

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

**IN RE CHOCOLATE
CONFECTIONARY ANTITRUST
LITIGATION**

**THIS DOCUMENT APPLIES TO:

ALL CASES**

MDL DOCKET NO. 1935
(Civil Action No. 1:08-MDL-1935)

(Judge Conner)

ELECTRONICALLY FILED

**AMENDED CONSOLIDATED CLASS COMPLAINT OF
INDIRECT PURCHASERS FOR RESALE**

JURY TRIAL DEMANDED

Pursuant to this Court's March 4, 2009 Order, the Class of Indirect Purchasers For Resale ("IPR Plaintiffs" or "Plaintiffs") file this Amended Consolidated Class Complaint for the purpose of adding additional class Plaintiffs, describing the business activities in Iowa and Nebraska of Plaintiff Treat America Limited and to clarify the state laws under which their claims are asserted.

The IPR Plaintiffs by and through their attorneys, bring this action for treble

damages, costs of suit, injunctive and other relief under the antitrust laws of Arizona, California, Iowa, Kansas, Michigan, Minnesota, Nebraska, North Carolina, North Dakota, South Dakota, Tennessee, and Wisconsin and under the consumer statutes of Florida.

Pursuant to this Court's August 11, 2009 Order, this action is brought against defendants Nestlé U.S.A., Inc.; Cadbury plc, Cadbury Holdings Ltd.; Cadbury Adams Canada, Inc.; The Hershey Company; Hershey Canada, Inc.; Mars, Inc.; and Mars Snackfood U.S. LLC.

Plaintiffs state, and intend to state, causes of action solely under the indirect purchaser antitrust laws of said states and the consumer protection statutes of Florida and specifically disclaim any attempt to state a cause of action under the laws of the United States of America, including, without limitation, the Sherman Act, 15 U.S.C. § 1.

The IPR Plaintiffs allege on behalf of themselves and all others similarly situated as follows:

I. NATURE OF THE CASE

1. This action arises out of an international conspiracy among defendants and their co-conspirators to, *inter alia*, artificially inflate, fix, raise, maintain and stabilize the price of chocolate bars and other chocolate candy (collectively "Chocolate Candy") packaged to be sold at retail in the United States and to

engage in other practices that violate the antitrust laws of the aforesaid states. The Antitrust Division of the United States Department of Justice and the Canadian Competition Bureau have commenced investigations of possible price-fixing by the defendants.

2. Defendants are among the leading manufacturers of Chocolate Candy in the world. It is estimated that \$16 billion in Chocolate Candy is sold in the United States every year.

3. Plaintiffs are purchasers of Chocolate Candy for resale. The purchases of Chocolate Candy involved in this class action were not made directly from defendants. Rather, in each instance, one or more non-defendant businesses stood between defendants and the Plaintiffs in the chain of distribution of Chocolate Candy. Thus, this class action involves what in antitrust law are commonly known as “Indirect Purchases.”

4. This action is brought on behalf of a class (“Class”) consisting of all persons and entities in the United States who purchased Chocolate Candy for resale which were manufactured by the named defendants during the period from approximately December 9, 2002 through at least December 20, 2007 (the “Class Period”). As a result of defendants’ unlawful conduct, Indirect Purchasers for Resale paid artificially inflated prices for Chocolate Candy. Such prices exceeded

the amount they would have paid if the prices had been determined in a competitive market.

II. JURISDICTION AND VENUE

5. The Court has jurisdiction over this action pursuant to 15 U.S.C. §§ 15 and 26, and pursuant to 28 U.S.C. §§ 1331, 1337 (a) and 1367. This Court has personal jurisdiction over each of the defendants because each was engaged in an illegal price-fixing scheme and conspiracy that was directed at, and/or caused injury to persons and entities residing in, located in, or doing business in this District and throughout the United States. For the state law antitrust claims of the Indirect Purchaser States and the consumer protection statutes (as defined below in “Definitions”), the Court also has jurisdiction pursuant to 28 U.S.C. §1332 (d) because this is a Class action wherein the matter of controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and some members of the proposed Class are citizens of States different from the defendants.

6. Venue is proper in this judicial district pursuant to 15 U.S.C. § 22 and 28 U.S.C. §1391 (b) and (c) in that defendants conduct a substantial amount of business in this judicial district, some of the defendants have their principal place of business in this district and/or some of the claims arose in this district. This Court has jurisdiction pursuant to 28 U.S.C. § 1407.

III. DEFINITIONS

7. As used in this Complaint:
- a. “Chocolate Candy,” as used herein, refers to chocolate bars and other chocolate confectionery products (*e.g.*, 3 Musketeers, Hershey’s Kisses, Dove Chocolates, M&Ms, etc.) packaged to be sold at retail.
 - b. The “Class Period” means the time period from December 9, 2002 to at least December 20, 2007.
 - c. “Direct Purchasers” are those individuals and/or entities that purchased Chocolate Candy directly from one or more of the defendants.
 - d. “Indirect Purchasers” are those individuals and/or entities that purchased Chocolate Candy manufactured and/or sold by one or more of the defendants, but did not purchase said products directly from any of the defendants. Rather, the purchases were from a "middle-man" - either a Direct Purchaser or another Indirect Purchaser.
 - e. “Indirect Purchasers for Resale” are those Indirect Purchasers that purchased Chocolate Candy not for their own use or consumption, but for the purpose of reselling such products to consumers.
 - f. The “Indirect Purchaser States” are those states identified in this pleading that have enacted antitrust or consumer protection statutes which allow Indirect Purchasers to bring private enforcement actions of such states’

antitrust laws. The “Indirect Purchaser States” include Arizona, California, Florida, Iowa, Kansas, Michigan, Minnesota, Nebraska, North Carolina, North Dakota, South Dakota, Tennessee, and Wisconsin.

IV. THE PARTIES

A. Plaintiffs

8. Plaintiff Treat America Limited (“Treat America”) is a business entity incorporated under the laws of the State of Kansas. Treat America is headquartered in Merriam, Kansas. Treat America also operates warehouses in Des Moines, Iowa; Omaha, Nebraska and Indianapolis, Indiana. Treat America operates approximately 3000 snack/candy vending machines in both public and private locations such as airports, hospitals, employee coffee rooms, and private manufacturing facilities. Treat America’s route drivers stock their trucks on-site at Treat America’s warehouses with products, including Chocolate Candy, for delivery to customers throughout Nebraska, Iowa, Kansas, Indiana and Missouri. Treat America’s route drivers stock and service vending machines installed at customer locations in Kansas, Iowa, Nebraska, Indiana and Missouri.

9. At all relevant times, Treat America was a retail seller of Chocolate Candy to the consuming public. At all relevant times, Treat America was an indirect purchaser of Chocolate Candy manufactured and/or sold by certain defendants and/or their subsidiaries during the Class Period. Chocolate Candy

manufactured by one or more defendants is shipped by Treat America's distributors directly to Treat America's operations in Kansas, Iowa, Nebraska and Indiana. Treat America's purchases included, but were not limited to, Chocolate Candy from defendants Hershey, Nestlé, Mars and Cadbury. Treat America purchased said products from entities which purchased said products directly from defendants and distributed, resold and shipped the products to retailers, such as Treat America.

