

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) FRIDAY, THE 22ND
)
JUSTICE E.M. MORGAN) DAY OF MARCH, 2019

BETWEEN:

JB & M WALKER LTD.

Plaintiff

- and -

THE TDL GROUP CORP.

Defendant



Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c.6

**ORDER
(Conditional Certification Order)**

THIS MOTION made by the Plaintiff, on consent of the Defendant, for an order conditionally certifying the within action (the "Action") as a class proceeding for the purposes of implementing a national settlement agreement dated March 6, 2019 (the "Settlement Agreement"), was heard on March 21, 2019 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario with judgment being reserved until March 22, 2019.

ON READING all materials filed on this motion, and on hearing the submissions of Class Counsel and counsel for the Defendants:

1. **THIS COURT ORDERS** that the definitions in the Settlement Agreement are incorporated into and shall be applied in interpreting this Order.
2. **THIS COURT ORDERS** that the Action is hereby certified, for the purpose of and subject to implementation of the Settlement Agreement, as a class proceeding pursuant to section 5 of the

Class Proceedings Act, 1992, S.O. 1992, c. 6 (the "*Class Proceedings Act*") on behalf of the Class.

3. **THIS COURT ORDERS** that the Class be collectively defined as all persons who have carried on business as Tim Hortons' franchisees in Canada under a franchise agreement or other form of operating agreement with The TDL Group Corp. at any time on or after March 9, 2017 (the "Class" or "Class Members").

4. **THIS COURT ORDERS** that JB & M Walker Ltd. is hereby appointed as the representative plaintiff for the Class.

5. **THIS COURT DECLARES**, for settlement purposes, that the common issues certified in this Action are:

- a) Is the Defendant a "franchisor" within the meaning of the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c. 3 ("Wishart Act") or other common law provincial franchise statutes?
- b) Did the Defendant interfere with or breach any Class Member's statutory right to associate under any of the Acts or prohibited or restricted, by contract or otherwise, any Class Member from forming or joining an organization of franchisees or from associating with other franchisees?
- c) Did the Defendant act in breach of its common law duty of good faith and fair dealing or its statutory duty of fair dealing under any of the Acts in relation to any Class Member's right to associate?
- d) Did the Defendant breach any terms of the Franchise Agreements in relation, directly or indirectly, to any Class Member's right to associate, including as a result of any alleged interference with such right to associate?

6. **THIS COURT ORDERS** that if the Settlement Agreement is not approved by this Court, then the within Order certifying this class proceeding for settlement purposes is hereby set aside, without further Order of this Court.

7. **THIS COURT ORDERS** that within five (5) days of the date of this Order, the Class shall be given notice of the certification of the Action in the following manner (the "Notice Plan"):

- a) The Defendant shall send the First Notice to all Class Members that are currently franchisees by e-mail where such addresses are known and by posting the First Notice in the Defendant's intranet (known as TimZone);
- b) Class Counsel shall send the First Notice to all Class Members that are no longer franchisees (i) by e-mail where such e-mail addresses are known, and (ii) by regular mail, to their last known address known to the Defendant, where such e-mail addresses are not known; and
- c) Class Counsel shall cause the First Notice to be published on a dedicated website.

8. **THIS COURT ORDERS** that the First Notice and the Second Notice in the forms attached hereto as Schedule 1 and Schedule 2, respectively, are hereby approved.

9. **THIS COURT DECLARES** that the Notice Plan satisfies the requirements of section 17 of the *Class Proceedings Act*, and that the Notice Plan shall be deemed to be notice to the Class.

10. **THIS COURT ORDERS** that by April 26, 2019 Class Counsel and the Defendant shall serve and file affidavits with this Court confirming compliance with their obligations under the Notice Plan.

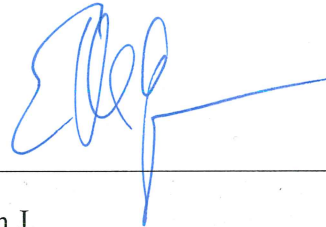
11. **THIS COURT ORDERS** that any Class Member may opt out of the Action by April 18, 2019 (the "Opt Out Deadline") by sending an election to opt out in the form attached as Schedule 3 by regular mail to Class Counsel, signed by the Class Member or by the authorized representative of the Class Member, stating that he, she or it opts out of the Association Action and also stating his, her or its full name and Tim Hortons store address.

