub Corp. d/b/a Price Chopper, Brookshire Grocery Co., and United Supermarkets LLC.

C. Approval of this Agreement, Notice, and Dismissal of Claims

32. Plaintiffs and the Cadbury Defendants shall use reasonable efforts to effectuate this Agreement, including cooperating in promptly seeking both the Court's certification of the Settlement Class and the Court's approval of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the prompt, complete, and final dismissal with prejudice of the Action as to the Cadbury Defendants.

33. Within twenty (20) days after the Execution Date of this Agreement, Plaintiffs shall submit to the Court a motion, to be joined in or stipulated to by the Cadbury Defendants, for (1) preliminary approval of this Settlement Agreement; (2) certification of the Settlement Class; (3) authorization to disseminate notice of such certification of the Settlement Class; (4) the final judgment contemplated by this Agreement; (5) and a stay of all proceedings in the Action against the Cadbury Defendants, except for proceedings provided for, by, or in connection with this Agreement as set forth herein (the "Motion"). The Motion shall include: (a) the definition of the Settlement Class to be certified by the Court pursuant to this Agreement; (b) a proposed form of, method for, and date of dissemination of

notice to the Settlement Class; (c) a copy of this Agreement; and (d) a proposed form of final judgment order. No later than ten (10) days thereafter, the Cadbury Defendants shall submit materials demonstrating their compliance with the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005), effective February 18, 2005.

34. Notice to Settlement Classes (“Notice Program”):

- (a) Upon preliminary approval of this Agreement, Settlement Class Counsel shall, in accordance with Fed. R. Civ. P. 23 and the Court’s order, provide those members of the Wholesale Direct Purchaser Component of the Settlement Class who have been identified by reasonable means with notice by first class mail of the settlement and the date of the hearing scheduled by the Court to consider the fairness, adequacy and reasonableness of the proposed settlement (the “Settlement Hearing”).
- (b) In order to permit mailed notice, within twenty (20) business days of execution of this Agreement, Settlement Class Counsel will seek an order from the Court requiring The Hershey Company; Mars, Inc.; Mars Snackfood U.S. LLC and Nestlé U.S.A., Inc. to provide to Settlement Class Counsel a machine-readable version of their United States customer mailing lists containing the names and addresses of potential members of the Wholesale Direct Purchaser Component of the Settlement Class who purchased Chocolate Candy during the Class Period.
- (c) The customer mailing lists of potential members of the Wholesale Direct Purchaser Component of the Settlement Class shall be subject to any generally applicable protective order already or hereafter entered in the Action.
- (d) Notice of the Settlement Hearing shall also be given to the Wholesale Direct Purchaser Component of the Settlement Class by publication once in the following industry publications: *Candy and Snacks Today* and *Professional Candy Buyer*, in accordance with the Court’s Order granting preliminary

approval of the Settlement. The Consumer Direct Purchaser Component of the Settlement Class shall only receive notice in a combined notice with, and through the same form of publication notice being employed by, the Indirect End User Purchaser Class.

- (e) Settlement Class Counsel shall take all necessary and appropriate steps to ensure that notice of the Settlement Hearing is provided in accordance with the Order of the Court.

35. Plaintiffs and the Cadbury Defendants shall jointly seek entry of an order and final judgment, the text of which Plaintiffs and the Cadbury Defendants shall agree upon:

- (a) as to the Action, approving finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;
- (b) directing that, as to the Cadbury Defendants, the Action be dismissed with prejudice and, except as provided for in this Agreement, without costs;
- (c) reserving exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement;
- (d) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to the Cadbury Defendants shall be final and entered forthwith; and
- (e) requiring Settlement Class Counsel to file with the Clerk of the Court a record of potential members of the Settlement Class who timely and validly excluded themselves from the Settlement Class.

This Agreement shall become final only when: (a) the Court has entered a final order approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and a final judgment dismissing the Action against the Cadbury Defendants on the merits with prejudice as to all Settlement Class Members and without costs, and (b) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as described in clause (a) above has expired or, if appealed, approval of this Agreement and the final judgment has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review ("Effective Date"). It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. §1651, shall be taken into account in determining the above-stated times. On the Execution Date of this Agreement, Plaintiffs and the Cadbury Defendants shall be bound by its terms, and this Agreement shall not be rescinded except in accordance with Sections I and J of this Agreement.

