

**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 RELATES TO** :  
**ALL INDIRECT END USER** :  
**ACTIONS** :  
\_\_\_\_\_ :

**ORDER GRANTING PRELIMINARY APPROVAL OF  
PROPOSED SETTLEMENT WITH THE CADBURY DEFENDANTS**

It is hereby ORDERED AND DECREED as follows:

The motion (Doc. 989) for preliminary approval of the proposed settlement with Cadbury plc, Cadbury Holdings, Ltd., and Cadbury Adams Canada, Inc. (collectively, “the Cadbury Defendants”) is hereby GRANTED.

1. For purposes of the settlement with the Cadbury Defendants (and only for such purposes, without any impact upon the issues between any of the Plaintiffs

and any of the non-settling Defendants), the Court preliminarily finds that the requirements of Rule 23 of the Federal Rules of Civil Procedure have been satisfied with respect to the Settlement Class. At this preliminary certification phase, and only for purposes of the settlement with the Cadbury Defendants, the Settlement Class is defined as follows:

All persons and/or entities residing in the United States who indirectly purchased Chocolate Candy, for their own use and not for resale, from any Defendant or any predecessor, controlled subsidiary, affiliate or division of any Defendant, in, or for delivery into, any state that has enacted a statute extending standing to indirect purchasers asserting claims under state or local antitrust, unfair competition, consumer protection, unfair practices, trade practice, or civil conspiracy law, including but not limited to the states of Arizona, California, the District of Columbia, Florida, Guam, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, New Mexico, Nebraska, New York, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Utah, Vermont and Wisconsin, and manufactured by or for 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”). Excluded from the Class are Defendants, their co-conspirators, all present or former parents, predecessors, subsidiaries or affiliates of Defendants, and all governmental entities. Nothing in this Agreement is intended to or shall limit the rights of any state attorney general.

2. The Court concludes that, for the sole purpose of the settlement with the Cadbury Defendants, and without adjudication on the merits, the Settlement Class is sufficiently well-defined and cohesive to merit preliminary approval. Neither this Order nor any final order regarding the settlement with the Cadbury

Defendants shall have any effect on the Court's consideration and determination of class certification or any other issue with respect to the non-settling Defendants.

3. Pursuant to Rule 23(a) (1), the Court determines that the Settlement Class is so numerous that joinder of all members is impracticable.

4. For purposes of preliminary approval, the commonality requirement of Rule 23(a)(2) is satisfied because Plaintiffs have alleged one or more questions of fact and law common to the Settlement Class, including whether the Cadbury Defendants violated the Sherman Antitrust Act, 15 U.S.C. § 1, et seq., and the antitrust and/or various other laws of the following states: Arizona, California, the District of Columbia, Florida, Guam, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, New Mexico, Nebraska, New York, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Utah, Vermont and Wisconsin, engaging in an unlawful conspiracy to fix, raise, maintain and/or stabilize prices of Chocolate Candy sold in the United States.

5. The Court hereby approves the Plaintiffs named in the Fourth Amended Consolidated Complaint, filed December 6, 2010, as Representative Plaintiffs of the Settlement Class pursuant to Rule 23(a)(3), and finds that, for settlement purposes only, these Representative Plaintiffs' claims are typical of the claims of the Settlement Class. The claims of the Representative Plaintiffs and

absent class members rely on the same legal theories and arise from the same alleged conspiratorial conduct by Defendants, namely, the agreement to fix, raise, maintain and/or stabilize prices of Chocolate Candy sold in the United States.

6. The Court preliminarily finds that the Representative Plaintiffs will fairly and adequately protect the interests of the Settlement Class in satisfaction of the requirements of Rule 23(a)(4) because: (1) the interests of the Representative Plaintiffs are consistent with those of the Settlement Class members; (2) there appear to be no conflicts between or among the Representative Plaintiffs and the other Settlement Class members; (3) the Representative Plaintiffs have been and appear to be capable of continuing to be active participants in both the prosecution and the settlement of this litigation; and (4) the Representative Plaintiffs and the Settlement Class members are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated class action cases, including those concerning violations of antitrust law.

7. The Court preliminarily finds that, for purposes of this settlement only, questions of law or fact common to members of the Settlement Class predominate over questions affecting only individual members of the Settlement Class under Rule 23(b)(3). Further, a class action resolution in the manner proposed in the Settlement Agreement would be superior to other available methods for a fair and efficient adjudication of the litigation with respect to the

Cadbury Defendants. In making these preliminary findings, the Court has considered, *inter alia*, (1) the interest of the Settlement Class members in individually controlling the prosecution or defense of separate actions; (2) the impracticality or inefficiency of prosecuting or defending separate actions; (3) the extent and nature of any litigation concerning these claims already commenced; and (4) the desirability of concentrating the litigation of the claims in a particular forum.

8. At this juncture, the Court makes no determination regarding the manageability of this litigation as a class action, if this litigation were to go to trial.

