

Court File No.: CV-17-577371-00CP
Court File No.: CV-17-584058-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

JB & M WALKER LTD.

Plaintiff

- and -

THE TDL GROUP CORP.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**MOTION RECORD
(Settlement Approval)**

April 15, 2019

HIMELFARB, PROSZANSKI
Barristers and Solicitors
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Toronto, ON M5G 1V2

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Defendant

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF MOTION
(Settlement Approval)

The Plaintiff will make a Motion to the Honourable Justice Morgan on April 26, 2019 at 9:00 am or as soon after that time the Motion can be heard at the Toronto Courthouse, 130 Queen Street West, Toronto, Ontario M5H 2N5.

PROPOSED METHOD OF HEARING: ORALLY

THE MOTION IS FOR:

1. A declaration that the settlement reached between the Parties on March 6, 2019 (the “**Settlement Agreement**”) in Court File No. CV-17-577371-00CP (the “**Ad Fund Action**”) and Court File No. CV-17-584058-00CP (the “**Association Action**”) is fair, reasonable, and in the best interests of the Class;

2. A declaration that the Settlement Agreement is approved pursuant to section 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the “*CPA*”);
3. A declaration that that, except as otherwise stated, the Order incorporates and adopts the definitions set out in the Settlement Agreement;
4. An order that all provisions of the Settlement Agreement (including its Recitals and Definitions) form part of the Order and are binding upon the Defendant and Class Members who did not opt out in accordance with the order of the Ontario Superior Court of Justice dated March 21, 2019 (the “**Notice Order**”);
5. A declaration that the Settlement Agreement is not binding upon persons who validly opted out in accordance with the Notice Order;
6. An order that the Release provided for in section 10.1 of the Settlement Agreement is approved and will take effect upon the Effective Date;
7. An order that the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain, assert, assist with or cooperate in, either directly or indirectly, whether in Ontario or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity, or other claims or relief, from any Releasee in respect of any Released Claim or any matter related thereto and are permanently barred and enjoined from doing so;
8. An order that the Approval Notice be disseminated pursuant to the Notice Program as approved by the Notice Order;

9. A declaration that in the event the Settlement Agreement is terminated in accordance with section 8.1, this Order will be null and void, *nunc pro tunc*;
10. An order that the that the Settlement Agreement be otherwise implemented in accordance with its terms;
11. An order approving the amounts sought by Galactic and Class Counsel as the Galactic TH Return and the Lawyers' Return under the litigation funding agreement dated November 15, 2018 (the "**Litigation Funding Agreement**"); and
12. Such further and other relief as the lawyers may request and this Honourable Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:

13. On March 6, 2019, the parties entered into a Settlement Agreement to settle the Ad Fund Action and Association Action, subject to court approval;
14. The Settlement Agreement is fair, reasonable, and in the best interests of the Class;
15. The Defendant consents to an Order approving the Settlement Agreement of the Ad Fund Action and Association Action;
16. The Settlement Agreement is supported by the representative Plaintiff and recommended by Class Counsel;
17. The First Notice, which adequately informed Class Members of the settlement approval motion, their rights to opt-out of the settlement, and their rights to appear at the approval motion, was disseminated in accordance with the Notice Plan;

18. The Notice Plan was approved in the Notice Order;
19. The proposed method of distributing the Second Notice, as set out in the Notice Plan, will provide reasonable notice to the Class of settlement approval;
20. On February 11, 2019, the Litigation Funding Agreement was approved by the Court whereby Galactic agreed to provide litigation funding and protection against adverse costs awards in the Ad Fund Action and Association Action. In exchange, Galactic TH and Class Counsel were to each receive a percentage of the litigation proceeds depending at which stage the actions were resolved;
21. Under the Litigation Funding Agreement, Galactic is entitled to 24% of the litigation proceeds (the “**Galactic TH Return**”) and Class Counsel is entitled to 2.5% of the litigation proceeds (the “**Lawyers’ Return**”), subject to court approval;
22. Galactic and Class Counsel are content to seek less than what they would be entitled to under the Litigation Funding Agreement;
23. The Galactic TH Return and Lawyers’ Return are fair and reasonable;
24. Sections 9, 12, 19, 29, and 32 of the *Class Proceedings Act*, 1992, S. 1992, c 6;
25. Rules 1, 2, 7.08, 12, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and
26. Such further and other grounds as the lawyers may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the

Motion:

27. The Ad Fund Funding Agreement Approval Motion Record, dated January 23, 2019;
28. The Litigation Funding Agreement Approval Reasons and Orders, dated February 11, 2019;
29. The Certification Motion Record, dated March 12, 2019;
30. The Certification Reasons and Orders, dated March, 22, 2019;
31. The Affidavit of Mark Walker, sworn April 15, 2019;
32. The Affidavit of Peter Proszanski, sworn April 15, 2019; and
33. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

April 15, 2019

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Lawyers for the Defendant

JB & M WALKER LTD.

-and-

THE TDL GROUP CORP.

PLAINTIFF

DEFENDANT

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at **TORONTO**

**NOTICE OF MOTION
(Settlement Approval)**

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Lawyers for the Plaintiff

Court File No.: CV-17-577371-00CP

Court File No.: CV-17-584058-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

JB & M WALKER LTD.

Plaintiff

- and -

THE TDL GROUP CORP.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF MARK WALKER
(Approval Motion)
(April 15, 2019)

I, MARK WALKER of the City of Mississauga, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the principal of the corporate Plaintiff in this action, JB & M Walker Ltd. (“**Walker Ltd**”). Walker Ltd has been a Tim Hortons Franchisee since June 1999 and currently owns two Tim Hortons locations in Mississauga, Ontario. I am also the president of the Great White North Franchisee Association (the “**GWNFA**”). As such, I have knowledge of the matters to which I depose unless otherwise stated. Where my knowledge is based upon information received from others, I have stated the source of information and believe such facts to be true.
2. I have read the affidavit of Peter Proszanski sworn April 15, 2019 prepared for this approval motion (the “**Proszanski Affidavit**”) and agree with the statements therein.

3. This motion is brought by the Plaintiff under s. 29(2) of the *Class Proceedings Act, 1992*, SO 1992, c. 6 (“CPA”) for approval of a settlement agreement entered into with the Defendant effective March 6, 2019 (the “**Settlement Agreement**”) of Court File No. CV-17-577371-00CP (the “**Ad Fund Action**”) and Court File No. CV-17-584058-00CP (the “**Association Action**”).
4. Class Counsel also moves for approval of the amounts payable under the Litigation Funding Agreement. All defined terms used in this affidavit but not defined herein shall have the meanings ascribed in the litigation funding agreement dated November 15, 2018 (the “**Litigation Funding Agreement**”) and Settlement Agreement.

Settlement Agreement

5. A copy of the Settlement Agreement is attached to my March 12, 2019 affidavit in the Certification motion record.
6. I, on behalf of the Representative Plaintiff, was personally involved in every step taken in the settlement of the Actions. In my opinion, the proposed settlement is fair, reasonable and in the best interests of the Class. Rather than proceed over the next several years with litigation having an uncertain result, I believe that it is in the best interests of the Class to settle the Actions on the terms set forth in the Settlement Agreement and provide the settlement benefits to Class Members in relatively short order. I believe that the Settlement Agreement provides a fair, workable and economical method of compensating members of the Class.

Litigation Funding Agreement Amounts

7. To date, legal fees and disbursements for the Ad Fund Action and the Association Action are in excess of \$1,000,000 based on the lawyers' hourly rates, exclusive of time for preparation of the approval of the settlement motion and exclusive of the anticipated time to implement the settlement. Galactic will not be reimbursed those amounts.
8. The non-monetary recovery under the Settlement Agreement has been calculated to be approximately \$25,396,000. Therefore, the Litigation Proceeds, as defined in the Litigation Funding Agreement, are in approximately \$37,396,000. On that basis, under the Litigation Funding Agreement, the Galactic TH Return (being 24% of the Litigation Proceeds) would approach \$9,000,000, and the Lawyers' Return (being 2.5% of the Litigation Proceeds) would exceed \$900,000.
9. I understand however, that Class Counsel and Galactic are content to significantly discount their eligible returns from the non-monetary portions of the Settlement Agreement. Galactic and Class Counsel propose to seek a combined 33% return of the \$12,000,000 monetary settlement, resulting in \$3,622,641.51 for the Galactic TH Return and \$377,358.49 for the Lawyers' Return. This represents 24% for Galactic and 2.5% for the Lawyers' Return on the \$12,000,000 monetary settlement plus a marginal 2.9% and 0.30% on the approximately \$25,396,000 non-monetary settlement, which is well below what they would be entitled to under the Litigation Funding Agreement.
10. The Actions were challenging and vigorously defended by TDL. Most Franchisees were not financially able or willing to fund the expenses of the litigation. I believe that Class Counsel devoted every resource possible to advancing the best interests of the Class in a

timely and concerted manner and was focused on maximizing the ultimate recovery for the Class. I had frequent contact with Class Counsel and was regularly updated on the litigation. I support the Litigation Funding Agreement payments sought by Galactic and Class Counsel and considers it reasonable. Galactic was a major asset to the plaintiff. The payments are in accordance with his expectations given the efforts and results achieved in the context of the retainer agreement and Litigation Funding Agreement.

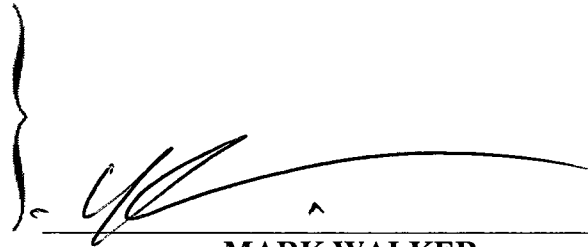
11. I swear this affidavit in support of an orders approving the Settlement Agreement and for the amounts payable under the Litigation Funding Agreement and for no improper purpose.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario
this 15th day of April, 2019.