D. Release and Discharge

36. (a) Upon the occurrence of the Effective Date and in consideration of payment of the Settlement Payment, as specified in Section G of this Agreement, and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from 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 interests, costs, expenses, class administration expenses, penalties, and lawyers' fees (including Settlement Class Counsel fees) that Releasors, or each of them, ever had, now have, or hereafter can, shall, or may have against the Releasees, whether known or unknown, on account of, arising out of, relating to, or resulting from or in any way relating to conduct of the Releasees during the period February 1, 2001 to December 31, 2008 concerning any aspect of the pricing, selling, discounting, marketing, manufacturing, and distributing of chocolate candy purchased in the United States or for delivery into the United States, or which are, have been or could have been asserted, within the scope of the facts asserted in the Complaint, either of which arise under any federal, state or local antitrust, unfair competition, consumer protection, unfair practices, trade practice, or civil conspiracy law, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*

(b) Each Releasor waives California Civil Code Section 1542 and similar provisions in other states. Class Plaintiffs hereby certify that they are aware of and have read and reviewed the following provision of California Civil Code Section 1542 ("Section 1542"): "A general release does not extend to claims

which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.” The provisions of the release set forth above shall apply, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction. Each Releasor may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims that are the subject matter of this paragraph, but each Releasor hereby expressly and fully, finally and forever waives, relinquishes, and forever settles and releases any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above. Each Releasor also expressly waives and fully, finally and forever settles any claims it may have against Releasees or any of them under California Business and Professions Code § 17200 et seq., which claims are expressly incorporated into this paragraph 36(b).

(c) Nothing herein shall release any product defect, claims of supplier or distributor breach of contract, or similar claims between the parties relating to Chocolate Candy.

(d) Notwithstanding the foregoing, "Releasees" does not include any other Defendant currently named in the Action.

(e) Upon final approval of the settlement, the Cadbury Defendants release and discharge each of the Representative Plaintiffs and their counsel and experts from any Claims relating to the institution or prosecution of the Action.

E. Right of Exclusion

37. The Settlement Class Notice shall provide for a right of exclusion, as set forth in Paragraph 38, and shall provide that a request for exclusion must be postmarked (or mailed by overnight delivery) no later than one hundred (100) days after the Court issues an Order preliminarily approving the Settlement. The Settlement Class Notice shall also provide for a right to object, as set forth in Paragraph 39, and shall provide that an objection must be postmarked (or mailed by overnight delivery) no later than one hundred and thirty-five (135) days after the Court issues an order preliminarily approving the Settlement.

38. Any Person seeking exclusion from the Settlement Class must file a timely written request for exclusion as provided in this Paragraph. Any Person who files such a request shall be excluded from the Settlement Class, shall have no rights with respect to this Settlement Agreement, and shall receive no benefit as provided in this Settlement Agreement. A request for exclusion must be in writing and state the name, address, and phone number of the Person(s) seeking exclusion.

Each request must also contain a signed statement that “I/we hereby request that I/we be excluded from the proposed Settlement Class in the *In re Chocolate Confectionary Antitrust Litigation*.” The request must be mailed to Settlement Class Counsel at the address provided in the Class Notice and postmarked (or mailed by overnight delivery) no later than one hundred (100) days after the Court issues an Order preliminarily approving the Settlement. A request for exclusion that does not include all of the foregoing information, that does not contain the proper signature, that is sent to an address other than the one designated in the Class Notice, or that is not sent within the time specified, shall be invalid, and the Person(s) serving such an invalid request shall be Settlement Class Members and shall be bound by this Settlement Agreement, if approved. Settlement Class Counsel shall promptly forward copies of all requests for exclusion, as they are received, to counsel for the Cadbury Defendants.