12. **THIS COURT ORDERS** that no Class Member may opt out of the Association Action after the Opt Out Deadline.

13. **THIS COURT ORDERS** that Class Counsel shall, within seven (7) days after the Opt Out Deadline, report to the Court and the Defendant by affidavit to be filed under seal and advise as to the names and store addresses of those Class Members, if any, who have opted out of the Association Action and attach the opt out documents.

14. **THIS COURT ORDERS** that there shall be no costs of this motion.

15. **THIS COURT ORDERS** that the settlement approval hearing is scheduled to be heard on April 26, 2019.



Morgan J.

ENTERED AT / INSCRIPT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 28 2019

PER/PAR



Schedule 1

NOTICE OF CERTIFICATION AND PROPOSED SETTLEMENT OF TIM HORTONS FRANCHISEE ASSOCIATION CLASS ACTION

PLEASE READ CAREFULLY. IGNORING THIS NOTICE WILL AFFECT YOUR LEGAL RIGHTS

NOTICE OF CERTIFICATION AND PROPOSED SETTLEMENT

A Canada-wide settlement has been reached in the proposed class action *JB & M Walker Ltd. v. The TDL Group Corp.*, commenced in the Ontario Superior Court of Justice (Toronto Registry), bearing Court File No. CV-17-584058-00CP (the "Association Action").

The Association Action alleged that The TDL Group Corp. ("Tim Hortons"): (i) interfered with or breached Class Members' statutory right to associate with other franchisees; (ii) breached its common law duty of good faith and fair dealing and its statutory duty of fair dealing in relation to Class Members' right to associate; and (iii) breached contractual obligations to the Class Members in relation to Class Members' right to associate. Tim Hortons denies the allegations made in the Association Action, makes no admission as to the truth of these allegations and denies any wrongdoing.

This Notice advises you of certification of the Association Action as a class action, the proposed Settlement Agreement (the "Association Settlement") and of the hearings that will be held to decide whether the Association Settlement should be approved.

WHO IS INCLUDED?

If the Association Settlement is approved, it will apply to all persons who have carried on business as Tim Hortons' Franchisees in Canada under a franchise agreement or other form of operating agreement with The TDL Group Corp. at any time on or after March 9, 2017 (the "Class" or "Class Members").

WHAT IS THE PROPOSED SETTLEMENT?

Given that Tim Hortons® is an iconic, Canadian brand – anchored by its restaurants and Franchisees in every community across Canada, Tim Hortons will work with Franchisees to enhance local marketing initiatives to build the Tim Hortons® brand, including programs such as the Smile Cookie, Timbits® sports, and Tim Hortons® coffee trucks at community events. Tim Hortons will pay for funding, in addition to the Ad Fund, for these types of regional initiatives in the amount of \$10,000,000 over the next two years (the "Advertising Supplement"). Exact regional and community brand building expenditures will be determined by current regional marketing process. Tim Hortons will remit \$2,000,000 to Class Counsel to pay legitimate and reasonable costs of legal, administrative, operational, organizational, logistical, expert, consultant, disbursements, and other expenses related to the common issues raised in this action and the Ad Fund Action (defined below) including preliminary investigations related thereto (collectively the "Background Expenses"). Additionally, Tim Hortons and the Tim Hortons Franchisee Advisory Board

have amended the Franchisee Advisory Board Governance Handbook to increase the visibility of Ad Fund expenditures to franchisees.

The Association Settlement was reached at the same time as settlement of another class action titled *JB & M Walker Ltd. v. The TDL Group Corp.* (formerly styled *1523428 Ontario Inc. v. The TDL Group Corp.*), in the Ontario Superior Court of Justice (Toronto Registry), Court File No. CV-17-577371-00CP) (the "Ad Fund Action" and "Ad Fund Settlement"). The Association Settlement is contingent on the Ad Fund Settlement receiving Court approval, and vice versa. The Ad Fund Settlement and Association Settlement may be reviewed at <https://www.himprolaw.com/class-actions>.

OPTING OUT

If you are a member of the Class and do not wish to be bound by future orders made in the Association Action, and/or by the Association Settlement, should it be approved, you must take active steps by "Opting Out". To Opt Out, you must fully complete and submit an Opt Out Form to Class Counsel by the Opt Out Deadline of April 18, 2019. Opt Out Forms are at <https://www.himprolaw.com/class-actions> or may be requested by mail or telephone from Class Counsel. If you Opt Out, you will NOT be able to enforce rights under the Association Settlement.