10. Plaintiff Corporate Services Group ("Corporate Services") is a Florida corporation, headquartered in Tampa Florida. Corporate Services operates vending machines and is an office supplier of food and beverages. Corporate Services also operates warehouses in Clearwater, Sarasota, Sanford, Melbourne, Jacksonville, Gainesville, New Port Richie and Ocala, Florida. Corporate Services' route drivers stock their trucks on-site at Corporate Services' Florida warehouses with products, including Chocolate Candy, for delivery to customers throughout Florida. Corporate Services' route drivers stock and service vending machines installed at customer locations throughout Florida.

11. At all relevant times, Corporate Services was a retail seller of Chocolate Candy to the consuming public. At all relevant times, Corporate Services was an indirect purchaser of Chocolate Candy manufactured and/or sold by certain defendants and/or their subsidiaries during the Class Period. Chocolate

Candy manufactured by one or more defendants is shipped by Corporate Services' distributors directly to all Corporate Service's operations in Florida. Corporate Service's purchases included, but were not limited to, Chocolate Candy from defendants Hershey, Nestlé, Mars and Cadbury. Corporate Services purchased said products from entities which purchased said products directly from defendants and distributed, resold and shipped the products to retailers, such as Corporate Services.

12. Plaintiff SS Distributor, LLC d/b/a JR Foodmart ("JR Foodmart") is an Arizona corporation, headquartered in Phoenix, Arizona. JR Foodmart is a 2800-square foot convenience store. It sells groceries, food, candies, soft drinks, miscellaneous household items, cigarettes, beer, and wine. At all relevant times, JR Foodmart was a retail seller of Chocolate Candy to the consuming public. At all relevant times, JR Foodmart was an indirect purchaser of Chocolate Candy manufactured and/or sold by certain defendants and/or their subsidiaries during the Class Period. JR Foodmart's purchases included, but were not limited to, Chocolate Candy from defendants Hershey, Nestlé, Cadbury and Mars. Chocolate Candy manufactured by one or more defendants is shipped by JR Foodmart's distributors directly to JR Foodmart in Arizona. JR Foodmart purchases said products from entities which purchased said products directly from defendants and distributed, resold and shipped the products to JR Foodmart.

13. GNC Properties, Inc. d/b/a Olive View AMPM (“Olive View”) is a California Corporation. Olive View is a convenience store located in Sylmar, California. It sells groceries, food, candies, soft drinks, miscellaneous household items, cigarettes, beer, and wine. At all relevant times, Olive View was a retail seller of Chocolate Candy to the consuming public. At all relevant times, Olive View was an indirect purchaser of Chocolate Candy manufactured and/or sold by certain defendants and/or their subsidiaries during the Class Period. Chocolate Candy manufactured by one or more defendants is shipped by Olive View’s distributors directly to Olive View in California. Olive View’s purchases included, but were not limited to, Chocolate Candy from defendants Hershey, Nestlé, Cadbury and Mars. Olive View purchases said products from entities which purchased said products directly from defendants and distributed, resold and shipped the products to Olive View.

14. Plaintiff Coborn’s Inc. (“Coborn’s”) is a Minnesota corporation, headquartered in St. Cloud, Minnesota. Coborn’s operates grocery, video, and liquor stores under a variety of names in Minnesota, South Dakota and North Dakota. At all relevant times, Coborn’s was a retail seller of Chocolate Candy to the consuming public. At all relevant times, Coborn’s was an indirect purchaser of Chocolate Candy manufactured and/or sold by certain defendants and/or their subsidiaries during the Class Period. Chocolate Candy manufactured by one or

more defendants is shipped by Coborn's distributors directly to Coborn's stores in Minnesota, North Dakota and South Dakota. Coborn's purchases included, but were not limited to, Chocolate Candy from defendants Hershey, Nestlé, Cadbury and Mars. Coborn's purchases said products from entities which purchased said products directly from defendants and distributed, resold and shipped the products to Coborn's stores in Minnesota, South Dakota and North Dakota.

15. Plaintiff Greater Tricities Services, LLC, d/b/a GTS Refreshment Service ("GTS Refreshment") is a Tennessee limited liability company. GTS Refreshment is a full line vending company headquartered in Kingsport, Tennessee which owns and services all types of vending machines in Tennessee and Virginia. The vending machines are in hospitals, health care facilities, prisons, and all types of office places. GTS Refreshment's route drivers stock their trucks on-site at GTS Refreshment's Tennessee warehouses with products, including Chocolate Candy, for delivery to customers throughout Tennessee and Virginia. GTS Refreshment's route drivers stock and service vending machines installed at customer locations in Tennessee and Virginia.

16. At all relevant times, GTS Refreshment was a retail seller of Chocolate Candy to the consuming public. At all relevant times, GTS Refreshment was an indirect purchaser of Chocolate Candy manufactured and/or sold by certain defendants and/or their subsidiaries during the Class Period.

Chocolate Candy manufactured by one or more defendants is shipped by GTS Refreshment's distributors directly to GTS in Tennessee. GTS Refreshment's purchases included, but were not limited to, Chocolate Candy from defendants Hershey, Nestlé, Mars and Cadbury. GTS Refreshment purchases said products from entities which purchased said products directly from defendants and distributed, resold and shipped the products to GTS Refreshment.

17. Plaintiff Food Express, Inc. ("Food Express") is a North Carolina corporation. Food Express is a contract food service company headquartered in Greensboro, North Carolina with offices in Knightdale and Lowell, North Carolina and Martinsville, Virginia. Food Express operates vending machines in a variety of locations throughout North Carolina, South Carolina and Virginia. Food Express's route drivers stock their trucks on-site at Food Express warehouses in North Carolina with products, including Chocolate Candy, for delivery to customers throughout North Carolina, South Carolina and Virginia. Food Express's route drivers stock and service vending machines installed at customer locations in North Carolina, South Carolina and Virginia.

18. At all relevant times, Food Express was a retail seller of Chocolate Candy to the consuming public. At all relevant times, Food Express was an indirect purchaser of Chocolate Candy manufactured and/or sold by certain defendants and/or their subsidiaries during the Class Period. Chocolate Candy

manufactured by one or more defendants is shipped by Food Express's distributors directly to Food Express in North Carolina. Food Express's purchases included, but were not limited to, Chocolate Candy from defendants Hershey, Nestlé, Mars and Cadbury. Food Express purchases said products from entities which purchased said products directly from defendants and distributed, resold and shipped the products to Food Express.

19. Plaintiff All Star Services, Inc. ("All Star") is a Michigan corporation. All Star is headquartered in Port Huron, Michigan, with offices in Cass City, Saginaw and Sterling Heights, Michigan. All Star operates vending machines and supplies offices with food and beverages in a variety of locations throughout Michigan. All Star's route drivers stock their trucks on-site at All Star's Michigan warehouses with products, including Chocolate Candy, for delivery to customers throughout Michigan and stock and service vending machines installed at customer locations throughout Michigan.

20. At all relevant times, All Star was a retail seller of Chocolate Candy to the consuming public. At all relevant times, All Star was an indirect purchaser of Chocolate Candy manufactured and/or sold by certain defendants and/or their subsidiaries during the Class Period. Chocolate Candy manufactured by one or more defendants is shipped by All Star's distributors directly to All Star in Michigan. All Star's purchases included, but were not limited to, Chocolate Candy

from defendants Hershey, Nestlé, Mars and Cadbury. All Star purchases said products from entities which purchased said products directly from defendants and distributed, resold and shipped the products to All Star.