Commissioner for Taking Affidavits
(or as may be)

R. QUANCE



MARK WALKER

JB & M WALKER LTD.

-and-

THE TDL GROUP CORP.

PLAINTIFF

DEFENDANT

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at **TORONTO**

**AFFIDAVIT OF MARK WALKER
(Approval Motion)**

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Lawyers for the Plaintiff

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ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

JB & M WALKER LTD.

Plaintiff

- and -

THE TDL GROUP CORP.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF PETER PROSZANSKI
(Approval Motion)
(April 15, 2019)

I, PETER PROSZANSKI, of the Town of Whitchurch-Stouffville, Region of York, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a managing partner at Himelfarb Proszanski, lawyers for the Plaintiff, and as such have knowledge of the matters to which I depose unless otherwise stated. Where my knowledge is based upon information received from others, I have stated the source of information and I believe such facts to be true.
2. I have read the affidavit of Mark Walker sworn April 15, 2019 prepared for this motion (the “**Walker Affidavit**”) and agree with the statements therein.
3. This motion is brought by the Plaintiff under s. 29(2) of the *Class Proceedings Act, 1992*, SO 1992, c. 6 (“CPA”) for approval of a settlement agreement entered into with the

Defendant effective March 6, 2019 (the “**Settlement Agreement**”) of Court File No. CV-17-577371-00CP (the “**Ad Fund Action**”) and Court File No. CV-17-584058-00CP (the “**Association Action**”).

4. Class Counsel also moves for approval of the amounts payable under the Litigation Funding Agreement. All defined terms used in this affidavit but not defined herein shall have the meanings ascribed in the litigation funding agreement dated November 15, 2018 (the “**Litigation Funding Agreement**”) and Settlement Agreement.

Background to the Actions

5. The Ad Fund Action was commenced June 19, 2017 and relates to a dispute over use of the advertising fund for the Tim Hortons franchise system. The Association Action was commenced October 6, 2017 and relates to the formation of and membership in the Great White North Franchisee Association (“**GWNFA**”) by Franchisees. The Representative Plaintiff for both Actions is a Tim Hortons Franchisee.
6. On or about October 25, 2017, a certification motion record in the Ad Fund Action was served. TDL objected to the motion record being filed asserting that it contained confidential information. Counsel agreed not to file the materials on an interim basis. TDL undertook to bring a sealing motion. TDL has not brought that motion.

Strike Motions

7. On October 3, 2018, TDL moved to strike portions of the Statements of Claim in both Actions. Portions of the Statements of Claim were struck and TDL was awarded \$84,000 in costs.

Litigation Funding Agreement

8. The Ad Fund Action and the Association Actions were commenced on a 'pay as you go' basis. The GWNFA indemnified the Plaintiffs for legal fees, disbursements and adverse costs awards. However, the amount of funding available to the GWNFA is limited as its only source of funding is through the collection of franchisee membership dues. By mid-2018, it became clear that the GWNFA would not be able to indemnify the Plaintiffs. Class Counsel refrained from billing legal fees and disbursements in mid-2018. As a practical matter, Class Counsel carried the Actions through a tumultuous period. This period included default notices and the strike motions brought by the Defendants.
9. Galactic's perseverance and fortitude to continue to be committed to funding these Actions was repeatedly tested even before the Litigation Funding Agreement was signed and approved by the Court:
 - a. In the summer of 2018, two of the three proposed Representative Plaintiffs exited the franchise system. Galactic responded by approving the Funding Agreement Budget;
 - b. Class Counsel was unable to locate alternative Plaintiffs; and
 - c. The Defendants achieved partial success on the Strike Motions.
10. On February 5, 2019, the Parties entered into a non-binding Term Sheet regarding the settlement of the Actions.
11. To date, Galactic has incurred over \$1,000,000 in charges and paid pursuant to the Litigation Funding Agreement and Funding Agreement Budget.

12. The existence and court approval of the Litigation Funding Agreement furthered settlement discussions, as the parties were now on an even playing field. For example, prior to learning of the Litigation Funding Agreement:
- a. TDL opposed the filing of an affidavit sworn by a former executive;
 - b. TDL put that former executive on notice of breach of contract;
 - c. TDL issued notices to the GWNFA board member Franchisees on no less than three occasions:
 - a. Default Notices dated September 18, 2017,
 - b. Brand Protection Notice dated September 4, 2018, and
 - c. Breach of Media Policy notices dated October 25, 2018.
 - d. Two of the three proposed representative Plaintiffs exited the Tim Hortons system after high profile public disputes with TDL. One was falsely accused of failing health inspections. The other was locked out of his stores. Both were GWNFA board members. One was GWNFA president.

Ad Fund Disclosure

13. TDL undertook a broad disclosure process. The Representative Plaintiff acknowledges that Mark Walker, a Franchisee and member of the Class, on behalf of the Representative Plaintiff (a) has reviewed a summary of Ad Fund spending from 2015 to 2017; (b) has had the opportunity to question the decisions made regarding Ad Fund spending and has received answers to those questions; and (c) is satisfied that members of the Advisory Board will have an opportunity, as set out in the revised Handbook, to review substantive details and ask questions of how TDL applies the Ad Fund as defined in the Franchise Agreement. Following the disclosure process, the parties conducted settlement discussions.

Settlement Agreement

14. On March 6, 2019, the parties entered into a comprehensive Settlement Agreement after months of negotiations. The Settlement Agreement settles both the Ad Fund Action and the Association Action. The Settlement Agreement is subject to court approval. Former Chief Justice Warren K. Winkler Q.C. mediated the detailed terms of the Settlement Agreement, including its schedules.
15. The Settlement Agreement is in the Certification Motion record. I do not reproduce it here.
16. While the financial component of the settlement is significantly less than the amount claimed in the Statement of Claim, the governance, transparency and control benefits are very significant as monetary settlement amounts would have provided a much smaller benefit to individual Class Members. For example, given the class size (approximately 3,800 stores), even a \$100,000,000 trial decision would have netted less than \$27,000 per store.
17. The total amount of the funds that flowed through the Ad Fund was only slightly larger than the amount claimed in the Ad Fund Action. As such, the Plaintiff would have had a tremendous burden to prove that the lion's share of the Ad Fund was misused. While a more modest judgment could have been more likely, with it would have come with continued litigation risk and damage to the Tim Hortons brand at time that Franchisees were fatiguing from the litigation and sought quick fair and reasonable resolution.
18. Regarding the Association Action damages, while existing legislation prohibits certain behaviour and establishes a cause of action, there are no set fines for breaches in the legislation. There is also a lack of case law quantifying damages amounts. Accordingly,

while liability may have been established, a significant damages award could have been difficult to achieve at trial.

19. As Class Counsel, it is my opinion that the settlement is fair and reasonable and in the best interests of the Class, given the potential risks of further litigation, including the risk of no recovery for Class Members, the scope and quantum of the relief, the behaviour modification of TDL, and the other non-monetary elements of the settlement.
20. The Defendant and Class Counsel complied with the Notice Plan requirements. Within the prescribed time, (i) the Defendant emailed the First Notice to all current Franchisees and posted the notice on its intranet (TimZone); (ii) Class Counsel sent the First Notice to all Class Members that are no longer franchisees by regular mail to their last known address known to the Defendant (no current email addresses were known to TDL); and (iii) Class Counsel published the First Notices onto a dedicated website.
21. In addition to the Notice Plan, the GWNFA held informational meetings summarizing the terms of the Settlement Agreement in Edmonton, Toronto and Montreal and by WebEx (English language and French language). The informational meetings and WebEx hosted by the GWNFA were open to all Class Members.
22. To date as of signing this affidavit, no opt-outs or objections have been received.

GWNFA Background Expenses

23. The GWNFA incurred significant organizational and operating expenses; these Background Expenses were not captured by the Funding Agreement Budget. For example, the GWNFA executives and advisors travelled across Canada to canvas Franchisees'

concerns with TDL and solidify support for the GWNFA. Lawyers were retained to determine possible causes of action. The GWNFA was incorporated, office space was rented, phone lines and equipment were obtained, administrative staff, consultants, and a public relations manager were hired, a website was established, a board of directors comprising of Franchisees was elected and their travel expenses were paid for. Numerous other expenses were also incurred by the GWNFA, which are not captured by the Funding Agreement Budget. The Background Expenses will assure that the GWNFA remains financially viable and able to ensure that behaviour modification is achieved under the Settlement Agreement will continue into the future.

24. As many as 70% of Canadian Tim Hortons franchisees have held GWNFA memberships; the vast majority of whom were held on an anonymous basis for fear of reprisal by TDL.

Non-Monetary Settlement Portion

25. Galactic retained Krofchick Valuations to estimate the value of the non-cash portion of the Settlement Agreement. Krofchick Valuations provides investigative accounting, business valuations, forensic economics and actuarial services. Gordon Krofchick, the principal of Krofchick Valuations, has been approved as an expert witness by the Ontario courts on multiple occasions.
26. Mr. Krofchick values the non-monetary elements of the Settlement Agreement at approximately \$25,396,000. The lion's share of which is related to the Franchisees' ability to negotiate their own insurance contracts (valued at \$22,256,000) followed by the 10 year renewal rights (valued at \$3,140,000) with the right to negotiate their own dairy contracts being valued at nil.