9. The Court hereby also approves the following law firms as Settlement Class Counsel pursuant to Rule 23(g), and finds that, for settlement purposes only, these Settlement Class Counsel have and will fairly and adequately protect the interests of the Settlement Class: Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C. and Lovell Stewart Halebian & Jacobson LLP.

10. The Court finds that the proposed settlement with the Cadbury Defendants, as set forth in the Settlement Agreement, subject to final determination following proper notice and a fairness hearing, is sufficiently fair, reasonable and adequate to authorize dissemination of notice to the Settlement Class.

11. The Court approves the form and content of the Notice of Pendency of Class Action, Proposed Partial Settlement of Class Action, Settlement Hearing, and

Right to Appear (“Notice”), attached hereto as Exhibit A, the summary notice to indirect end user purchasers, (“Summary Notice”), attached hereto as Exhibit B, and the press release attached hereto as Exhibit C (“Press Release”) to be issued through *PR Newswire*.

12. The Court finds that the publication of the Summary Notice, and the issuance of the Press Release in the manner set forth herein constitute the best notice practicable under the circumstances and is due and sufficient notice to the Indirect End User Settlement Class and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States.

13. By Monday, October 3, 2011, Plaintiffs’ counsel are hereby directed to cause the Summary Notice to Indirect End User Consumers, substantially in the form attached hereto as Exhibit B, to be published in *USA Weekend*, *USA Today*, *Maui News*, and *Guam Pacific Daily News*, and the Press Release, substantially in the form attached as Exhibit C, to be issued through *PR Newswire*.

14. All requests for exclusion from the Settlement Class must be postmarked no later than Friday, October 21, 2011, and must otherwise comply with the requirements set forth in the Notice.

15. Each member of the Settlement Class shall retain all rights and causes of action with respect to claims against all Defendants other than the Cadbury

Defendants, regardless of whether such member of the Settlement Class decides to remain in the Settlement Class or to exclude itself from the Settlement Class.

16. By Friday, November 4, 2011, Plaintiffs' Counsel shall file with the Court and serve on the parties their motion for final approval of the Settlement Agreement.

17. By Monday, November 28, 2011, Plaintiffs' Counsel shall cause to be filed with the Clerk of this Court, and served upon counsel for Defendants, affidavits or declarations of the person under whose general direction the publication of the Summary Notice and the issuance of the Press Release were made, showing that publication and issuance were made in accordance with this Order.

18. Any member of the Settlement Class who objects to the settlement must do so in writing. The objection must include the caption of this case, be signed, and be sent to the Court, Plaintiffs' Counsel, and Counsel for the Cadbury Defendants postmarked no later than Monday, November 28, 2011 and shall otherwise comply with the requirements set forth in the Notice. Any member of the Settlement Class who wishes to speak at the Fairness Hearing must submit a letter notifying the Court, Plaintiffs' Counsel, and Counsel for the Cadbury Defendants postmarked no later than Monday, November 28, 2011 and shall otherwise comply with the requirements set forth in the Notice.

19. On or before Monday, December 5, 2011, Plaintiffs' Counsel shall file with the Court and serve on the parties their responses to any objections to the settlement.

20. The Court will hold a Fairness Hearing on Monday, December 12, 2011 at 10:30 a.m. to determine the fairness, reasonableness, and adequacy of the proposed settlement with the Cadbury Defendants. Any member of the Settlement Class who follows the procedure set forth in the notices may appear and be heard at this hearing. The Fairness Hearing may be continued without further notice to the Settlement Class.

21. The Court approves the establishment of two escrow accounts, as set forth in the Settlement Agreement, as "Qualified Settlement Funds" pursuant to Treas. Reg. § 1.468B 2(1). The Court retains continuing jurisdiction over any issues regarding the formation or administration of the escrow accounts. Plaintiffs' Counsel and their designees are authorized to expend funds from the escrow accounts to pay Taxes, Tax Expenses and notice and administration costs, as set forth in the Settlement Agreement.

22. The Court grants Plaintiffs' counsel the right to make withdrawals from the Notice and Administration Fund for payment of the cost of notice(s) to potential members of the Settlement Class regarding the Settlement Agreement and related matters, and other costs and expenses reasonably incurred in connection

with the administration of the Settlement Agreement (the “Administrative Expenses”), without the approval of the Court in each instance, so long as (a) the Administrative Expenses incurred or contracted for are reasonable and necessary to carry out the transactions contemplated by the Settlement Agreement, and (b) counsel for the Cadbury Defendants shall receive from Settlement Class Counsel a full accounting of all expenditures made from the Notice and Administration Fund in the event such funds are returned to the Cadbury Defendants under the terms of the Settlement Agreement.

23. The Notice Company, Inc. is approved to serve as Settlement Administrator for the Indirect End User Class Actions.

24. The litigation against the Cadbury Defendants in this action is hereby stayed, pending further order of the Court.

SO ORDERED this 12th day of August, 2011.

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S/ Christopher C. Conner  
CHRISTOPHER C. CONNER  
United States District Judge