21. Plaintiff The Konop Companies (“Konop”) are incorporated in Wisconsin. Konop is headquartered in Green Bay, Wisconsin with offices in Shawano and Marinette, Wisconsin. Konop operates vending machines and supplies offices with food and beverages in a variety of locations throughout Wisconsin. Konop’s route drivers stock their trucks on-site at Konop’s Wisconsin warehouses with products, including Chocolate Candy, for delivery to customers throughout Wisconsin. Konop’s route drivers stock and service vending machines installed at customer locations throughout Wisconsin.

22. At all relevant times, Konop was a retail seller of Chocolate Candy to the consuming public. At all relevant times, Konop was an indirect purchaser of Chocolate Candy manufactured and/or sold by certain defendants and/or their subsidiaries during the Class Period. Chocolate Candy manufactured by one or more defendants is shipped by Konop’s distributors directly to Konop in Wisconsin. Konop’s purchases included, but were not limited to, Chocolate Candy from defendants Hershey, Nestlé, Mars and Cadbury. Konop purchases said products from entities which purchased said products directly from defendants and distributed, resold and shipped the products to Konop.

B. Defendants

23. Defendant Nestlé U.S.A., Inc. (“Nestlé”) is a Delaware corporation with its headquarters located at 800 North Brand Boulevard, Glendale, California. Nestlé U.S.A. is the United States subsidiary of Nestlé, S.A. At all relevant times, Nestlé U.S.A. manufactured, marketed, sold and/or distributed Chocolate Candy for retail sale in the United States, including, but not limited to the Indirect Purchaser States.

24. Defendant Cadbury plc is a British entity with its principal place of business at 25 Berkeley Square, London, W1J 6HB, United Kingdom. Before May 8, 2008, Cadbury plc was known as Cadbury Schweppes plc. On May 8, 2008, Cadbury plc completed a demerger of its Schweppes beverage business from its Cadbury confectionery business. Cadbury plc is the world’s largest confectionery company. During the Class Period, Cadbury licensed several popular chocolate confectionery products to Hershey for sale in the United States, including York Peppermint Pattie, Mounds and Almond Joy. Cadbury plc organizes its business by geographic region and includes the U.S. and Canada in its Americas region. At all relevant times, Cadbury plc manufactured, marketed, sold and/or distributed Chocolate Candy to purchasers in the United States, including, but not limited to the Indirect Purchaser States.

25. Defendant Cadbury Adams Canada, Inc. (“Cadbury Canada”) is a Canadian corporation with its headquarters located at 5000 Yonge Street, Suite 2100, Toronto, Ontario, Canada. Cadbury Canada is a subsidiary of defendant Cadbury Schweppes. At all relevant times, Cadbury Canada manufactured, marketed, sold and/or distributed Chocolate Candy to direct purchasers to be re-sold to Indirect Purchasers for Resale and/or other Indirect Purchasers, in the United States, including, but not limited to the Indirect Purchaser States.

26. Defendant Cadbury Holdings Ltd. (“Cadbury Holdings”) is a British entity with its principal place of business at 25 Berkeley Square, London, W1J 6HB, United Kingdom. At all relevant times, Cadbury Holdings Ltd. manufactured, marketed, sold and/or distributed Chocolate Candy to purchasers in the United States, including, but not limited to the Indirect Purchaser States.

27. Defendants Cadbury plc, Cadbury Holdings, Ltd. and Cadbury Canada are collectively referred to herein as “Cadbury.”

28. Defendant The Hershey Company is a Delaware corporation with its headquarters located at 100 Crystal A Drive, Hershey, Pennsylvania. The Hershey Company is the largest North American manufacturer of Chocolate Candy. The Hershey Company reports global revenues of nearly \$5 billion and has more than 13,000 employees worldwide. The Hershey Company produces numerous popular brand-name Chocolate Candy including *Hershey’s*, *Reese’s*, *Hershey’s Kisses* and

Fifth Avenue. At all relevant times, The Hershey Company manufactured, marketed, sold and/or distributed Chocolate Candy in the United States, including, but not limited to the Indirect Purchaser States.

29. Defendant Hershey Canada, Inc. (“Hershey Canada”) is a Canadian corporation with its headquarters located at Airport Corporate Centre, 5750 Explorer Drive, Suite 500, Mississauga, Ontario, Canada. Hershey Canada is a wholly owned subsidiary of defendant, The Hershey Company. At all relevant times, Hershey Canada manufactured, marketed, sold and/or distributed Chocolate Candy to purchasers in the United States, including, but not limited to the Indirect Purchaser States.

30. Defendants The Hershey Company and Hershey Canada are collectively referred to herein as “Hershey”.

31. Defendant Mars, Inc. is a Delaware corporation with its headquarters located at 6885 Elm St, McLean, Virginia. Mars Inc. is one of the world’s leading food manufacturers with more than \$7 billion in annual sales and more than 12,000 employees in the United States. Mars, Inc. produces some of the world’s best-selling brand-name Chocolate Candy including *Mars*, *M&Ms*, *Snickers*, *Twix* and *Dove*. At all relevant times herein, Mars, Inc. manufactured, marketed, sold and/or distributed Chocolate Candy in the United States, including, but not limited to the Indirect Purchaser States.

32. Defendant Mars Snackfood U.S. LLC is headquartered at 800 High Street, Hackettstown, New Jersey. It is a business unit of Mars, Inc. At all relevant times, Mars Snackfood U.S. LLC manufactured, marketed, sold and/or distributed Chocolate Candy to purchasers in the United States, including, but not limited to the Indirect Purchaser States.

33. Defendants Mars, Inc. and Mars Snackfood U.S. LLC, are collectively referred to herein as “Mars.”

C. Agents and Co-Conspirators

34. The acts alleged against the defendants in this Complaint were authorized, ordered, or done by their officers, agents, employees, or representatives, while actively engaged in the management and operation of defendants’ businesses or affairs.

35. Certain other persons, firms, corporations and entities have participated as unnamed co-conspirators of defendants in the violations and conspiracy alleged herein. In order to engage in the offenses charged and violations alleged herein, these co-conspirators have performed acts and made statements in furtherance of the antitrust violations and conspiracies alleged herein.

36. At all relevant times, each defendant was an agent of each of the remaining defendants, and in doing the acts alleged herein, was acting within the course and scope of such agency. Each defendant ratified and/or authorized the

wrongful acts of each of the defendants. Defendants, and each of them, are individually sued as participants and as aiders and abettors in the improper acts and transactions that are the subject of this action.

V. CLASS ACTION ALLEGATIONS

37. Plaintiffs bring this action both on behalf of themselves individually, and as a class action pursuant to Federal Rules, Civil Procedure, Rule 23 (a) and (b)(3), on behalf of the following class (the “Class”):

All persons and entities who indirectly purchased Chocolate Candy for resale in the states of Arizona, California, Florida, Iowa, Kansas, Michigan, Minnesota, Nebraska, North Carolina, North Dakota, South Dakota, Tennessee, and Wisconsin manufactured and/or distributed by one or more of the defendants between December 9, 2002 to at least December 20, 2007 (the “Class Period”). The class does **not** include: (1) defendants; (2) defendants’ parents, subsidiaries, or affiliates; (3) any purchasers of Chocolate Candy who purchased such products directly from the defendants; (4) any purchaser of Chocolate Candy who purchased such products for their own use; (5) any purchaser of Chocolate Candy who purchased such products for a purpose other than for resale; (6) any governmental entities; (7) any co-conspirators; or (8), any judicial officer to whom this case is assigned.