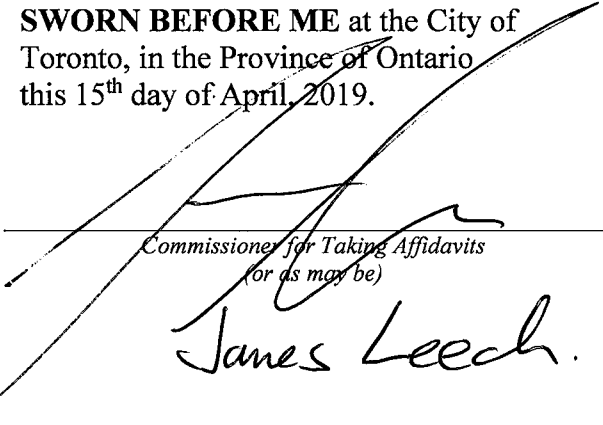
27. I acknowledge that Mr. Krofchick may overvalue or undervalue the benefit ultimately realized by the Class from the non-monetary portions of the Settlement Agreement. However given the discounting in paragraph 30, the variance is not material.

Litigation Funding Agreement - Payout Amounts

28. To date, legal fees and disbursements for the Ad Fund Action and the Association Action are in excess of \$1,000,000 based on the lawyers' hourly rates, exclusive of time for preparation of the approval of the settlement motion and exclusive of the anticipated time to implement the settlement. Galactic will not be reimbursed those amounts.
29. The non-monetary recovery under the Settlement Agreement has been calculated to be approximately \$25,396,000. Therefore, the Litigation Proceeds, as defined in the Litigation Funding Agreement, are in approximately \$37,396,000. On that basis, under the Litigation Funding Agreement, the Galactic TH Return (being 24% of the Litigation Proceeds) would approach \$9,000,000, and the Lawyers' Return (being 2.5% of the Litigation Proceeds) would exceed \$900,000.
30. However, Class Counsel and Galactic are content to significantly discount their eligible returns from the non-monetary portions of the Settlement Agreement. Galactic and Class Counsel propose to seek a combined 33% return of the \$12,000,000 monetary settlement, resulting in \$3,622,641.51 for the Galactic TH Return and \$377,358.49 for the Lawyers' Return. This represents 24% for Galactic and 2.5% for the Lawyers' Return on the \$12,000,000 monetary settlement plus a marginal 2.9% and 0.30% on the approximately \$25,396,000 non-monetary settlement, which is well below what they would be entitled to under the Litigation Funding Agreement.

31. As Class Counsel, having regard to the various factors used to determine whether to approve the fee request, it is my belief that the combined fee request in the immediate case are reasonable in all of the circumstances and ought to be approved by the Honourable Court.
32. I swear this affidavit in support of an orders approving the Settlement Agreement and for the amounts payable under the Litigation Funding Agreement and for no improper purpose.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario
this 15th day of April, 2019.



*Commissioner for Taking Affidavits
(or as may be)*

James Leech.



PETER PROSZANSKI

JB & M WALKER LTD.

-and-

THE TDL GROUP CORP.

PLAINTIFF

DEFENDANT

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SUPERIOR COURT OF JUSTICE**

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**AFFIDAVIT OF PETER PROSZANSKI
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Lawyers for the Plaintiff

CITATION: JB & M Walker Ltd / 1523428 Ontario Inc. v. TDL Group, 2019 ONSC 999
COURT FILE NOS: CV-17-584058 and CV-17-577371-00CP
DATE: 20190211

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JB & M Walker Ltd., Plaintiff

– AND –

The TDL Group Corp., Defendant

AND RE: 1523428 Ontario Inc., Plaintiff

– AND –

The TDL Group Corp., Defendant

BEFORE: EM Morgan J.

COUNSEL: *Richard Quance, Tom Arndt, and Emily Dubis*, for the Plaintiffs
Jennifer Dolman, for the Defendant

HEARD: February 6, 2019

2019 ONSC 999 (CanLII)

LITIGATION FUNDING APPROVAL

I. The funding approval motion

[1] The Plaintiffs in both of these actions are Tim Hortons franchisees and the Defendant is the Tim Hortons franchisor. Each of the actions has been brought as a potential class action, although neither of them has reached the certification stage. The Plaintiffs bring this motion for approval of a third-party litigation funding arrangement.

[2] One of the original Plaintiffs in Court File No. CV-17-584058, 1128419 Alberta Ltd., has been removed as Plaintiff from that action by consent Order dated February 6, 2019, leaving JB & M Walker Ltd. (“Walker”) as the sole Plaintiff in that action. The Plaintiff in Court File No. CV-17-577371, 1523428 Ontario Inc., has indicated that it also wishes to be removed as Plaintiff in that action. Walker, the remaining Plaintiff in CV-17-584058, has indicated that it will agree to step in as Plaintiff in CV-17-577371, conditional on the litigation funding being approved herein. At that point, Walker will be Plaintiff in both actions and each will be titled *JB & M Walker Ltd. v The TDL Group Corp.* Since this last change has not yet taken place, I will for now continue to refer to the Plaintiffs in the plural. That said, the actions are closely related to each

other and the Agreement and Budget pertain to both, and so I will refer to the litigation itself in the singular.

[3] Plaintiffs' counsel and the Plaintiffs themselves have entered into a Litigation Funding Agreement dated November 15, 2018 (the "Agreement") and an accompanying Funding Agreement Budget (the "Budget") with a New York-based litigation funding company, Galactic TH Litigation Funders LC ("Galactic"). They have submitted a copy of the Agreement and a redacted copy of the Budget in their motion record and have provided me with an unredacted copy of the Budget which they seek to file under seal.

[4] The Agreement provides that Galactic will pay class counsel's fees and disbursements on a pay-as-you-go, non-recourse basis in accordance with the terms set out in the Budget. In addition, Galactic will post security for costs if required and will indemnify the Plaintiffs for any adverse costs awards. Galactic has also agreed to attorn to the court's jurisdiction, protect the confidentiality and privilege of any communications related to the litigation, and abide by the deemed undertaking rule. Importantly, the Agreement provides that the funding arrangement thereunder may only be terminated with court approval. The Plaintiffs have received independent legal advice regarding the Agreement and Budget from experienced class action lawyers.

[5] Under the *Class Proceedings Act, 1992*, SO 1992, c. 6 ("CPA"), it is necessary for the Plaintiffs to obtain court approval for the Agreement and Budget in order for them to be legally in force: *Bayens v Kinross Gold Corporation*, 2013 ONSC 4974, at para 41. Previous cases have held that, "The general test for determining whether to approve a third-funding agreement is that the agreement should not be champertous or illegal and it must be a fair and reasonable agreement that facilitates access to justice while protecting the interests of the defendants": *Houle v St. Jude Medical Inc.*, 2017 ONSC 5129, at para 71, aff'd 2018 ONSC 6352 (Div Ct).

[6] This overall test was elaborated further by Perell J. in *Houle*, at para 63, and approved by the Divisional Court, at para 27, as a multi-part analysis. The court is to assess a request for third party litigation funding in accordance with the following criteria:

(a) the agreement must be necessary in order to provide access to justice; (b) the access to justice facilitated by the third-party funding agreement must be substantively meaningful; (c) the agreement must be a fair and reasonable agreement that facilitates access to justice while protecting the interests of the defendants; and (d) the third-party funder must not be overcompensated for assuming the risks of an adverse costs award because this would make the agreement unfair, overreaching, and champertous.

[7] For the reasons that follow, I find that the Agreement and Budget meet this test and are approved.

II. Access to justice

[8] As indicated at the outset, these claims and proposed class action pit Tim Hortons coffee and donut shop franchisees against the franchisor. The background to the action is set out in my

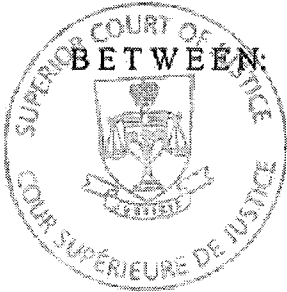
Court File No. CV-17-577371

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE MORGAN

)
)
)

MONDAY, THE 11TH
DAY OF FEBRUARY, 2019



1523428 ONTARIO INC.

Plaintiff

- and -

THE TDL GROUP CORP.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
Funding Agreement Approval Motion
Substitute Plaintiff Motion
(Ad Fund Action)**

THIS MOTION, made by the Plaintiff, for an Order approving a litigation funding agreement dated November 15, 2018 among the Plaintiff, Galactic TH Litigation Funders LLC and Himelfarb Proszanski, a copy of which is attached to this Order as **Schedule "A"** (the "Litigation Funding Agreement"), and substituting the Plaintiff in the event the Litigation Funding Agreement was approved, was heard on February 6, 2019 at the court house, Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5, and Judgment being reserved until February 11, 2019.

ON READING the Plaintiff's Motion Record, Plaintiff's Supplementary Motion Record, Plaintiff's Factum, the Consent of the proposed replacement plaintiff, filed, and on hearing submissions from counsel for the parties;

- 2 -

AND BEING ADVISED THAT the Defendant does not oppose this Order and the parties to the Litigation Funding Agreement are content that approval of the Galactic TH Return and the Lawyers' Return (as defined in the Litigation Funding Agreement) be reserved until the outcome of the action is known:

1. **THIS COURT ORDERS** *nunc pro tunc* that the Plaintiff may serve and file a copy of the Litigation Funding Agreement with the Funding Agreement Budget redacted.
2. **THIS COURT FURTHER ORDERS** *nunc pro tunc* that the Plaintiff may serve and file an unredacted copy of the Funding Agreement Budget under seal with the Court.
3. **THIS COURT FURTHER ORDERS** that the Litigation Funding Agreement and the Funding Agreement Budget are approved, save and except the Galactic TH Return and the Lawyers' Return.
4. **THIS COURT FURTHER ORDERS** that leave is hereby granted to remove 1523428 Ontario Inc. as a Plaintiff in this action.
5. **THIS COURT FURTHER ORDERS** that leave is hereby granted to add JB & M Walker Ltd. as a Plaintiff in this action and that the title of this proceeding shall be amended accordingly.

