

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION**

IN RE: CHOCOLATE : **MDL DOCKET NO. 1935**
CONFECTIONARY ANTITRUST : **(Civil Action No. 1:08-MDL-**
LITIGATION : **1935)**

:

: **(Judge Conner)**

:

THIS DOCUMENT APPLIES TO: :
ALL DIRECT PURCHASER CLASS : ***FILED ELECTRONICALLY***
ACTIONS :

:

:

:

NESTLÉ U.S.A., INC.’S MOTION FOR SUMMARY JUDGMENT

Defendant Nestlé U.S.A., Inc. (“Nestlé USA”) hereby moves for summary judgment on all claims in the Direct Purchaser Plaintiffs’ Consolidated Class Action Complaint (ECF No. 418) pursuant to Federal Rule of Civil Procedure 56 and Rule 56.1 of the Rules of Court of the U.S. District Court for the Middle District of Pennsylvania.

Based upon this Court’s statements during the January 25, 2013 status hearing (*See* 1/25/13 Status Conf. Tr. at 14:12-15:18 (ECF No. 1311)), Nestlé USA expressly incorporates by reference into this motion the summary judgment papers that it previously filed in connection with the Individual Direct Purchaser actions, including Nestlé USA’s Motion for Summary Judgment (ECF No. 1205), its memorandum of law in support of the motion (ECF No. 1213), its reply memorandum of law (ECF No. 1314), the Local Rule 56.1 Statement of

Undisputed Facts in Support of the Defendants' Motions for Summary Judgment (ECF Nos. 1223-74), and the Response to Plaintiffs' Statement of Additional Facts Which Plaintiffs Contend Demonstrate Disputed Issues of Material Fact (ECF No. 1333). This motion is also supported by the concurrently filed Memorandum of Law, the Declaration of Daniel J. Howley and the exhibits thereto, any reply memorandum that Nestlé USA may file, and any oral argument that this court may entertain.

Respectfully submitted,

Dated: May 31, 2013

By: /s/ Peter E. Moll

Michael A. Finio (PA 38872)
SAUL EWING LLP
PNI Plaza, 2nd Floor
2 North Second Street
Harrisburg, PA 17101
Tel: (717) 238-7671
Fax: (717) 257-7585

Peter E. Moll (DC 231282)
Daniel J. Howley (DC 983664)
**CADWALADER, WICKERSHAM &
TAFT LLP**
700 Sixth Street, N.W.
Washington, DC 20001
Tel: (202) 862-2220
Fax: (202) 862-2400

Carmine R. Zarlenga (DC 386244)
Adam L. Hudes (DC 495188)
MAYER BROWN LLP
1999 K Street, N.W.
Washington, D.C. 20006

Tel: (202) 263-3000
Fax: (202) 263-3300

Counsel to Nestlé U.S.A., Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2013, I caused to be served on all counsel listed below, true and correct copies of: Nestlé U.S.A., Inc.'s Motion for Summary Judgment, Nestlé U.S.A., Inc.'s Memorandum of Law in Support of It's Motion for Summary Judgment, the Declaration of Daniel J. Howley in Support of Nestlé U.S.A., Inc.'s Memorandum of Law in Support of It's Motion for Summary Judgment and accompanying exhibits thereto, and Nestlé USA's [Proposed] Order Granting Summary Judgment.

H. Laddie Montague, Jr.
Ruthanne Gordon
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
Tel: (215) 875-3000

Michael D. Hausfeld
Hillary K. Scherrer
William P. Butterfield
Seth R. Gassman
HAUSFELD LLP
1700 K Street, N.W., Ste. 650
Washington, D.C. 20006
Tel: (202) 540-7200

Bruce J. Wecker
HAUSFELD LLP
44 Montgomery Street, Ste. 3400
San Francisco, CA 94104
Tel: (415) 633-1908

Direct Purchaser Class Counsel

Walter W. Cohen
Kevin J. Kehner
**OBERMAYER REBMANN
MAXWELL & HIPPEL LLP**
200 Locust Street, Ste. 400
Harrisburg, PA 17101
Tel: (717) 234-9730

Local Counsel for the Direct Purchaser Class

Steve D. Shadowen
HILLARD & SHADOWEN, LLC
39 W. Main Street
Mechanicsburg, PA 17055
Tel: (855) 344-3298

Joseph T. Lukens
FARUQI & FARUQI LLP
101 Greenwood Ave., Ste. 600
Jenkintown, PA 19046
Tel: (215) 277-5770

Liaison Counsel for the Individual Plaintiffs

Steven F. Benz
Andrew M. Hetherington
Kevin J. Miller
**KELLOGG, HUBER, HANSEN,
TODD, EVANS & FIGEL, PLLC**
Sumner Square
1615 M Street, N.W., Ste. 400
Washington, D.C. 20036
Tel: (202) 326-7929

Christopher Lovell
Craig Essenmacher
Peggy J. Wedgworth
**LOVELL STEWART HALEBIAN
LLP**
61 Broadway, Ste. 501
New York, NY 10006
Tel: (212) 608-1900

Lead Counsel for the Indirect End User Plaintiffs

Roman M. Silberfeld
Bernice Conn
Emily Jarvis
**ROBINS, KAPLAN, MILLER &
CIRESI LLP**
2049 Century Park East, Ste. 3400
Los Angeles, CA 90067
Tel: (310) 552-0130

Steven R. Maher
Michael C. Maher
THE MAHER LAW FIRM
631 West Morse Boulevard, Ste. 200
Winter Park, FL 32789
Tel: (407) 839-0866

K. Craig Wildfang
**ROBINS, KAPLAN, MILLER &
CIRESI LLP**
800 Lasalle Ave., Ste. 2800
Minneapolis, MN 55402
Tel: (612) 349-8554

Joseph U. Metz
Christopher H. Casey
DILWORTH PAXSON LLP
112 Market Street, Ste. 800
Harrisburg, PA 17101
Tel: (717) 236-4812

Joshua D. Wolson
DILWORTH PAXSON LLP
1735 Market Street
3200 Mellon Bank Center
Philadelphia, PA 19103
Tel: (215) 575-7000

Lead Counsel for the Indirect Purchaser for Resale Plaintiffs

Dated: May 31, 2013

By: /s/ Daniel J. Howley
Daniel J. Howley
**CADWALADER, WICKERSHAM &
TAFT LLP**
700 Sixth Street, N.W.
Washington, DC 20001
Tel: (202) 862-2220
Fax: (202) 862-2400

Counsel for Nestlé U.S.A., Inc.