38. Plaintiffs do not know the exact number of Class members. The true number of Class members is likely to be known by defendants, however, and thus, may be notified of the pendency of this action by published notice or other alternative means. Plaintiffs believe that, due to the nature of the trade and commerce involved, there are most likely thousands of Class members

geographically dispersed throughout the United States such that a joinder of all Class members is impracticable.

39. Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs and the members of the Class indirectly purchased for resale Chocolate Candy from one or more of the defendants at artificially maintained, supra-competitive prices established by the actions of defendants as alleged herein in restraint of trade, all Class members were damaged by the same wrongful conduct, and the relief sought is common to the Class.

40. Numerous questions of law or fact arise from defendants' anti-competitive conduct that are common to the Class. These common questions include:

- a. whether defendants engaged in a contract, combination or conspiracy amongst themselves to fix, maintain or stabilize the prices of, or allocate the market for, Chocolate Candy which was purchased by the Class;
 - b. whether defendants' conduct violated the relevant state antitrust laws and common law;
 - c. whether the defendants' conduct caused prices of Chocolate Candy purchased by the Class to be artificially inflated to non-competitive levels;
- and

d. whether Plaintiffs and the other members of the Class were injured by defendants' conduct, and if so, the appropriate class-wide measure of damages and appropriate injunctive relief.

41. These common questions of law or fact are common to the Class and predominate over any other questions affecting only individual Class members.

42. Plaintiffs will fairly and adequately represent the interests of the Class in that they are typical Indirect Purchasers for Resale of Chocolate Candy manufactured and/or distributed by defendants, and have no conflicts with any other members of the Class. Furthermore, Plaintiffs have retained competent counsel, experienced in complex, antitrust and class-action litigation.

43. A class action is superior to the alternatives, if any, for the fair and efficient adjudication of this controversy. Prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for the defendants. Treatment as a class action will achieve substantial economies of time, effort and expense. This class action presents no material difficulties in management.

44. Injunctive and/or declaratory relief is appropriate as to the Class as a whole because defendants have acted or refused to act on grounds generally applicable to the Class.

VI. FACTUAL ALLEGATIONS

A. The Chocolate Market

45. The market for Chocolate Candy in the United States is approximately \$16 billion. During the Class Period, defendants controlled the majority of the Chocolate Candy market in the United States and Canada. In 2006 for example, The Hershey Company had a United States market share of approximately 43%, Mars, Inc. had nearly 25%, and Nestlé U.S.A. had 8%. Cadbury also had a significant portion of the remaining Chocolate Candy market in the United States. In Canada, Hershey Canada, Mars Canada, Nestlé Canada, and Cadbury Canada control approximately two thirds of the Chocolate Candy market. The concentration of market share among a small number of manufacturers, facilitated defendants' ability to conspire to fix the prices of Chocolate Candy.

46. The "buyer" side of the market is highly diffuse, consisting of all manner of wholesale distributors, chain grocery stores, mass merchandisers, chain drug stores, vending companies, wholesale clubs, convenience stores, dollar stores, concessionaires, department stores and other outlets. Because of the sheer number and diversity of buyers, in comparison to the highly concentrated "seller" side, buyers are not able to influence prices in any meaningful way.

47. All Chocolate Candy serves the same purpose for consumers as packaged chocolate snacks, sold in standardized sizes. In this regard, Chocolate Candy consists of undifferentiated, fungible, commodity-like products.

48. Each defendant produces and sells chocolate candy bars, bagged chocolate products and seasonal novelty chocolates that are interchangeable and in competition with chocolate candy bars, bagged chocolate products and seasonal novelty chocolates offered by other defendants.

49. As wholesale packages, defendants' respective collections of Chocolate Candy are also fungible. Thus, for example, the collection of Chocolate Candy that Mars offers to retailers is interchangeable with the collection of Chocolate Candy that Hershey or Nestlé offers to retailers.

50. Additionally, the Chocolate Candy markets in Canada and the United States are intermingled. In 2005, the United States Department of Agriculture reported that the United States supplied 45% of Canadian Chocolate Candy by value. Similarly, according to the 2007 Matrade New York Report, Canada was the largest exporter of Chocolate Candy to the United States from 2004 through 2006.

51. Every year, Candy Industry, the global magazine of chocolate and confectionery companies, publishes a list of the top 100 global confectionery companies that manufacture Chocolate Candy in the United States. In 2005, all of

the defendants were in the top 5 on this list. Below is a table showing their total sales value:

Company	Total U.S. Sales 2005
Mars	\$9,546,000,000
Cadbury	\$8,126,000,000
Nestlé	\$7,973,000,000
Hershey	\$4,881,000,000

52. There are high barriers to entry to the Chocolate Candy market in the form of technical know-how, brand recognition and advertising, and access to distribution channels. Because of their high collective market share in the United States and Canada, defendants are able to exercise market power in the United States and Canada, including the ability to raise prices. Industry commentators have noted these high barriers to entry. The 2007 MATRADE New York report mentioned above stated: “[t]he US Chocolate market is a mature market. Private label companies and upstarts face high barriers to entry from the leading manufacturers. The Hershey’s Corporation and Mars, Inc. dominate the US chocolate confectionery industry, with Nestlé the only foreign manufacturer who has made inroads with the US market.”

53. While barriers to entry are very high, there are essentially no barriers to expansion. Defendants typically operate at significantly less than full capacity. Consequently, they have the ability to compete against one another – if they want

to – for market share both by manufacturing more product and by introducing new products.

54. From the mid-1990s until December 2002, prices for Chocolate Candy were stable in the United States. In late 2002, defendants began announcing a series of unprecedented parallel price increases for Chocolate Candy, including the following:

55. In December 2002, within a week of each other, defendants announced price increases for Chocolate Candy. On or about December 9, 2002, Mars instituted price increases of approximately 10.7% on its regular sized chocolate bars (“Singles”), and approximately 22% on its Multi-Pack Six Packs for several of its chocolate bars (Milky Way, Snickers, 3 Musketeers, Snickers Almond, Twix Caramel Cookie), purportedly driven by the rising cost of raw materials, labor and transportation.

56. On or about December 11, 2002, Hershey announced a price increase of approximately 10.7% for its regular sized chocolate bars (“Standard Bars”) effective January 1, 2003, approximately 13.6% for its King Size bars, approximately 7.6% for its 6-Packs of bars, and approximately 15.4% for its 10-Packs of bars. Hershey and Mars falsely justified the price increase as being necessitated by the rising cost of cocoa.

57. On or about December 13, 2002, Nestlé instituted a price increase of approximately 10.3% on its regular sized chocolate bars (“Singles”), approximately 14.5% on its king size bars (“Kings”) and approximately 16.8% on its multi-count packs (“10-pack”). Nestlé noted it had been seven years since its last price increase and blamed the increase on raw material, packaging, labor and transportation costs.

58. In July 2003, Hershey reported that its second quarter net profit rose to \$71.5 million, an increase of \$8.4 million over the prior year. Hershey attributed its increased profits, in part, to the price increase announced in December 2002 as well as decreasing raw material costs.

59. On or about November 19, 2004, Mars announced a second price increase on its baglines (“Peg Packs”, “Small Bags,” “Medium Bags”, “Large Bags,” “X-Large Bags,” and “Travel Cups”) ranging from 2.9% to 15.6% effective on November 19, 2004. On or about on December 17, 2004, Mars also instituted price increases of approximately 5.5% on its regular bars (“Singles”), approximately 8.5% on its Multi-Pack Six Packs, and approximately 4.7% on its King Size Packs.