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

MAR 21 2019

PER/PAR



Justice Morgan

Schedule A

LITIGATION FUNDING AGREEMENT

This Litigation Funding Agreement is dated the 15th day of November 2018

Between:

Galactic TH Litigation Funders LLC ("Galactic TH")

and

1523428 Ontario Inc., JB &M Walker Ltd. and 1128419 Alberta Ltd. ("Claimants")

and

Himelfarb Proszanski ("Lawyers")

RECITALS WHEREAS:

- A. Claimants seek to enforce their Claims and those of the proposed Class Members against Defendant, and wish to pursue the Proceedings to enforce the Claims.
- B. Claimants have agreed, subject to any certification order, to act as the representative plaintiffs in the Proceedings, which have been commenced on their own behalf and on behalf of the Class Members against the Defendant in respect of their Claims.
- C. Lawyers are not prepared to take the risk of litigation or to pay disbursements or any Court Ordered Costs of the Proceedings.
- D. Claimants in their capacity as the proposed representative plaintiffs in the Proceedings, have requested funding from Galactic TH to assist with paying certain legal fees and disbursements in respect of the Proceedings.
- E. Galactic TH is prepared to provide such funding to Claimants on the terms of this Agreement, including paying the Lawyers fees plus the disbursements as they arise from time to time.
- F. Galactic TH will also fund any Court Ordered Costs and any Security for Costs ordered against the Claimants on the terms of this Agreement.
- G. Parties acknowledge that each have, by virtue of their respective contributions, obligations and entitlements set out in this Agreement, an interest in the Claims, the Proceedings and any Litigation Proceeds.
- H. In exchange for the funding, Claimants wish to assign to Galactic TH a share of the Litigation Proceeds (if any), in accordance with this Agreement.

- I. Before entering into discussions with Galactic TH for the purposes of this Agreement, Claimants had already engaged the Lawyers pursuant to an hourly rate retainer agreement (the "Retainer Agreement").
- J. Claimants in their capacity as the proposed representative plaintiffs agree to seek a Litigation Funding Agreement Approval Order in respect of this Agreement.
- K. This Agreement is necessary to provide the Claimants and the Class Members with access to justice in respect of the Claims.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree:

KEY TERMS

1. ARTICLE 1- DEFINITIONS

- 1.1 Capitalized terms used in this Agreement will have the meanings ascribed to them in the General Terms and Conditions attached as Exhibit A or as otherwise may be defined in the remainder of this Agreement.
- 1.2 References in this Agreement to Sections and Articles refer to the Sections and Articles in these Key Terms. References in this Agreement to Clauses and Parts refer to the Clauses and Parts in the General Terms and Conditions, Exhibit A.

2. ARTICLE 2- FUNDING COMMITMENT

- 2.1 It is acknowledged and agreed that, as the proposed representative plaintiffs in the Proceedings, the Claimants will be liable to the Defendant for any Court Ordered Costs or Security for Costs ordered by the Court, and the Claimants will be entitled to receive any costs awards made by the Court in their favour. Pursuant to the terms set out below, Galactic TH agrees to pay the Litigation Funding Amount, any Court Ordered Costs and/or any Security for Costs on behalf of the Claimant.
- 2.2 Litigation Funding Commitment. Galactic TH agrees to pay the Legal Fees and Disbursements in respect of the Proceedings ("**Litigation Funding Amount**").
- 2.3 Court Ordered Costs Commitment. Galactic TH will pay any Court Ordered Costs In accordance with the terms of this Agreement.
- 2.4 Security for Costs Commitment. In the event that the Court orders Security for Costs in favour of the Defendant, Galactic TH will provide such Security for Costs.

- 2.5 Over-Budget Fees and Disbursements. Any Over-Budget Fees and Disbursements will be the sole responsibility of the Claimants, and the Claimants will be compensated for any Over-Budget Fees and Disbursements as set out in Section 3.
- 2.6 Conditions for Funding and Funding Dates. Galactic TH will pay the Litigation Funding Amount, any Security for Costs and any Court Ordered Costs subject to the conditions set out in Clause 2.8 of Exhibit A and on the dates set out in Clause 2.7 of Exhibit A.

3. **ARTICLE 3- RETURNS AND PAYMENT WATERFALL**

- 3.1 Galactic TH Return. Subject to the order of priority detailed in Section 3.3 of the Key Terms, Galactic TH will receive from the Litigation Proceeds, an amount to be calculated as follows:

3.1.1 if any Litigation Proceeds are received at any time on or before the 18-month anniversary of the commencement of each Proceeding, an amount equal to twenty-two percent (22%) of the Litigation Proceeds plus HST;

3.1.2 If any Litigation Proceeds are received after the 18-month anniversary of the commencement of each Proceeding, and on or before the 36-month anniversary of the Agreement, an amount equal to twenty-four percent (24%) of the Litigation Proceeds plus HST; or

3.1.3 If any Litigation Proceeds are received after the 36-month anniversary of the commencement of each Proceeding, an amount equal to twenty-six percent (26%) of the Litigation Proceeds plus HST (the "Galactic TH Return").

- 3.2 Lawyers' Return. Subject to the order of priority detailed in Section 3.3 of the Key Terms, Lawyers will receive, from the Litigation Proceeds, an amount to be calculated as follows:

3.2.1 if any Litigation Proceeds are received at any time on or before the 18-month anniversary of the date of the Agreement, an amount equal to two percent (2%) of the Litigation Proceeds plus HST;

3.2.2 If any Litigation Proceeds are received after the 18-month anniversary of the date of this Agreement and on or before the 36-month anniversary of the Agreement, an amount equal to two and one half percent (2.5%) of the Litigation Proceeds plus HST; or

3.2.3 If any Litigation Proceeds are received after the 36-month anniversary of the date of the Agreement, an amount equal to three percent (3%) of the Litigation Proceeds plus HST (the "Lawyers' Return").

- 3.3 Payment Waterfall. Litigation Proceeds and any amounts paid by Galactic TH as Security for Costs will be paid in the following order of priority:
- 3.3.1 First, to Galactic TH, any amounts ordered to be repaid by the Court in respect of Security for Costs posted by Galactic TH;
 - 3.3.2 Second, to Galactic TH, the Galactic TH Return;
 - 3.3.3 Third, if approved by the Court, to the Claimants, an amount equal to any Disbursements incurred by the Claimants over and above the Disbursements paid by Galactic TH as part of the Litigation Funding Amount;
 - 3.3.4 Fourth, if approved by the Court, to the Lawyers, an amount equal to the Lawyers' Return;
 - 3.3.5 Fifth, to the Class Members (including all subrogated claims of provincial health insurers or otherwise) as directed by the Court (the "Class Members' Return").

All payments made under this Section 3.3 will be made without reduction, set-off or counterclaim. For certainty, Galactic TH's sole recourse for the Galactic TH Return will be from the litigation Proceeds. Lawyers' sole recourse for the Lawyers Return will be from the Litigation Proceeds, unless this Agreement is terminated, in which case the Lawyers shall be entitled to such remuneration as set out in the Retainer Agreement between the Lawyers and the Claimants, and as approved by the Court.

An example of the calculation made pursuant to this Section 3.3 is contained in Exhibit B.

- 3.4 Settlement Proceeds. All Litigation Proceeds recovered as a result of a Settlement will be received by, or sent to, the Lawyers and will remain in the Trust Account pending the deadline for appealing the order approving the Settlement. If an appeal is filed within the prescribed time for doing so, the Litigation Proceeds will remain in the Trust Account pending the outcome of the appeal and the prescribed time for appealing any order made on the appeal. The Settlement Proceeds will then be disbursed in accordance with the Court's settlement approval order and in accordance with Section 3.3.

4. ARTICLE 4-RETAINER AND LAWYERS

- 4.1 Lawyers' Retainer and Additional Lawyers. The Lawyers have been retained by Claimants pursuant to the Retainer Agreement. If this Agreement is approved by the court, the Lawyers and Claimants will amend the Retainer Agreement to confirm that the only remuneration to be paid to the Lawyers in respect of the Proceedings will be the Lawyers' hourly fees and the Lawyers' Return, and this Agreement shall be appended as a schedule to the amended Retainer Agreement. A copy of the amended Retainer

Agreement will be provided to Galactic TH. Lawyers represent, warrant and covenant that at all times, the Retainer Agreement between the Lawyers and Claimants is, and will be in accordance with and comply with all applicable laws, including the Solicitors Act, (Ontario) in effect from time to time and with all applicable Rules of Professional Conduct issued by the Law Society of Upper Canada or other applicable governing body.

- 4.2 If Claimants terminate their retainer of the Lawyers, then at Galactic TH's option this Agreement may continue with the new lawyers or require that their Galactic TH's funding advances to date be protected by any such new lawyers.

5. ARTICLE 5-COURT APPROVAL

- 5.1 Court Approval. All obligations of Galactic TH under this Agreement are subject to and conditional upon the Court making a Litigation Funding Agreement Approval Order. In the event a Litigation Funding Agreement Approval Order is not granted by the Court, this Agreement will automatically terminate, subject to Clauses 10.4.5 and 10.4.6 of Exhibit A. Submission of the Agreement to the Court for approval is not and will not be a waiver of any applicable privilege insofar as this Agreement contains information regarding litigation strategy or budget, which parts shall be redacted when provided to the Defendant, but provided to the Court in an unredacted form, under seal.

6. ARTICLE 6-ATTORNMENT

- 6.1 Attornment. Each Party attorns to the jurisdiction of the Court, including in respect of the implied undertaking of confidentiality and agrees to comply with any protective orders made by the Court. Galactic TH shall be deemed to be a party to the Proceedings for the purpose of Rule 30.1.01 of the Rules of Civil Procedure, R.R.O.1990, Reg.194.