F. Right to Object

39. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who objects to the settlement may appear in person or through counsel, at that Settlement Class Member’s own expense, at the Settlement Hearing to present any evidence or argument that the Court deems proper and relevant. However, no such Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any such Settlement

Class Member shall be received and considered by the Court, unless such Settlement Class Member properly submits a written objection that includes (a) a notice of intention to appear, (b) proof of membership in the Settlement Class, and (c) the specific grounds for the objection and any reasons why such Settlement Class Member desires to appear and be heard, as well as all documents or writings that such Settlement Class Member desires the Court to consider. Such a written objection must be both filed with the Court no later than one hundred and thirty-five (135) days after the Court issues an Order preliminary approving the Settlement and mailed to Settlement Class Counsel and the Cadbury Defendants' counsel at the addresses provided in the Class Notice and postmarked (or mailed by overnight delivery) no later than one hundred and thirty-five (135) days after the Court issues an Order preliminary approving the Settlement. While a valid objection must contain *prima facie* evidence that the objector is a Settlement Class Member, Plaintiffs and/or the Cadbury Defendants may take discovery regarding the matter, subject to Court approval. Any Settlement Class Member that fails to object in the manner prescribed herein shall be deemed to have waived its objections and will forever be barred from making any such objections in the Action or in any other action or proceeding, unless otherwise excused for good cause shown as determined by the Court.

G. Payment of the Settlement Amount

40. Settlement Payment. Within twenty-one (21) days after the execution of this Settlement Agreement, the Cadbury Defendants shall wire transfer the Settlement Amount into the Escrow Account and shall wire transfer the Notice and Administration Cost Fund into the separate Notice and Administration Escrow Account.

41. Disbursements from the Notice and Administration Cost Fund may be made for expenses associated with administering the settlement, providing notice of settlement to the Settlement Classes, and/or any payments and expenses incurred in connection with taxation matters relating to the settlement and this Agreement as addressed in Section M of this Agreement. Upon the Effective Date, if any funds remain in the Initial Notice and Administration Cost Fund after the payment of all notice and notice administration costs, any such funds shall be included in the payment to the Direct Purchaser Class Plaintiffs.

H. The Settlement Fund

42. The Settlement Fund shall be invested exclusively in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC limit, in accordance with

instructions received from the signatories hereto on behalf of the Plaintiffs. The Escrow Agent shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All interest earned on the Settlement Fund shall become and remain part of the Settlement Fund.

43. In no event shall the Cadbury Defendants have any responsibility, financial obligation, or liability whatsoever with respect to the investment or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such administration, except as expressly otherwise provided in this Agreement.

44. Except as provided for in this Agreement, in no event shall the Cadbury Defendants have any liability with respect to the giving of notice of this settlement to members of the Settlement Classes, including, but not limited to, the expense and cost of such notice. Subject to application to and approval of the Court, Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees, past, current, or future litigation expenses (including, but not limited to, experts' and consultants' fees and expenses); and any incentive awards to the Plaintiffs. The Cadbury Defendants agree not to oppose such an application. Attorneys' fees and expenses authorized by the Court shall be payable from the Settlement Fund, notwithstanding the existence of any timely filed objections to

the Settlement, to any payment of attorneys' fees and expenses or to any incentive award, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, if the Effective Date does not occur, or the Settlement Agreement is subject to successful collateral attack, or the fee or cost amount is reduced or reversed.

I. Rescission if this Agreement is Not Finally Approved

45. If the Court refuses to approve this Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 35 of this Agreement, or if the Court enters the final judgment and appellate review is sought and, on such review, such final judgment is not affirmed, then the Cadbury Defendants and the Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety.

J. Option to Rescind

46. Under certain circumstances, the Cadbury Defendants have the option to terminate this Agreement. If the Cadbury Defendants exercise this termination right, the Settlement Fund and any residual amount remaining in the Notice and Administration Cost Fund, if any, shall be returned forthwith to the Cadbury Defendants. This option is set forth in a separate letter agreement that will not be

filed with the Court presiding over the Action unless and until (1) the Court presiding over the Action orders that the separate letter agreement be filed, or (2) a dispute arises among the parties concerning the interpretation or application of the separate letter agreement. If either of the foregoing events occurs, the separate letter agreement shall be filed under seal unless otherwise ordered by the Court.