60. On or about December 15, 2004 Hershey instituted a second price increase of approximately 5.5% on its Standard Bars, approximately 4.7% on its King Size bars, approximately 8.5% on its 6-Packs, approximately 5.5% on its

Variety Packs, and increases ranging from approximately 2.5% to 7.6% on its Chocolate Packaged Candy, Large Chocolate Peg bags, Kisses Peg Bags, and Travel Cups.

61. On or about December 22, 2004, Nestlé instituted a price increase of approximately 5.7% on its regular chocolate bars (“Singles”), approximately 4.8% on its king size bars (“King Bars”), approximately 7.7% on its 6-Packs of chocolate bars, approximately 7.5% on Chocolate Peg Bags and Chocolate Miniatures and additional price increases on other chocolate candy products.

62. In April 2007, defendants again increased the price of Chocolate Candy by approximately 5%. Mars led the price increase, claiming that it was necessary due to rising costs. Prudential analyst John McMillin predicted that Hershey’s earnings would not be impacted by the price increase because Mars “is also taking pricing up, so Hershey is not out there alone, we think, in this chocolate price increase.”

63. On or about March 23, 2007, Mars instituted price increases of approximately 5.3% on its regular chocolate bars (“Singles”), its Multi Packs, its 6-Packs and its Variety Packs, approximately 4.5% for its King-size bars, and approximately 15% for its Dove Packages, citing raw material cost increases and increasing advertising and labor costs.

64. On or about April 4, 2007, Hershey announced price increases effective April 7, 2007 of approximately 5.2 % for Standard Bars, Standard Size Variety Packs, and 6 Packs, and approximately 4.5% for King Size Bars and King Size Variety Packs, citing raw material and other cost increases.

65. On or about April 5, 2007, Nestlé instituted price increases of approximately 5.4%, on its regular chocolate bars (“Singles”), approximately 4.6% on its king size bars (“Kings”) , approximately 4.6% on its 6 packs (“6 Pack Trays”), as well as additional price increases on other chocolate candy products.

66. Contrary to these purported reasons for increased prices, defendants were in fact exchanging their pricing information and monitoring price increases, so that one defendant would not get too far above the others, and so that artificially high prices were maintained both during times of rising costs as well as times of cost stability.

67. Defendants’ price increases cannot be explained by increased public demand since demand for defendants’ Chocolate Candy decreased during the Class Period for the following reasons: (1) consumers’ growing preference for more expensive chocolate brands, and (2) a growing public preference for nutritious snacks. Chocolate industry consultant, Curtis Vreeland, was quoted as saying that, “[c]onventional, every day chocolate hasn't been doing all that well. Current attitudes toward sugar and obesity are also working against [these companies].”

68. Similarly, defendants' price increases cannot be explained by the increased cost of raw materials. The price of cocoa beans either decreased or remained stable from 2003 to the present. Sugar prices also remained stable during the Class Period, except for a brief spike in late 2005 due to destruction wrought by hurricanes, but prices again fell in 2006 as sugar crops recovered. Furthermore, defendants' price increases cannot be justified based on raw material costs since defendants protect themselves from such price fluctuations by entering into contracts for the purchase of raw materials and/or by engaging in forward purchasing for up to two years.

69. During the Class Period, decreasing demand led to the closure of several Hershey manufacturing plants throughout the United States and Canada. In 2007, Hershey announced plans to reduce its workforce by 11.5%.

70. Defendants' conspiracy successfully moderated the normal downward pressure on the pricing of Chocolate Candy caused by changing consumer preferences. Moreover, defendants' price increases are fundamentally inconsistent with a competitive market for a product facing declining demand.

B. Cooperation Among Defendants

71. During the Class Period, there was a high degree of cooperation among defendants in regards to their Chocolate Candy as evidenced by various product licensing agreements. For example, Hershey has a licensing agreement

with Cadbury to "manufacture and/or sell and distribute" Chocolate Candy in the United States under the brand names, *Cadbury*, *Caramello*, *York*, *Almond Joy* and *Mounds*. The licensing agreement requires senior management representatives of Hershey and Cadbury to meet each quarter to review the marketing, promotion and sale of the licensed products.

72. Hershey also has a licensing agreement with Nestlé S.A. to manufacture and sell Chocolate Candy in the United States under the brand names, *Kit Kat* and *Rolo*.

73. The cooperation among defendants in the form of licensing agreements afforded companies that were supposedly in competition with each other multiple opportunities to discuss pricing. All parties involved in the licensing agreements stood to profit from the business arrangements, creating a financial incentive to participate in the conspiracy to fix the prices of Chocolate Candy.

74. Collaboration was also made possible through membership in trade associations. For example, The Hershey Co., a subsidiary of Cadbury plc, a business unit of Mars, Inc., and a subsidiary of Nestlé U.S.A. are members of the National Confectioners Association. Similarly, The Hershey Company, a business unit of Mars, Inc., and a subsidiary of Nestlé U.S.A. are members of the Chocolate Manufacturers Association. The Hershey Company and the divisions of Cadbury

and Nestlé are members of the Pennsylvania Manufacturing Confectioners' Association. Bob Huzinec of Hershey is the President of the American Association of Candy Technologists, Randy Hofberger of Nestlé is a Councilor-at-Large. Through events and meetings hosted by these trade associations, defendants were able to gather in the same venue and discuss their plans as they related to the pricing of Chocolate Candy. Their ability to congregate in these settings provided ample opportunity to implement the conspiracy.

C. Defendants' Profits Continue to Rise Despite Increased Costs and Lower Demand

75. Despite claimed increasing costs and emerging health consciousness, defendants were able to achieve business growth and record profits. For example, Hershey's financial success during the conspiracy is evidenced by the fact that it posted a record breaking net income of \$574,633,000 for 2004.

76. Hershey explained that its record profitability during 2004 was the result of strong sales growth fueled by new products, more efficient trade spending, and solid cost control. The company also attributed its extraordinary profits to marketplace momentum, as well as record sales, earnings, and returns despite significant pressures. In reality, Hershey's soaring profits were partially the result of artificially inflated prices for their Chocolate Candy.

77. Like Hershey, Nestlé reported record sales and profits in 2005. Although sales were up 7.5% from 2004, profits were up 20.7%. 2006 was another

record year for the company with an 8.1% increase in sales, and a 13.8% increase in profits. In 2007, Nestlé reported that the strength of their brands allowed the company to "raise prices to offset rising raw material costs". Pricing in particular was responsible for 2.7% of Nestlé's gains in that year.

D. Investigations by Competition Authorities

78. Defendants and their affiliates have been the subject of multiple antitrust investigations. For example, in December 2007, Nestlé S.A. was fined by Greek competition authorities for fixing dairy prices in 2004. Nestlé Italiana SpA, a subsidiary of defendant Nestlé S.A., was fined by the Italian Competition Authority on December 12, 2005 for allegedly participating in a price-fixing cartel in the sector of baby milk.

79. Plaintiffs are informed and believes, and thereon allege, that defendants are currently under investigation by government authorities in Canada, Germany, and in the United States for their anti-competitive conduct in connection with the Chocolate Candy industry.

E. The Canadian Investigation

80. On November 28, 2007, The Associated Press reported that Canadian authorities had launched an investigation into an alleged price-fixing scheme among Hershey Canada, Nestlé Canada, Mars Canada, and Cadbury Canada. Representatives of Hershey Canada, Cadbury Canada and Nestlé Canada

confirmed to The Associated Press that the companies were served papers and were cooperating with the investigation. The investigation began in July 2007 with the assistance of a cooperating company involved in the conspiracy. The Superior Court of Ontario issued the search warrants based on evidence that there were reasonable grounds to believe that a number of chocolate manufacturers had violated Canada's Competition Act.