7. ARTICLE 7- INDEPENDENT LEGAL ADVICE

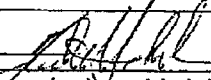
- 7.1 Representation and Warranty. Claimants represent and warrant that competent counsel has reviewed the Agreement on their behalf and Claimants have received independent legal advice regarding the terms of the Agreement and the execution and delivery of the Agreement by Claimants and their performance of its obligations hereunder.

8. ARTICLE 8- AMENDMENTS TO PROCEEDINGS OR CHANGE IN LAWYERS

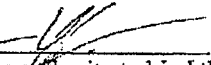
- 8.1 The Parties agree that the terms of this Agreement may need to be renegotiated if a material change occurs, including by way of example, if there was a material change or amendment to the Proceedings (including if an additional defendant is added or new causes of action are pleaded), or if additional lawyers are sought to be added as part of the consortium of lawyers prosecuting the Proceedings. However, should the Lawyers retain other lawyers to provide specialized expertise and advice to them in respect of any issue in the proceeding that shall not constitute a material change.

IN WITNESS WHEREOF, the Parties have executed the Agreement as of the date first above written.

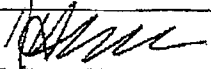

Galactic TH Litigation Funders LLC

By:  "I have authority to bind the Corporation" Name: Friedrich Schulze Title: Managing Member	By: _____ "I have authority to bind the Corporation" Name: _____ Title: _____
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Claimants

1523428 Ontario Inc. By: _____ "I have authority to bind the Corporation" Name: _____ Title: _____	JB & M Walker Ltd. By:  "I have authority to bind the Corporation" Name: Mark Walker Title: CEO
1128419 Alberta Ltd. By: _____ "I have authority to bind the Corporation" Name: _____ Title: _____	

Himelfarb Proszanski Lawyers

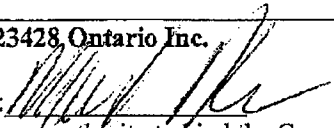
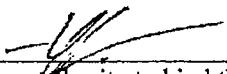

 Name: David Himelfarb	 Name: Peter Proszanski
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IN WITNESS WHEREOF, the Parties have executed the Agreement as of the date first above written.

Galactic TH Litigation Funders LLC

By: _____ "I have authority to bind the Corporation" Name: Title:	By: _____ "I have authority to bind the Corporation" Name: Title:
--	--

Claimants

1523428 Ontario Inc. By:  "I have authority to bind the Corporation" Name: Mark Kuziora Title: President	JB &M Walker Ltd. By:  "I have authority to bind the Corporation" Name: Mark Walker Title: CEO
1128419 Alberta Ltd. By:  "I have authority to bind the Corporation" Name: DAVID HUGHES Title: OWNER (PRESIDENT)	

Himelfarb Proszanski Lawyers

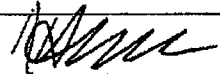
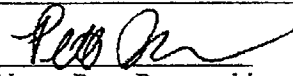
 Name: David Himelfarb	 Name: Peter Proszanski
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EXHIBIT A**GENERAL TERMS AND CONDITIONS**

The following General Terms and Conditions form part of the Litigation Funding Agreement to which this Exhibit A is attached.

1. PART 1- DEFINITIONS

Capitalized terms used in this Agreement have the meanings ascribed to them below or otherwise as specifically defined elsewhere in the Agreement.

"Affiliate"	<p>In relation to:</p> <p>(i) the Claimants and the Lawyers, their Representatives, and any additional lawyers retained by the Lawyers to assist in the prosecution of the Proceedings; and</p> <p>(ii) in relation to Galactic TH:</p> <p>a. Galactic Litigation Partners LLC, being the parent company of Galactic TH ("Galactic THParentCo");</p> <p>b. any subsidiary company Controlled by Galactic TH ("Subsidiary");</p> <p>c. an entity or trust Controlled or advised or managed, directly or indirectly, by Galactic TH, Galactic THParentCo or a Subsidiary; or</p> <p>d. the Representatives of Galactic TH, Galactic THParentCo or any Subsidiary.</p>
"Agreement"	Means this litigation Funding Agreement, including its recitals and Exhibits as any of the foregoing may be amended by the Parties in writing from time to time.
"Galactic TH Return"	The meaning assigned to such term in Section 3 of the Key Terms.

- "Business Day" Means a day, which is not a Saturday, Sunday, or public holiday in the place of receipt of that communication.
- "Claims" The claim or claims that the Class Members have or may have against the Defendant.
- "Class Members" or "Class" In respect of the Proceedings:
- (i) class members in Ontario Superior Court of Justice Court File No. CV-17-577371 (the Ad Fund Class)
 - (ii) class members in Ontario Superior Court of Justice Court File No. CV-17-584058 (the Association Class),
- in each case to the extent such persons have not opted out, or such other definition as may be approved by the Court.
- "Class Members' Return" The meaning assigned to such term in Section 3 of the Key Terms.
- "Confidential Information" Any information relating to any of the Agreement's provisions or terms, the Claims or the Proceedings, including any discussions and negotiations related thereto, regardless of whether such information is:
- (i) Written or oral and irrespective of the form or storage medium; or
 - (ii) Specifically identified as "Confidential" or which, by virtue of its nature, would be understood to be confidential by a reasonable Recipient.
- Confidential Information includes analyses and summaries derived from other Confidential Information. Confidential Information does not include information that:
- (i) was or becomes generally available to the public other than as a result of a disclosure by the Recipient in breach of the Agreement;
 - (ii) was actually known to the Recipient on a non-confidential basis prior to its disclosure;
 - (iii) is rightfully received by the Recipient from a third party not in breach of any obligation of confidentiality to the Disclosing Party; or
 - (iv) was developed independently of any information derived from any Confidential Information.
- "Control" Means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or

otherwise and "Controlled" and "Controlled" have corresponding meanings.

"Court"	The Court in which the Proceedings are conducted.
"Court Ordered Costs"	Means any legal fees and disbursements that a Court orders the Claimants to pay to the Defendant in respect of the Proceedings, provided that the applicable legal fees and disbursements incurred by the Defendant were incurred during the term of this Agreement only.
"Defendant"	The TDL Group Corp., Tim Hortons Advertising and Promotion Fund (Canada) Inc., Restaurant Brands International Inc., Daniel Schwartz, Elias Diaz Seze, Sami Siddiqui, Andrea John and Jon Domanko, or as amended from time to time in the Proceedings.
"Disbursements"	out-of-pocket costs and relating to the Claims and Proceedings and including, for certainty, the costs of expert witnesses and consultants.
"Disclosing Party"	A Party to the Agreement that provides Confidential Information to another Person.
"Expended Litigation Funding Amount"	Amounts paid by Galactic TH pursuant to the Agreement in respect of the Litigation Funding Amount.
"Final Resolution"	The resolution of the Proceedings, which concludes the Proceedings pursuant to: <ul style="list-style-type: none"> (i) A legal and valid judgment of the Court for which the appeal period has elapsed or expired and no appeal has been commenced; (ii) A final, non-appealable judgment of the Court; (iii) A Settlement between Claimant and Defendant that has been approved by the Court; or (iv) A discontinuance or permanent stay of the Proceedings <p>"General Terms and Conditions" Means the general terms and conditions detailed in this Exhibit A.</p>
"HST"	Means taxes in respect of a taxable supply made in Ontario and Canada at the rates of 5% and 8% respectively, pursuant to section 165 of the Excise Tax Act (Canada).
"Key Terms"	The initial part of the Agreement under heading titled Key Terms.

- "Lawyers" The law firm of Himelfarb Proszanski and additional lawyers engaged by the Lawyers to assist in the prosecution of the Proceedings in accordance with the term of the Claimants' Retainer Agreement, or any other lawyers who the Claimants engage to replace Himelfarb Proszanski and who have been approved by Galactic TH to become signatories to this Agreement.
- "Lawyers' Remaining Fees" Means all of the Lawyers' total docketed time over and above the Legal Fees.
- "Lawyers' Return" The meaning assigned to such term in Section 3 of the Key Terms.
- "Legal Fees" The fees budgeted by the provided in relation to the Claims, Proceedings and seeking to obtain the Litigation Funding Agreement Approval Order, payable subject to the terms of the Agreement. For the avoidance of doubt, Legal Fees does not include the Lawyers' Remaining Fees.
- "Litigation Funding Amount" The meaning assigned to such term in Section 2.2 of the Key Terms. For certainty, Litigation Funding Amount does not include legal fees and disbursements of any personal lawyers that may be retained by any Class Member to represent their interests in any individual issues.
- "Litigation Funding Agreement Approval Order" The Court order approving this Agreement and declaring that the agreement is binding on Class Members.
- "Litigation Proceeds" Any and all amounts paid or to be paid directly or indirectly to or for the benefit of Claimants and/or Class Members or received directly or indirectly by or for the benefit of Claimants and/or Class Members in connection with or as a result of the Claims and the Proceedings, whether by judgment, settlement or otherwise.
- Such amounts may include:
- (i) amounts in respect of any damages (punitive or otherwise), penalties, interest, costs, cost awards and orders and any other amounts, paid or to be paid regardless of type or characterization of same;
 - (ii) any ex gratia payments, and
 - (iii) any interest earned on any of the amounts referred paragraphs (i) and (ii) above.
- Without limiting the generality of the foregoing, the amount of Litigation Proceeds will not be reduced by:

- (i) Any costs or fees, paid or payable, to collect the Litigation Proceeds;
- (ii) Recoupments or set-offs in respect of any counterclaims, cross-claims or third party claims asserted against Class Members by any party to the Proceedings, including Defendant, that are unrelated to the Claims; and
- (iii) Any set off applied by the Court.