**K. Rights In The Event of Rescission Or
If Agreement Does Not Become Effective**

47. In the event this Agreement does not become effective for any reason, the Settlement Fund (including all interest earned thereon) less any disbursements properly made in accordance with this Agreement shall be returned forthwith to the Cadbury Defendants; and all funds remaining in the \$250,000 Initial Notice and Administrative Cost Fund after all disbursements have been made pursuant to Paragraph 41 hereinabove shall also be returned forthwith to the Cadbury Defendants.

48. The Cadbury Defendants and Plaintiffs expressly reserve all of their rights if this Agreement does not become effective or if it is rescinded by the Cadbury Defendants pursuant to Paragraph 46 of this Agreement. Further, Plaintiffs and the Cadbury Defendants agree that this Agreement, whether or not it is finally approved and whether or not the Cadbury Defendants elect to rescind it under Paragraph 46 of this Agreement, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an

admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by any Defendant, or of the truth of any of the claims or allegations contained in the Complaint or any other pleading filed by Plaintiffs in the Action, and evidence thereof shall not be discoverable nor used directly or indirectly, in any way, whether in the Action or in any other action or proceeding. However, in the event of rescission or if the Settlement does not become effective, the Cadbury Defendants agree to make two additional fact witnesses available for deposition upon reasonable notice by Plaintiffs. Such deponents shall be made available and depositions taken pursuant to the terms set forth in Paragraph 50.

L. Cooperation Agreement

49. The Cadbury Defendants shall support Plaintiffs' preparation and prosecution of their Claims as alleged in the Action by providing the cooperation described in Paragraphs 50 through 53 herein.

50. The Cadbury Defendants agree to use reasonable efforts to provide full cooperation, in the form of interviews and testimony, if requested by Plaintiffs, by up to seven identified individuals under the Cadbury Defendants' control or formerly under the Cadbury Defendants' control. The Cadbury Defendants agree to use reasonable efforts to make up to seven (7) witnesses available for interview by Plaintiffs' counsel, a deposition under oath if requested by Plaintiffs, and/or trial testimony in this matter, if necessary, without the need for Plaintiffs to

subpoena such witnesses or, if outside the United States, without the need to comply with any applicable legal requirements. Depositions shall be administered pursuant to the Federal Rules of Civil Procedure (U.S.), regardless of the location at which they take place or the citizenship of the deponent. No provision of any foreign procedural law, whether based in case law, statutory law, or public policy, shall override the Federal Rules of Civil Procedure during the taking of such depositions. Upon reasonable request by the Plaintiffs, the Cadbury Defendants will also make witnesses available either to provide a written declaration under Federal Rules of Evidence 902(11) and/or 902(12) or to testify under oath regarding the authenticity and “business records” qualifications of Cadbury documents, to the extent that the above named witnesses are unable or unwilling to do so. To the extent another witness(es) with uniquely relevant information (i.e., relevant information not otherwise available from any of the other witnesses made available for interviews or deposition) is disclosed to Plaintiffs during any of the above interviews or depositions, the Cadbury Defendants agree to comply with Plaintiffs’ reasonable requests to provide that witness(es) to Plaintiffs for an interview and deposition. Absent extraordinary circumstances, the number of such additional witnesses shall be limited to two. Cadbury agrees to use reasonable efforts to produce those witnesses for deposition or for trial, if necessary, without

the need for Plaintiffs to subpoena such witnesses or, if outside the United States, without the need to comply with any applicable legal requirements.

51. The Cadbury Defendants shall also respond to reasonable document requests consistent with the Federal Rules of Civil Procedure for specific documents identified during the above interviews or depositions and to cooperate with respect to the Local Rules for the Middle District of Pennsylvania and any scheduling, discovery, and case management orders applicable to the Chocolate Antitrust Litigation.

52. Notwithstanding any other provision in this Settlement Agreement, the Cadbury Defendants may assert where applicable the work product doctrine and the attorney-client privilege with respect to any statements, testimony, material, and/or information requested under this Settlement Agreement.