81. The November 19, 2007 Information contains the following facts, among others, which were discovered during the Canadian Competition Bureau's investigation:

82. Hershey Canada, Mars Canada, Nestlé Canada and other persons knowingly conspired, combined, agreed or arranged with each other and with a Cooperating Party to enhance unreasonably the price of Chocolate Candy in Canada, and did thereby commit an indictable offense contrary to paragraph 45 (1) (b) of the *Competition Act*.

83. The alleged conspiracy arises from communications between employees of the Cooperating Party, Hershey Canada, Mars Canada, Nestlé Canada, and others who exchanged confidential pricing information. The information reveals a pattern of communications via e-mail, telephone, private meetings and meetings. Information obtained by the Canadian Commissioner indicated that the above mentioned parties entered an agreement or arrangement to

fix prices and control discounts relating to the supply of Chocolate Candy in Canada contrary to paragraphs 45 (1) (b) and 45 (1) (c) of the *Competition Act*.

The Commissioner became aware of the matter after a participant in these alleged offenses (the "Cooperating Party") approached the Bureau under its Immunity Program. Some of the evidence uncovered by the Canadian investigation is as follows:

84. At a breakfast meeting between a witness from the Cooperating Party and the President of Nestlé Canada, Bob Leonidas on February 23, 2004, one topic of discussion was trade spend (the practice of providing discounts, rebates and allowances to customers). The Cooperating Party indicated that it was known in the industry that he disagreed with the industry's prevailing approach to trade spend and that the Cooperating Party was going to reduce trade spend on Chocolate Candy. The Cooperating Party left the meeting with the impression that Leonidas "sees the world the way" that he did and with the understanding that he had an open line to call Leonidas if there were any issues in the market, including trade spend practices.

85. During a Confectionery Manufacturers Association of Canada annual meeting, held June 2nd to June 5th, 2005, Leonidas sought out a witness from the Cooperating Party and they had a short meeting. Leonidas delivered an envelope, which the Cooperating Party accepted without objection. The envelope contained

a document with information about Nestlé Canada's planned price increase on Chocolate Candy in 2005.

86. Counsel for the Cooperating Party provided the Canadian Competition Bureau with a price increase letter from the Cooperating Party dated July 29, 2005, which announced an average price increase of 5.2% on its Chocolate Candy portfolio, effective October 31, 2005. The price increase was such as to align its prices with those of Nestlé Canada. Counsel for the Cooperating Party also provided a Hershey Canada price increase letter dated August 23, 2005 and a Mars Canada price increase letter dated September 6, 2005. The Hershey Canada letter announced a price increase of an unknown percentage on most candy and Chocolate Candy effective October 31, 2005. The Mars Canada letter announced a price increase on average of 6% on select confectionery items effective November 7, 2005.

87. On July 4, 2007, a witness from the Cooperating Party went to lunch with Sandra Martinez de Arvalo ("Martinez"), President of Nestlé Confectionery. Martinez suggested that the Cooperating Party lead a price increase in 2007, as Nestlé Canada wanted to take a price increase in the third quarter. The witness replied that he was not prepared to take a price increase in 2007, but indicated that the Cooperating Party might take one in 2008. The witness told the Canadian

Competition Bureau that Martinez would have understood that "they were on the same page."

88. On July 5, 2007, another cooperating witness received a call from Nestlé Canada employee Steve Morris. Morris told the witness that Nestlé Canada was thinking about taking a pricing increase in early March 2008. The cooperating witness said that the Cooperating Party was thinking of taking a price increase too. They also discussed that if Nestlé Canada and the Cooperating Party took a price increase, Mars would probably follow.

89. In an e-mail dated November 7, 2005, a cooperating witness disclosed a discussion with Martin Lebel of Effem (now Mars Canada) related to Mars' "dead net cost" on chocolate singles and trade spend issues. In an e-mail dated February 27, 2006, the cooperating witness referred to a discussion with Lebel about the level of margins on certain Chocolate Candy. In an e-mail dated February 6, 2007, the witness referred to a discussion with Lebel indicating that the cooperating witness had obtained information from Effem and Hershey Canada about presentations made to one of their common customers.

90. On January 3, 2007 Bert Alfonso, now Senior Vice President, Chief Financial Officer of The Hershey Company, sent an e-mail to Eric Lent, General Manager of Hershey Canada, and the Cooperating Party, introducing Eric Lent as VP/GM for the Canada business. One of the cooperating witnesses met Lent at a

dinner hosted by the Food and Consumer Products of Canada trade association on September 27, 2007. The witness was approached by Lent, who said words to the following effect: "Hey, welcome back to Canada. Congratulations on your new job. Hey, by the way, Nestlé is taking a price increase." Lent continued with either "So we should take advantage" or "We should increase our prices too." The cooperating witness replied either "we should not be having this conversation" or "I am not comfortable having this conversation." Lent responded with: "Don't worry, we can talk about it. Bob [Leonidas] and I talk all the time. It's public knowledge that Nestlé is taking its prices up."

91. Documentation reviewed by a competition law officer and authorized representative of the Commissioner of Competition indicates that there was a course of communications, both direct and indirect, about trade spend for Chocolate Candy among ITWAL, a company in the business of supplying Chocolate Candy, Cadbury Canada, Hershey Canada, Mars Canada, Nestlé Canada and others commencing at least as early as February 2002, and continuing until at least October 2003 for the purpose of eliminating, controlling or reducing trade spend in the Chocolate Candy industry.

92. A filing cabinet at ITWAL contained letters dated February 21, 2002 from D. Glenn Stevens, President and CEO of ITWAL to each of Bob Leonidas at Nestlé Canada, Rick Meyers at Hershey Canada, Don Robinson at Mars Canada

and Arthur Soler at Cadbury Canada. The following statement is taken from the letter to Leonidas: "At the 'end of the day,' it is only the suppliers' control and discipline of the trade spending that can restore the functionality of the marketplace. The problem is very serious and completely out of control on the part of the suppliers. I am being forced to re-examine how we operate in the market and I am not sure it would be in the best interests of Nestlé. I urge you to meet and take action before this chocolate bar 'bubble bursts.'"

93. A folder labeled "TAN [Take Action Now] notices" was found in a filing cabinet at ITWAL with letters addressed to various employees at Cadbury Canada, Hershey Canada, Mars Canada and Nestlé Canada. A fax to Cadbury Canada contained the following statement: "Further to my letter of February 21, 2002, please find attached information forwarded by Members on product and pricing available from diverters. In view of the seriousness of the problem, I will forward information as received under the acronym T.A.N., which stands for 'TAKE ACTION NOW!' I trust you will accept the information in the spirit with which it is intended. I look forward to meeting with you to learn what steps Cadbury is taking to address this problem."

F. The U.S. Investigation and Defendants' Ties to Canada

94. The United States Department of Justice ("DOJ") reported on December 21, 2007 that it too was contacting manufacturers of Chocolate Candy in

the United States to investigate price-fixing. A spokeswoman for Mars, Inc. has been reported as saying that the company was contacted by the DOJ regarding their investigation into the pricing practices of the Chocolate Candy industry in the United States. Nestlé U.S.A. has confirmed that the company is aware of the investigation and claimed it will cooperate fully.