Litigation Proceeds do not include any amount paid in respect of Security for Costs that is returned by Court order.

"Over-Budget Fees and Disbursements"

Any amounts that exceed:

- (a) being the total budgeted amount (inclusive of HST) for legal fees and
- (b) the total budgeted amount (inclusive of HST) for disbursements.

"Party"

A party to this Agreement.

"Payment"

The meaning assigned to such term in Clause 2.8 of this Exhibit A.

"Person"

Any person, natural or legal, including, without limitation, a corporation, partnership, limited partnership, limited liability company, joint stock company, joint venture, association, company, estate, trust or other organization whether or not a legal entity, custodian, trustee, executor, administrator, nominee or entity in a representative capacity and any government or agency or political subdivision thereof.

"Proceedings"

The legal proceedings in connection with all claims, actions and/or proceedings relating to or arising from the class action proceedings, 1523428 Ontario Inc. v. The TDL Group Corp., et al. Court File No CV-17-577371 (the "Ad Fund Proceeding"), and JB & M Walker Ltd. et al v. The TDL Group Corp., et al, Court File No CV-17-584058-00CP (the "Association Proceeding") commenced pursuant to the provisions of the *Class Proceedings Act, 1992*.

"Recipient"

The Person that receives Confidential Information from a Party.

"Representatives"

A director, officer, partner, member, employee, auditor, insurer, prospective insurer, insurance broker, legal counsel, trustee, consultant and other professional adviser.

"Request"

The meaning assigned such term in Clause 2.8.1.1 of this Exhibit A.

"Retainer Agreement"	The meaning assigned to such term in Recital of the Key Terms
"Security for Costs"	Means any security for the costs of the Defendant as ordered by the Court in respect of the Proceedings.
"Settlement"	Any compromise, discontinuance, waiver, payment (including any ex gratia payment), release or other form of settlement whatsoever where value passes (or it is agreed will pass in the future) from or on behalf of Defendant to or for the benefit of Class Members in circumstances in which the Proceedings do not continue as a result of or in connection with the passing of that value; and "Settle", "Settles" and "Settled" have corresponding meanings.
"Taxes"	<p>Other than HST, any and all applicable taxes, duties, charges or levies of any nature imposed by any taxing or other governmental or regulatory authority, including, without limitation, income, gains, capital gains, surtax, capital, franchise, capital stock, value-added taxes, taxes required to be deducted or withheld from payments made by the payer and accounted for to any tax authority, employees' income withholding, back-up withholding, withholding on payments to foreign Persons, social security, unemployment, worker's compensation, payroll, disability, real property, personal property, sales, use, goods and services or other commodity taxes, business, occupancy, excise, customs and import duties, transfer, stamp, and other taxes (including interest, penalties or additions to tax in respect of the foregoing), and includes all taxes payable pursuant to any provision of local, provincial, federal or foreign law.</p> <p>For the avoidance of doubt, Taxes does not include HST.</p>
"Termination"	Any termination of the Agreement in accordance with Part 10.
"Trust Account"	The account referred to in Clause 3.1 of this Exhibit A.

2. PART 2- PAYMENT OF LITIGATION FUNDING AMOUNT. PAYMENT OF COURT ORDERED COSTS. INVOICES. FUNDING DATES. INTERIM COST AWARDS AND PAYMENT

- 2.1 General. Galactic TH will provide the Litigation Funding Amount subject to the terms and conditions set forth in the Agreement.
- 2.2 Use of Funding. Under no circumstances may any part of the Litigation Funding Amount be used to pay any amount other than as specifically contemplated by this Agreement.

- 2.3 Court Ordered Costs. Lawyers are required to deliver to Galactic TH a copy of any order for Court Ordered Costs within one (1) Business Day of the order being received by them.
- 2.4 No Affirmative Liability. Except for payment of the litigation Funding Amount, Court Ordered Costs and Security for Costs, under no circumstances will Galactic TH have any obligation to pay any liability of the Claimants including fees, costs, expenses, counterclaims, cross-claim awards or third party awards, nor will Galactic TH be liable for any liability or obligation of the Class Members whatsoever, except as expressly provided for in the Agreement.
- 2.5 Lawyers' Invoices. Lawyers will provide monthly invoices addressed to Claimants, with a copy to Galactic TH in a form acceptable to Galactic TH, setting out all Legal Fees and Disbursements incurred by the Lawyers for such month, which will contain (i) summaries of time details for the fees of the Lawyers (date, time spent, lawyer performing work, hourly rate),(ii) the Legal Fees for the month, indicating the total docketed time, and a separate figure for the Legal Fees for which Payment is sought; and,(iii) copies of all invoices for Disbursements.
- 2.6 Assessment. Galactic TH may, in its discretion, require that the Lawyers submit any one or more of their invoices to assessment. The Claimants hereby irrevocably authorize Galactic TH to take all appropriate actions, in the Claimants' name, to assess any of the Lawyers' invoices. Any costs of any assessment will be paid by Galactic TH as part of the Legal Fees.
- 2.7 Funding Dates. Subject to any conditions or limitations set out in this Part 2 or in Article 2 of the Key Terms, Galactic TH will pay:
- 2.7.1 Any amount that relates to a Litigation Funding Amount, no later than thirty (30) days after receipt by Galactic TH of all of the items required to be delivered pursuant to Clause 2.8 of this Exhibit A;
- 2.7.2 Any amount that relates to Security for Costs in accordance with the period stipulated in the relevant order of the Court (unless the Security for Costs order is stayed pending an appeal or otherwise); and
- 2.7.3 Any amount that relates to Court Ordered Costs in accordance with the period stipulated in such order (unless such order is stayed pending an appeal or otherwise).
- 2.8 Conditions for Funding. Galactic TH will pay amounts in respect of the Litigation Funding Amount, from time to time, (each a "Payment") upon satisfaction of the following conditions (as applicable):
- 2.8.1 In respect of each Payment, Galactic TH will have received from Claimants:
- 2.8.1.1 copies of relevant invoices from the Lawyers that comply with Clause 2.5 and a written email request for payment from Claimants in the form attached as Exhibit C (a "Request") that is emailed to Galactic TH in accordance with Clause

- 13.1 of this Exhibit A and also emailed to an email address as directed in writing by Galactic TH;
- 2.8.2 In respect of Payment regarding an order for Security for Costs, Galactic TH will have received the relevant Court order and absent the Security for Costs order being stayed pending an appeal or otherwise, Galactic TH will comply with such order.
- 2.8.3 In respect of Payment regarding an order for Court Ordered Costs, Galactic TH will have received the relevant Court order. Galactic TH will, absent the Court Ordered Costs being stayed pending an appeal or otherwise, comply with such order.
- 2.8.4 Galactic TH will make all Payments by electronic fund transfer or wire transfer to Lawyers as specified to Galactic TH in the relevant invoice or Request.
- 2.9 Interim Costs Award If during the course of the Proceedings, the Court awards costs to the Claimants on a motion or other interlocutory proceeding and such costs are paid by the Defendants, such court costs shall be paid into the Trust Account, and the Lawyers shall pay to Galactic TH from such court costs the amount of Disbursements already incurred and paid by Galactic TH, and to the extent that any such court costs remain in trust after repayment of the Disbursements paid by Galactic TH, the court costs may be paid to the Lawyers to reimburse them for any Disbursements not paid by Galactic TH. Should any court costs remain in trust after the repayment of all incurred Disbursements, the Lawyers shall hold the remaining court costs in trust. Such court costs may be applied towards the payment of future Disbursements and Lawyers' invoices, in which case the Disbursements and Lawyers' invoices paid from the trust funds shall not be paid by Galactic TH, and shall not count towards the calculation of the litigation Funding Commitment. To the extent that any such costs award have not been applied against Disbursements at the time of the final resolution of the Proceeding, the costs award will be applied first toward the Galactic TH Return and if any amount remains thereafter, then second to the Lawyers' Return payable under this Agreement.

3. PART 3- RECEIPT OF LITIGATION PROCEEDS

- 3.1 Trust Account. Claimants will cause and hereby irrevocably direct the Lawyers:
- (a) to arrange to receive any and all Litigation Proceeds and to immediately deposit all Litigation Proceeds into a separate trust account (the "Trust Account") established by the Lawyers at a Toronto, Ontario branch of a Schedule A Canadian bank to be held in trust for and on behalf of the Party or Parties that are intended to be the ultimate recipient thereof under this Agreement;
- (b) not to permit the funds in the Trust Account to be mixed with any other funds that are not Litigation Proceeds;
- (c) not to disburse the funds in the Trust Account except in accordance with the Agreement and an order of the court; and

(d) to pay out of the Trust Account to Galactic TH, all amounts to which Galactic TH is entitled as the Galactic TH Return. The Lawyers will provide Galactic TH with all identifying particulars of the trust account.

- 3.2 Class Member's Receipt of Litigation Proceeds. The Claimants and the Lawyers will not consent to any settlement that provides for the payment of Litigation Proceeds directly to Class Members, and in the event of a successful conclusion to any common issues trial or determination of individual issues, the Lawyers will draw to the attention of the court or individual issues adjudicator the fact of this Agreement, and its approval by the court, including the fact that there is a first charge on any Litigation Proceeds in favour of Galactic TH and the Lawyers with respect to the Galactic TH Return and the Lawyers Return, and request that any Litigation Proceeds be directed to be paid to the Lawyers in accordance herewith.