53. The Cadbury Defendants' obligations to cooperate shall not be affected by the release set forth in Paragraph 36 of this Settlement Agreement. Unless this Agreement is rescinded, disapproved, or otherwise fails to take effect, the Cadbury Defendants' obligations to cooperate under this Agreement shall continue until the date that final judgment has been rendered in the Action against all Defendants, and shall terminate at that time.

M. Taxes

54. Settlement Class Counsel shall be solely responsible for directing the Settlement Administrator to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Fund. Further, Settlement Class Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the funds in the Escrow Account. Settlement Class Counsel shall be entitled to direct the Escrow Agent to pay customary and reasonable Tax Expenses, including professional fees and expenses incurred in connection with carrying out their responsibilities as set forth in this Paragraph, from the applicable amounts in the Escrow Account by notifying the Escrow Agent in writing. The Cadbury Defendants shall have no responsibility to make any tax filings relating to this Settlement Agreement or the amounts in the Escrow Account, and shall have no responsibility to pay Taxes on any income earned by the amounts in the Escrow Account, or to pay any Taxes with respect thereto unless this Agreement is rescinded and the Settlement Fund and any residual amount, if any, in the Notice and Administration Cost Fund are returned to the Cadbury Defendants. Other than as specifically set forth herein, the Cadbury Defendants shall have no responsibility for the payment of Taxes or Tax Expenses.

55. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “Administrator” of the Escrow Account shall be the Settlement Administrator, who shall timely and properly file or cause to be filed on a timely basis, all tax returns necessary or advisable with respect to the Escrow Accounts (including without limitation all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B 2(1)).

56. The parties to this Agreement and their counsel shall treat, and shall cause the Settlement Administrator to treat the Escrow Account as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B 1. The parties, their counsel, the Settlement Administrator, and the Escrow Agent agree that they will not ask the Court to take any action inconsistent with the treatment of the Escrow Account in such manner. In addition, the Settlement Administrator and, as required, the parties shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B 1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and

thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Escrow Account being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B 1.

N. Miscellaneous

57. Settlement Class Counsel and the Cadbury Defendants understand and acknowledge that this is a compromise settlement and release without any admission of civil damage liability on the part of the Cadbury Defendants.

58. This Agreement does not settle or compromise any claim by Plaintiffs or any Settlement Class members asserted in the Action against any Defendant or alleged co-conspirator other than the Releasees, and shall not reduce the liability of any Defendant or alleged co-conspirator other than the Releasees except as provided by law. All rights of Plaintiffs or any Settlement Class member against Defendants or alleged co-conspirators or any other person or entity other than the Releasees are specifically reserved by Plaintiffs and the Class Member.

59. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and the Cadbury Defendants.

60. This Agreement constitutes the entire agreement among Plaintiffs and the Cadbury Defendants pertaining to the settlement of the Action against the Cadbury Defendants only and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and the Cadbury Defendants in connection therewith. This Agreement may be modified or amended only by a writing executed by Plaintiffs and the Cadbury Defendants and approved by the Court. Amendments and modifications to this Agreement may be made without notice to the Settlement Class unless notice is required by law or by the Court.

61. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Releasors and Releasees. Without limiting the generality of the foregoing and subject to the Effective Date occurring: (a) each and every covenant and agreement made herein by Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasors, and (b) each and every covenant and agreement made herein by the Cadbury Defendants shall be binding upon all Releasees.

62. This Agreement may be executed in counterparts by Plaintiffs and the Cadbury Defendants, and a facsimile or scanned signature shall be deemed an original signature for purposes of executing this Agreement.

63. Neither the Cadbury Defendants nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the

purpose of 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 Agreement.

64. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Class Members, Releasers, and Releasees any right or remedy under or by reason of this Agreement.

65. Where this Agreement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by facsimile, email or letter by overnight delivery.

66. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

Dated: April 28, 2011

MORRISON & FOERSTER LLP

By: 

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Dated: April 25th, 2011

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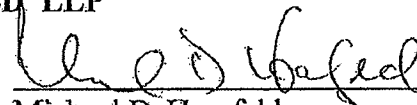
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**Co-Lead Counsel for Direct
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Dated: April 25, 2011

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