95. In October 2006, Hershey's U.S. Commercial Group became the newly established North American Commercial Group in order to recognize the combination of marketing, customer marketing and sales in the U.S. and Canada. According to The Hershey Company's former Chairman, President and CEO Richard H. Lenny, Hershey was "leveraging Hershey's North American marketing and sales leadership to unite [their] U.S. and Canadian marketing, sales and customer marketing areas, while building capabilities to capitalize on the very unique consumer and customer trends within each country". As part of this change, Eric Lent, Vice President of Refreshment, Snacks and Confectionery of the U.S. Commercial Group was named Vice President, General Manager of Hershey Canada. As described above, Eric Lent was implicated by name in the Canadian price-fixing investigation, and he also had pricing authority in the United States during the Class Period.

96. The United States and Canada are served by the same manufacturing facilities. In February 2007, Hershey announced it would be closing some of its

United States manufacturing plants and was moving production to Monterrey, Mexico. Hershey's last remaining Canadian manufacturing plant was scheduled to close in December 2007. With no remaining manufacturing plants in Canada, the same plant that will be supplying the United States will likely be supplying Canada as well.

97. According to Cadbury's website, their operations in the Americas span from Canada in the north to Argentina and Chile in the South. Cadbury Canada is part of Cadbury's Americas Confectionery region. The Americas Confectionery corporate office is headquartered in Parsippany, New Jersey, the same location as Cadbury's United States subsidiary, Cadbury Adams USA, LLC.

98. Nestlé S.A.'s Executive Board member Paul Polman oversees Zone Americas which includes Nestlé divisions in the United States, Canada, Mexico, the Caribbean Region, the Central American Region, the Bolivarian Region, the Austral-American Region, and Brazil. Nestlé U.S.A. and Nestlé Canada are, therefore, both controlled by the same individual at the parent company Nestlé S.A., making it simple to facilitate collaboration between the two subsidiaries.

99. Each of the defendants have a certain degree of combined operations in Canada and the United States and there is substantial cross-border commerce in the Chocolate Candy industry. The two markets have strong similarities. Accordingly, it is likely that decisions relating to defendants' pricing in Canada

were part of defendants' overall North American budgeting and strategic planning process and necessarily affected pricing in the United States.

100. Trade association meetings provided an ideal venue for multiple companies to gather in the same location to discuss pricing, as evidenced by the events described in the affidavits filed in Canada. Defendants and/or their subsidiaries are members of several trade associations in the United States, as alleged above. These trade associations hold annual meetings, events, and conferences, at which members have the opportunity to discuss the Chocolate Candy industry. Notably, the Confectionery Manufacturers Association of Canada, at whose annual meeting conspiratorial activities took place, and the National Confectioners Association, whose members include The Hershey Co., a subsidiary of Cadbury Schweppes, a business unit of Mars, Inc., and a subsidiary of Nestlé U.S.A., are members of the International Confectionery Association. On its website, the International Confectionery Association lists as one of its rules in the industry to provide “an international and non-competitive forum for the global confectionery industry and its associates to meet, identify and agree on matters of common interest and action.”

101. Certain of these trade association meetings and events occur in the United States. The National Confectioners Association holds an annual State of the Industry Conference. From 2003-2007, the conference was held in Scottsdale,

Arizona. This year, it was held from February 28th through March 1st in Orlando, Florida. On November 7, 2007, the National Confectioners Association held a media showcase in New York City for companies to exhibit their latest products. The National Confectioners Association also holds an annual All Candy Expo in Chicago, Illinois, which is referred to on the association's website as "a meeting place for the confectionery industry." The Pennsylvania Manufacturing Confectioners' Association holds an Annual Production Conference in Hershey, Pennsylvania in either April or May. The American Association of Candy Technologists holds an annual National AACT Technical Conference in Lincolnshire, Illinois during the fall.

VII. FRAUDULENT CONCEALMENT

102. Plaintiffs had no knowledge of the combination and conspiracy alleged herein, or of any facts that might have led to the discovery thereof in the exercise of reasonable diligence, prior to November 28, 2007, when it was reported that Hershey Canada, Nestlé Canada, Mars Canada, and Cadbury Canada were involved in investigations by competition authorities in Canada into the price-fixing of Chocolate Candy.

103. Plaintiffs could not have discovered the existence of the combination and conspiracy alleged herein at an earlier date by the exercise of reasonable due diligence because of the deceptive practices and techniques of secrecy employed

by the defendants and their co-conspirators to avoid detection and affirmatively conceal such violations including, without limitation, falsely attributing price increases to increased costs.

104. When Hershey announced price increases on its Chocolate Candy in December 2002, December 2004, November 2005, and April 2007, it concealed the anti-competitive basis for its prices by contending they were due to changes in input costs Hershey explained:

“We change prices and weights of our products when necessary to accommodate changes in manufacturing costs, the competitive environment and profit objectives, while at the same time maintaining consumer value. Price increases and weight changes helped to offset increases in our input costs, including raw and packaging materials, fuel, utilities, transportation, and employee benefits.”

105. During the Class Period, defendants misled Plaintiffs and the Class about the true nature of the Chocolate Candy industry. For example, Hershey repeatedly concealed its anti-competitive activities in the United States Security and Exchange Commission (the “SEC”) filings by stating, “ [w]e sell our brands in a highly competitive market with many other multinational, national, regional and local firms. Some of our competitors are much larger than our Company and have greater resources.”

106. Cadbury made similar misleading statements in its SEC filings, wherein it asserted:

“WE OPERATE IN HIGHLY COMPETITIVE MARKETS IN

WHICH OUR PERFORMANCE COULD BE ADVERSELY AFFECTED IF WE WERE UNABLE TO RESPOND TO RAPID CHANGES AND CONSUMER PREFERENCES OR OTHER COMPETITIVE FACTORS . . . Both the beverage and confectionery industries are highly competitive. We compete with other multinational corporations which have significant financial resources to respond to and develop the markets in which both we and they operate. These resources may be applied to change areas of focus or to increase investments in marketing or new products.”

[Emphasis in original].

107. Cadbury disseminated numerous misleading market-based explanations, which served to conceal defendants’ anti-competitive conduct. For instance, after Cadbury posted strong growth in the first half of 2007, the Cadbury Schweppes CEO, Todd Stitzer stated “First-half revenue growth was strong driven by investment in brands, innovation and market-place execution. We expect continued good revenue growth in the second half, while margins will be impacted by the combination of growth investment and higher input costs.”

108. Defendants repeatedly attributed their price increases to the rising prices of cocoa beans, dairy, sugar, and fuel. The companies also reported changing attitudes towards sugar and obesity as factors that contributed to their price hikes. These were, in reality, pretextual reasons for the price increases.

109. Plaintiffs had no reason to disbelieve these statements which, on their face, appeared to be reasonable explanations for the pricing of Chocolate Candy. Furthermore, most of the explanations provided by defendants involved non–

public and/or proprietary information completely in defendants' control such that Plaintiffs and the other members of the Class could not verify their accuracy. Defendants' purported reasons for the price increases of Chocolate Candy were materially false and misleading and were made for the purpose of concealing defendants' anti-competitive scheme as alleged herein. In truth, at all relevant times, the prices of Chocolate Candy were artificially inflated and maintained as a direct result of the defendants' anti-competitive scheme, the operation of which was a substantial, but undisclosed, factor in the pricing of Chocolate Candy during the Class.

110. As a result of the fraudulent concealment of the conspiracy, Plaintiffs assert the tolling of the applicable statutes of limitation affecting the causes of action by Plaintiffs and the other members of the Class.