4. PART 4- APPLICATION OF LITIGATION PROCEEDS

- 4.1 Payment Waterfall. Claimants will cause the Lawyers to pay promptly out of the Trust Account in accordance with the provisions of the Key Terms pursuant to Article 3 thereof titled "Returns and Payment Waterfall", the amounts required to be paid thereunder as and when any Litigation Proceeds are received and may be paid out of the Trust Account.
- 4.2 Taxes. Each Party will be responsible for the payment of Taxes arising from its receipt of its share of the Litigation Proceeds. Payment to Galactic TH and the Lawyers will not be reduced by payment of any Taxes owed by any other Party or Person.

5. PART 5- CONDUCT OF PROCEEDINGS AND SETTLEMENT

- 5.1 Conduct of Proceedings and Right to Settle. Subject to the provisions of this Part 5, Claimants will have the sole and exclusive right to direct the conduct of the Proceedings and to settle the Proceedings.
- 5.2 Communication of Settlement Offers. Claimants will communicate to Galactic TH the amount and terms of any Settlement offers within one (1) Business Day following receipt of the offer, and advise Galactic TH of all Settlement offers proposed to be made by Claimants.

6. PART 6- CONFIDENTIALITY AND PROVISION OF DOCUMENTS

- 6.1 Implied Undertaking of Confidentiality. The Parties acknowledge that Galactic TH will be subject to the implied undertaking of confidentiality imposed upon the parties to the Proceedings with respect to any documents or information about the claims and the Proceedings and the parties to the Proceedings that Galactic TH may receive as a result of its rights under the Agreement. Galactic TH will be relieved of the implied undertaking of confidentiality in the same manner and at the same time as Claimants.
- 6.2 No Waiver of Privilege. In providing to Galactic TH any documents or information about the Claims and the Proceedings, Claimants do not waive any privilege that may attach to the documents or information. For greater certainty, the Parties acknowledge that Claimants and Galactic TH share a common interest in the documents and information

related to the Claims and the Proceedings and disclosure of any such documents and information by confidence.

6.3 Entitled to Documents and Information. Without interfering in the solicitor-client relationship between Claimants and the Lawyers, and subject to:

(a) Galactic TH's confidentiality obligations under the Agreement, including the implied undertaking of confidentiality applicable to Galactic TH pursuant to Clause 6.1 of this Exhibit A;

(b) the Lawyers' reasonable judgment with respect to preservation of all legal privileges of Claimants; and

(c) compliance with Court orders or other legal restrictions on the sharing of information, Claimants will:

6.3.1 Authorize the Lawyers to promptly provide to Galactic TH, upon Galactic TH's request, a copy of any document filed, served, produced or obtained in the course of the Proceedings; and

6.3.2 Authorize the Lawyers to keep Galactic TH fully and continually informed of all material developments with respect to the Claims and the Proceedings.

Claimants agree to reasonably defend any claim made by Defendant that Galactic TH should not be entitled to any of the information or documentation to be provided to Galactic TH pursuant to this Clause 6.3 or otherwise, at Galactic TH's expense. Any legal fees and disbursements expended by the Lawyers with respect to such a challenge shall not be included in the calculation of the Litigation Funding Amount.

6.4 Exclusive Ownership of Information by Disclosing Party. All Confidential Information provided to the Recipient is and will remain at all times the exclusive property of and owned by the Disclosing Party (or its Affiliates or contract counterparties, as the case may be). Recipient's use or awareness of such Confidential Information will create no rights, at law or in equity, in the Recipient in or to such Information, or any aspect or embodiment thereof. The furnishing of any Confidential Information will not constitute:

(a) a grant, whether express or by implication, estoppel or otherwise, of any ownership interest or license, copyright, trademark, service mark, business and trade secret or other proprietary right to such Confidential Information, or of any right to use such Confidential Information for any purpose other than as specified in the Agreement; or

(b) a waiver of any solicitor-client privilege, litigation privilege, common interest privilege, or any other applicable or available similar privilege or protection.

6.5 Non-Disclosure of Information. Subject to Clause 6.6 of this Exhibit A, the Recipient will not for any reason, during the term of the Agreement and thereafter, disclose, use, reveal, report, publish, transfer, or make available, directly or indirectly, to any Person other than its Affiliates, any Confidential Information provided to it in connection with the performance of its obligations or rights under the Agreement or the enforcement of its

rights under the Agreement, unless expressly authorized to do so in writing by the Disclosing Party prior to the contemplated disclosure or required to do so by an express provision of the Agreement, by any applicable law or legally binding order of any court, government, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity acting within its powers

- 6.6 Public Notices. No press release or other announcement concerning the existence of the Agreement, the funding provided under the Agreement, or the identity of the Parties or their respective Affiliates, will be made by a Party without the prior written consent of the other Party, subject to Galactic TH's right and the right of its parent entity, to make disclosure to relevant securities exchange, if any ("Securities Exchange") of its funding of the Proceedings and the Claims, including any key developments in, and the outcome to, the Proceedings in accordance with the Securities Exchange Listing Rules and laws of the United States of America (or either of them), and the Claimant's obligation to disclose the Litigation Funding Agreement Approval Order to the Class. Prior to making any such disclosure, Galactic TH and/or the Lawyers will provide the other Parties with a reasonable opportunity to review and comment on the proposed disclosure, provided, however, that notwithstanding anything else in this Agreement, under no circumstances will Galactic TH be prevented from complying with its legal or regulatory obligations.
- 6.7 Confidentiality Procedures. Subject to Clause 6.5 and Clause 6.6 of this Exhibit A, the Recipient will ensure that the Confidential Information that it receives is not divulged or disclosed to any Person except its Affiliates and any assignee permitted pursuant to Clause 14.3 of this Exhibit A, who have a legitimate "need to know" the Confidential Information. The Recipient will be solely responsible for its and its Affiliates' and assignees' failure to comply with the provisions of the Agreement and the Recipient will ensure its Affiliates' and assignees' compliance with the confidentiality obligations stipulated herein.

7. PART 7- COVENANTS OF CLAIMANTS

- 7.1 Co-operation of Claimants. At all times during the term of the Agreement, Claimants will:
- 7.1.1 intentionally deleted;
 - 7.1.2 intentionally deleted;
 - 7.1.3 intentionally deleted;
 - 7.1.4 Co-operate with Galactic TH including by being reasonably available at Galactic TH's reasonable request to discuss the operation of the Agreement by phone or email or in person;
 - 7.1.5 Provide full assistance and co-operation to the Lawyers and Galactic TH in relation to opposing, taxing, assessing or resolving any application for security for costs or any Defendant's Costs Order.
 - 7.1.6 intentionally deleted;

7.1.7 intentionally deleted.

7.2 Co-operation of Lawyers. At all times during the term of the Agreement, Lawyers will:

7.2.1 intentionally deleted;

7.2.2 intentionally deleted;

7.2.3 intentionally deleted;

7.2.4 Maintain a record of all funding provided by Galactic TH of which they are aware under the Agreement;

7.2.5 intentionally deleted;

7.2.6 Continue to act for Claimants even if the maximum amount of the Litigation Funding Amount has been reached. If the Litigation Funding Amount is exceeded, Claimants are responsible for all Over-Budget Fees and Disbursements, which shall be paid only from the Litigation Proceeds;

7.2.7 Provide to Galactic TH, as and when requested by Galactic TH, a copy of any material document or filing made or obtained in the Proceedings by way of discovery, subpoena or any other lawful means, subject to:

(a) Galactic TH's confidentiality obligations under the Agreement, including the deemed undertaking of confidentiality applicable to Galactic TH pursuant to Part 6 of Exhibit A;

(b) Lawyers' reasonable judgment with respect to preservation of all legal privileges of Claimants; and

(c) compliance with court orders or other legal restrictions on the sharing of information.

7.2.8 Keep Galactic TH fully and continually informed of all material developments with respect to the Claims and the Proceedings, no less often than once every three (3) months unless waived by Galactic TH, subject to the Lawyers' reasonable judgment with respect to preservation of all legal privileges of Claimants.

7.2.9 Within one (1) Business Day, inform Galactic TH of any application for Security for Costs made by Defendant;

7.2.10 Within one (1) Business Day, inform Galactic TH of any Court Ordered Costs or of any circumstances which might reasonably give rise to an order for Court Ordered Costs;

7.2.11 Immediately inform Galactic TH and the Claimants of all Settlement offers or offers to engage in an alternative dispute resolution process received from any Defendant;

- 7.2.12 intentionally deleted;
- 7.2.13 intentionally deleted;
- 7.2.14 Receive all Litigation Proceeds into the Trust Account and comply with Part 3 of this Exhibit A.
- 7.2.15 Promptly pay out of the Trust Account all amounts payable to Galactic TH under the Agreement, once such funds are payable, in accordance with the provisions in the Key Terms pursuant to Article 3 thereof titled "Returns and Payment Waterfalls". Only once the Galactic TH Return and the Lawyers Return are fully paid may Lawyers pay the balance out of the Trust Account to or for the benefit of Claimants, unless otherwise ordered by the court; and
- 7.2.16 Provide commercially reasonable assistance and co-operation to Galactic TH in relation to opposing, taxing, assessing or resolving any application for Security for Costs or any Court Ordered Costs and ensure any costs order that is not an order for Court Ordered Costs that is being funded in accordance with this Agreement, is paid in accordance with its terms.
- 7.3 Ongoing Truth and Completeness of Representations and Warranties. Claimants' representations and warranties to Galactic TH in the Agreement will remain true, correct and complete at all times during the term of the Agreement.
- 7.4 Not a Solicitor Client Relationship. Nothing herein will create a solicitor-client relationship between Lawyers and Galactic TH, and it is understood that Lawyers' professional obligations are owed exclusively to Claimants.