THE SETTLEMENT REQUIRES COURT APPROVAL

In order for the Association Settlement to become effective, it must be approved by the Court. The Court must be satisfied that the Association Settlement is fair, reasonable and in the best interest of the Class. The Settlement Approval Hearing has been scheduled for April 26, 2019 at 9:00am at the Ontario Superior Court of Justice, 130 Queen Street West, Toronto, Ontario.

OBJECTING TO THE PROPOSED SETTLEMENT AND OPPORTUNITY TO APPEAR

If you wish to object to the Association Settlement, you must submit a written objection to Class Counsel by no later than April 18, 2019 at the address listed in this Notice. Class Counsel will file copies of all objections with the Court. Do NOT send an objection directly to the Court. You may also attend the Settlement Approval Hearing, and if you submitted a written objection to Class Counsel, you may make oral submissions to the Court.

PARICIPATING IN THE SETTLEMENT

If the Association Settlement is approved by the Court, the benefits from the settlement will automatically be attributed to you. You will not need to submit a claim for compensation.

LEGAL FEES

At or following the Settlement Approval Hearing, Class Counsel will request approval of the Funder's Return and Lawyers' Return as defined in the litigation funding agreement dated November 15, 2018 (the "LFA"). The LFA received Court approval on February 11, 2019. The LFA establishes the Funder's Return to be between 22-26% and the Lawyer's Return to be 2-3% of the litigation proceeds, each depending on when settlement or award is reached. The Lawyers' Return is a top-up in addition to Class Counsel's billed hours. The Funder's Return and the Lawyers' Return are payable from the Advertising Supplement only and is in addition to the Background Expenses. A copy of the LFA can be obtained from Class Counsel.

FOR MORE INFORMATION

If you have questions about the Association Settlement and/or would like to obtain more information and/or copies of the Association Settlement and related documents, please visit <https://www.himprolaw.com/class-actions> or contact Class Counsel:

Himelfarb Proszanski
480 University Avenue, Suite 1401
Toronto, ON M5G1V2
Attn: Tom Arndt

Phone: 416.599.8080
Fax: 416.599.3131

tom@himprolaw.com

This Notice contains a summary of some of the terms of the Association Settlement. If there is a conflict between this Notice and the Association Settlement, the terms of the Association Settlement shall prevail.

This notice has been approved by the Court. Questions about matters in this notice should NOT be directed to the Court.

Schedule 2

NOTICE OF SETTLEMENT APPROVAL IN TIM HORTONS FRANCHISEE ASSOCIATION CLASS ACTION

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NOTICE OF SETTLEMENT APPROVAL

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This Notice advises you that, following publication of a notice program, a hearing was held on April 26, 2019 in the Ontario Superior Court of Justice, 130 Queen Street West, Toronto, Ontario (the "Approval Hearing"). The Court issued orders (the "Approval Orders") approving the Settlement Agreement (the "Association Settlement") as being fair, reasonable and in the best interest of Class Members. The approved Association Settlement therefore settles all litigation in Canada relating to the Association Action. The Approval Order can be reviewed at <https://www.himprolaw.com/class-actions> or by contacting Class Counsel.

WHO IS INCLUDED?

The Association Settlement applies to all persons who have carried on business as Tim Hortons' franchisees in Canada under a franchise agreement or other form of operating agreement with The TDL Group Corp. at any time on or after March 9, 2017 (the "Class" or "Class Members").

TERMS OF THE SETTLEMENT AGREEMENT

Given that Tim Hortons® is an iconic, Canadian brand – anchored by its restaurants and franchisees in every community across Canada, Tim Hortons will work with franchisees to enhance local marketing initiatives to build the Tim Hortons® brand, including programs such as the Smile Cookie, Timbits® sports, and Tim Hortons® coffee trucks at community events. Tim Hortons will pay for funding, in addition to the Ad Fund, for these types of regional initiatives in the amount of \$10,000,000 over the next two years (the "Advertising Supplement"). Exact regional and community brand building expenditures will be determined by current regional marketing process. Tim Hortons will also remit \$2,000,000 to Class Counsel to pay

legitimate and reasonable costs of legal, administrative, operational, organizational, logistical, expert, consultant, disbursements, and other expenses related to the common issues raised in this action and the Association Action (defined below) including preliminary investigations related thereto (collectively the "Background Expenses"). Additionally, Tim Hortons and the Tim Hortons Franchisee Advisory Board have amended the Franchisee Advisory Board Governance Handbook to increase the visibility of Ad Fund expenditures to franchisees.