VIII. CAUSES OF ACTION

COUNT ONE

VIOLATION OF STATE STATUTES

111. Plaintiffs incorporate by reference as if fully set forth at this point, the preceding allegations of this complaint.

112. Although the exact start date of the conspiracy is unknown to Plaintiffs, they believe that beginning at least as early as January 1, 2002, and continuing through the present, defendants, by and through their officers, directors,

employees, agents, or other representatives, entered into a continuing and unlawful arrangement, contract, agreement, trust, combination, and/or conspiracy to unreasonably restrain trade and commerce in violation of the following state antitrust and consumer protection statutes:

- a. Arizona: Ariz. Rev. Stat. §§44-1401 *et seq.*
- b. California: Cal. Bus. & Prof. Code §§16720, *et seq.*
- c. Florida; Fla. Stat. 501.201 *et seq.*
- d. Iowa: Iowa Code §553.4 *et seq.*
- e. Kansas: Kan. Stat. § 50-101, *et seq.*
- f. Michigan: Mich. Compiled Laws §445.771, *et seq.*
- g. Minnesota: Minn. Stat. §325D.51, *et seq.*
- h. Nebraska: Neb. Rev. Stat. §59-801, *et seq.*
- i. North Carolina: N.C. Gen. Stat. §75-1.1, *et seq.*
- j. North Dakota: N.D. Code §51-08.1-03, *et seq.*
- k. South Dakota: S.D. Codified Laws §37-1-3.1 *et seq.*
- l. Tennessee: Tenn. Code §47-25-101, *et seq.*
- m. Wisconsin: Wisc. Stat. §133.03, *et seq.*

113. Defendants, by their unlawful conspiracy, artificially raised, inflated and maintained the prices at which Chocolate Candy was sold in the United States, and in the above-referenced states.

114. The contract, combination or conspiracy consisted of a continuing agreement, understanding and concert of action among defendants and their co-conspirators, the substantial terms of which were to fix, raise, maintain and stabilize the prices of Chocolate Candy in the United States.

115. Upon information and belief, for the purposes of formulating and effectuating their contract, combination or conspiracy, defendants and their co-conspirators did those things they contracted, combined or conspired to do, including:

- a. Participating in meetings, conversations and communications to discuss the prices of Chocolate Candy;
- b. Agreeing to the prices that would be charged for Chocolate Candy;
- c. Issuing price announcements and price quotations in accordance with the agreements reached; and
- d. Engaging in meetings, conversations and communications for the purpose of monitoring and adhering to be agreed-upon prices.

116. As a direct and proximate result of the unlawful conduct of defendants and their co-conspirators in furtherance of their continuing contract, combination or conspiracy, Plaintiffs and the other members of the Class have been injured in

their businesses and property in that they have paid more for Chocolate Candy than they would have paid in the absence of defendants' price-fixing.

117. The above combination and conspiracy has had the following effects, among others:

a. Price competition in the sale of defendants' Chocolate Candy to Indirect Purchasers for Resale has been restrained, suppressed and eliminated throughout the United States and in the Indirect Purchaser States;

b. Prices for defendants' Chocolate Candy sold to Indirect Purchasers for Resale have been raised, fixed, maintained and stabilized at artificially high and noncompetitive levels throughout the United States and in the Indirect Purchaser States; and

c. Indirect Purchasers for Resale of defendants' Chocolate Candy have been deprived of the benefit of free and open competition in the purchase of such products.

118. As a direct and proximate result of the unlawful conduct of defendants, Plaintiffs and the other members of the Class have been injured in their businesses and property in that they paid more for Chocolate Candy than they otherwise would have paid in the absence of the unlawful conduct of defendants. As a result, Plaintiffs and the other members of the Class have sustained damages to their businesses and property in an amount to be determined at trial.

119. Plaintiffs and the Class seek actual damages for their injuries caused by the violations of the above-referenced antitrust and consumer protection statutes in an amount to be determined at trial. Plaintiffs and the Class seek treble damages pursuant to the antitrust laws of the Indirect Purchaser States, as referenced above, where allowed by law.

120. Defendants' willful and unlawful conduct allow Plaintiffs and the Class to seek attorneys' fees where allowed by law. As such, Plaintiffs and the Class hereby seek such attorneys' fees and costs where allowed by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class demand judgment against defendants as follows:

- A. A declaration that this action is a proper class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined herein, and an Order directing that reasonable notice of this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given to each member of the Class;
- B. A declaration that defendants have committed violations of state antitrust or consumer laws of the Indirect Purchaser States as alleged herein;
- C. An injunction enjoining, preliminarily and permanently, defendants from continuing the unlawful combination and conspiracy alleged herein;
- D. An award of damages to Plaintiffs and the Class, as provided by law,

and joint and several judgments in favor of Plaintiffs and each member of the Class against defendants, and each of them, in an amount to be trebled in accordance with the laws of such Indirect Purchaser States which provide for such trebling; and actual damages where treble damages are not allowed by law;

E. An award to Plaintiffs and the Class of the actual costs in prosecuting this action (including expert fees), together with interest and reasonable attorney's fees as provided by law;

F. An award to Plaintiffs and the Class of the return of overpayments made by them for Chocolate Candy;

G. An award for such other and further relief as the nature of this case may require or as this court deems just, equitable and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff Class of Indirect Purchasers For Resale hereby demand a trial by jury of all causes of action.

Dated: August 26, 2009

Respectfully submitted,

/s/ Roman M. Silberfeld

Roman M. Silberfeld (CA62783)
ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
2049 Century Park East, Suite 3400
Los Angeles, CA 90067-3208
Telephone: (310)552-0130
Fax: (310) 229-5800
E Mail: rmsilberfeld@rkmc.com

Steven R. Maher (CA132140)
THE MAHER LAW FIRM
631 West Morse Blvd.
Winter Park, FL 32789
Telephone: (407) 839-0866
Fax: (407) 425-7958
E Mail: smaher@maherlawfirm.com

Joseph U. Metz (PA32958)
DILWORTH PAXSON LLC
112 Market Street, Suite 800
Harrisburg, PA 17101
Telephone: (717) 236-4812
Fax: (717) 236-7811
E Mail: jmetz@dilworthlaw.com

*Attorneys for The Class of Indirect Purchasers
For Resale*

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2009, I caused to be served on all counsel of record via ECF, except those listed below who were served via U.S. Mail, true and correct copies of **AMENDED CONSOLIDATED CLASS COMPLAINT OF INDIRECT PURCHASERS FOR RESALE.**

Allen D. Black
FINE KAPLAN & BLACK, R.P.C.
1835 Market Street, Suite 2800
Philadelphia, PA 19103
Counsel for Plaintiff The Lorain Novelty Co., Inc.

Brian M. English
TOMPKINS, MCGUIRE
WACHENFELD & BARRY, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102
Counsel for Defendant Hershey Co.

Jason D. Walke
Gunderson Sharp & Walke PC
321 East Walnut Street
Suite 300, P.O. Box 6010
Des Moines, IA 50309
Counsel for Plaintiff James Bell

Joseph A. Ostoyich
Howrey & Simon
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Counsel for Defendant Nestle U.S.A., Inc.

William A. Isaacson
BOISE, SCHILLER & FLEXNER LLP
5301 Wisconsin Ave., N.W.
Washington D.C. 20015
Counsel for Plaintiff Canteen Vending Company

/s/ Roman M. Silberfeld