The Association Settlement was reached at the same time as settlement of another class action titled *JB & M Walker Ltd. v. The TDL Group Corp.* (formerly styled *1523428 Ontario Inc. v. The TDL Group Corp.*), in the Ontario Superior Court of Justice (Toronto Registry), Court File No. CV-17-577371-00CP (the "Ad Fund Action" and "Ad Fund Settlement"). The Association Settlement is contingent on the Ad Fund Settlement receiving Court approval, and vice versa. The Ad Fund Settlement and Association Settlement may be reviewed at <https://www.himprolaw.com/class-actions> or by contacting Class Counsel.

PARTICIPATING IN THE SETTLEMENT

The benefits from the Association Settlement will automatically be attributed to you if you did not opt-out. You do not need to submit a claim for compensation.

LEGAL FEES

At the Approval Hearing, the Funder and Class Counsel requested and received the Court's approval for payment of the Funder's Return of \$XX and the Lawyers' Return of \$XX. The Funder's Return and Lawyers' Return are to be paid out of the Advertising Supplement. The Lawyers' Return is a top-up in addition to Class Counsel's billed hours.

FOR MORE INFORMATION

If you have questions about the Association Settlement and/or would like to obtain more information and/or copies of the Association Settlement and related documents, please visit the settlement website at <https://www.himprolaw.com/class-actions> or by contacting Class Counsel:

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This notice has been approved by the Court. Questions about matters in this notice should NOT be directed to the Court.

TIM HORTONS FRANCHISEE ASSOCIATION CLASS ACTION SETTLEMENT

IF YOU ARE CONTENT WITH THE TERMS OF THE SETTLEMENT, DO NOT USE THIS FORM. IF YOU ARE CONTENT WITH THE TERMS OF THE SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING.

This form is not a registration form or a claim form. This form excludes you from participation in the Tim Hortons Association Settlement Agreement of the Ontario class action with Court File No. CV-17-584058-00CP. Do not use this form if you want to participate under the settlement.

NAME _____

TIM HORTONS' _____

STORE ADDRESS _____

EMAIL _____

TELEPHONE _____
(Area Code / Phone No. (Ext. if applicable))

Total Number of Tim Hortons restaurants operated during the Class Period (on or after March 9, 2017)

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If more than one store, attach a schedule listing all store addresses for which you are opting out.

I understand that if I opt-out through completion and submission of this form, I will not participate in this class action and agree to be excluded from it, not being bound by the result.

I understand that I will not be entitled to any benefits that I may otherwise be entitled to under settlement of this class action.

I understand that if I intend to proceed with my own legal action, I must commence my lawsuit within a specified limitation period or my claim will be legally barred. I take full responsibility for obtaining legal advice about the applicable limitation period and for taking all necessary steps to protect my individual claim.

DATE: _____

WITNESS SIGNATURE

CLASS MEMBER SIGNATURE OR
THEIR REPRESENTATIVE ON THEIR BEHALF

Print Name: _____

Print Name: _____

Completed Opt-Out Forms should be sent to: Tim Hortons Association Action Settlement, c/o Himelfarb Proszanski 1401-480 University Avenue, Toronto, Ontario M5G 1V2

The deadline to submit an Opt-Out Form is April 18, 2019. Opt-Out Forms must be received by Himelfarb Proszanski by the close of business on April 18, 2019 to be effective.

JB & M WALKER LTD.

-and-

THE TDL GROUP CORP.

PLAINTIFF

DEFENDANT

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at **TORONTO**

ORDER
(Conditional Certification Order)
Association Action

HIMELFARB PROSZANSKI

Barristers & Solicitors

480 University Avenue, Suite 1401

Toronto, ON M5G 1V2

Peter Proszanski (274660)

peter@himprolaw.com

Richard P. Quance (18939U)

richard@himprolaw.com

Tom Arndt (43417K)

tom@himprolaw.com

Emily Dubis (74532R)

edubis@himprolaw.com

Tel: 416-599-8080

Fax: 416-599-3131

Lawyers for the Plaintiff