8. PART 8- REPRESENTATIONS AND WARRANTIES

- 8.1 Claimants' Representations, Warranties and Covenants. The Claimants, jointly and severally, represent and warrant to and covenant in favour of Galactic TH that:
- 8.1.1 intentionally deleted;
- 8.1.2 intentionally deleted;
- 8.1.3 The Claimants are not insolvent or subject to any proceeding in respect of voluntary or involuntary bankruptcy, winding-up, dissolution, liquidation, arrangement or compromise with creditors, or appointment of any Person with powers similar to a receiver;
- 8.1.4 The Claimants disclosed or have made available to Galactic TH all material documentation and other information and facts in their possession or control relevant to the Claims or the Proceedings;
- 8.1.5 There is no information or facts in the knowledge, possession or control of the Claimants that is or is reasonably likely to be material to Galactic TH's assessment of the Claims or the Proceedings that has not been disclosed to Galactic TH;

8.1.6 The Claimants believe that the Claims are meritorious;

8.1.7 Except for the Proceedings, no litigation has been commenced by or against or, to the best of its knowledge, is threatened against the Claimants which may materially and adversely affect the Claims or the recoverability of the Litigation Proceeds;

8.1.8 The Claimants have the full capacity to bring the Claims, pursue the Proceedings and direct the Lawyers;

8.1.9 The Claimants have not failed to disclose to Galactic TH any fact or fact of which they are aware that would, if Galactic TH had been so advised, be reasonably expected, individually or in the aggregate, to have led Galactic TH not to enter into this Agreement;

8.1.10 The Recitals stated on page 1 of the Agreement are true and correct.

9. PART 9- DURATION OF AGREEMENT

Subject to Part 10, the Agreement commences on the date hereof and, absent Termination, continues in effect until:

- (a) Final Resolution;
- (b) The Parties have complied with all of their obligations pursuant to the Agreement; and
- (c) All Litigation Proceeds (if any) have been fully disbursed in accordance with the Agreement.

10. PART 10- TERMINATION

10.1 By Galactic TH. Subject to court approval, Galactic TH will have the right to terminate the Agreement upon ten (10) days' written notice to Claimants from and after the occurrence of any of the following events, so long as such event is continuing at the end of the ten (10) day period:

10.1.1 Any material breach by Claimants of a provision in the Agreement;

10.1.2 The Lawyers seek to withdraw or do withdraw from the Proceedings;

10.1.3 Either of the Claimants becomes insolvent or becomes subject to any proceeding in respect of voluntary or involuntary bankruptcy, winding-up, dissolution, liquidation, arrangement or compromise with creditors, or appointment of any Person with powers similar to a receiver, and the Court does not grant an order permitting the Claimants to continue in their capacity as representative plaintiffs, or the court does not grant an order replacing the Claimants with another representative plaintiff;

10.2 intentionally deleted;

10.3 By Claimants. Claimants will have the right, in their sole discretion, to terminate the Agreement upon ten (10) days' written notice to Galactic TH from and after a failure by

Galactic TH to fulfill (i) Payment of part of the Litigation Funding. Amount, (ii) payment of any Court Ordered Costs or (iii) payment of any Security for Costs in accordance with the terms of this Agreement, so long as such failure is continuing at the end of the ten (10) day period and such failure to fulfill payment is not the subject of a continuing dispute undertaken by Galactic TH in good faith.

10.4 Consequences of Termination.

10.4.1 If Galactic TH terminates the Agreement pursuant to any of Clauses 10.1.1 to 10.1.4 of this Exhibit A, then Galactic TH will continue to be entitled, to the Galactic TH Return out of any litigation Proceeds recovered by Claimants, paid in the order of priority provided for in Article 3 of the Key Terms.

10.4.2 If Galactic TH terminates the Agreement pursuant to Clause 10.1.5 or 10.1.6 of this Exhibit A, or if Claimants terminate the Agreement pursuant to Clause 10.3 of this Exhibit A, then Galactic TH will not be entitled to the Galactic TH Return but will instead be entitled to be paid an amount equal to the Expended litigation. Funding Amount out of any Litigation Proceeds recovered by Claimants, paid in the order of priority provided for in Article 3 of the Key Terms.

10.4.3 If the Agreement is terminated pursuant to Article 4.2 of the Key Terms, and no new funding agreement is entered into with Claimants' new lawyers, then Galactic TH will be entitled to be paid an amount equal to the Expended Litigation Funding Amount out of any litigation Proceeds recovered by Claimants, paid in the order of priority provided for in Article 3 of the Key Terms.

10.4.4 All obligations of Galactic TH under the Agreement will cease on the date the Termination becomes effective, other than obligations accrued prior to that date. Such accrued obligations include:

10.4.4.1 Payment of any outstanding legal Fees, Disbursements, Court Ordered Costs and Security for Costs payable by Galactic TH pursuant to the Agreement incurred up to the date the Termination becomes effective;

10.4.4.2 Payment of any court ordered Security for Costs (which, for the avoidance of doubt; relates only to Security for Costs which are ordered after the date Claimants sign the Agreement but before the date the Termination becomes effective); and

10.4.4.3 Payment of any Court Ordered Costs where the Costs Order or the obligation of the Claimants to pay Court Ordered Costs is made prior to the date the Termination becomes effective.

10.4.5 Upon any Termination, Galactic TH will be entitled, in order to protect its own interest in relation to the Agreement, to keep copies of the Confidential Information provided to it pursuant to the Agreement, subject to Galactic TH's ongoing obligations pursuant to Clause A (Non-Disclosure of Information) and Clause 6.7 of this Exhibit A (Confidentiality Procedures).

10.4.6 The following are continuing obligations and survive Termination, subject to the further conditions set out above in this Clause 10.4 Part 6 of this Exhibit A (Confidentiality and Provision of Documents), Part 7 of this Exhibit A (Covenants of Claimants), Part 11 of this Exhibit A (Governing Law) and Part 12 of this Exhibit A (Notices).

- 10.5 Continued Performance Unless and until the Agreement is terminated under this Part 10, each Party will continue to perform its obligations under the Agreement notwithstanding the existence of any dispute among the Parties.

11. PART 11 GOVERNING LAW

- 11.1 Governing Law. The Agreement is entered into in the Province of Ontario and will be governed by and construed in accordance, with the laws of the Province of Ontario applicable to contracts entered into and fully to be performed in such Province, without regard to that Province's conflict of laws rules.
- 11.2 Resolution of Disputes. The Parties agree to attempt to resolve any disputes by consulting with one another in good faith. In the event that the Parties are unable to resolve matters after consulting with one another in good faith, each Party irrevocably consents and attorns to the exclusive jurisdiction of the competent courts of the Province of Ontario.

12. PART 12 NOTICES

- 12.1 Method. All notices requests demands or other communications required or permitted to be given by one Party to another pursuant to the Agreement will be given in writing by email or by personal delivery, courier, service, prepaid registered mail (in each case accompanied by concurrent delivery of notice by email), addressed or delivered to such other Party as follows:

Galactic TH Litigation Funders LLC
400 Rella Blvd. Suite 301
Sufem New York USA 10901

For Claimants and Lawyers:

Himelfarb Proszanski
480 University Avenue, Suite 1401
Toronto, Ontario, Canada M5G 1V2

or at such other address of which written notice is given to the other Parties. It is Galactic TH's preference that wherever possible, written communications between the Parties will be by email and not by other methods of delivery.

- 12.2 Receipt. Any communication under or in connection with this Agreement will be deemed to have been received:

12.2.1 (in the case of delivery by hand) on delivery at the address of the addressee as provided in Clause 12.1, unless that delivery is made on a non-Business Day, or after 5.00pm local time on a Business Day, when that communication will be deemed to be received at 9.00 am on the next Business Day;

12.2.2 (in the case of regular mail) on the third Business Day after posting;

12.2.3 (in the case of overnight courier) on the first Business Day after it is sent by overnight courier for next Business Day delivery; and

12.2.4 (in the case of email) on the day it is transmitted by email, provided it is transmitted by email no later than 5:00 p.m., otherwise, such notice will be considered to have been received on the first Business Day thereafter.

13. PART 13- ACKNOWLEDGEMENTS

- 13.1 By executing the Agreement, Claimants acknowledge that Galactic TH is not a law firm and neither Galactic TH nor its Affiliates (other than professional advisers) are engaged in the practice of law or any other professional activity. Galactic TH and its Affiliates are not providing any legal advice to Claimants, and Claimants have not and will not rely on Galactic TH or its Affiliates for legal, tax, accounting or other professional advice. Claimants acknowledge that they have received independent legal advice with respect to this Agreement.
- 13.2 Subject to Part 5, by executing the Agreement, Galactic TH acknowledges that Claimants are the sole persons with authority to direct Lawyers with respect to the Proceedings and possess the exclusive authority to make all decisions relating to the Proceedings, provided that Claimants considers Lawyers' reasonable advice with respect to any such decision.

14. PART 14-GENERAL

- 14.1 Interpretation. Section, Article, Clause and Part headings in the Agreement are for convenient reference only and will not affect the interpretation or construction of the Agreement. The singular includes the plural in the Agreement and vice versa. Examples and words like "including" are deemed to mean "without limitation".
- 14.2 Entire Agreement. The Agreement constitutes the entire agreement between the Parties in relation to the subject matter of the Agreement, and supersedes all prior agreements, understandings and negotiations between the Parties with respect to the subject matter. If the Parties entered into any earlier agreements (other than a confidentiality agreement) relating to the Claims or the Proceedings, those agreements are hereby terminated and the Agreement will be the sole agreement governing the Parties' relationship. A prior confidentiality agreement is not superseded by the Agreement (notwithstanding anything else that may be contained therein) and continues in full force and effect. However, to the extent that there is a conflict between the Agreement and the prior confidentiality agreement, the Agreement will prevail.
- 14.3 Assignment. The Agreement will ensure to the benefit of, and will be binding upon, the Parties hereto and their respective successors and assigns. All representations, warranties, covenants and indemnities made herein will survive the execution and delivery of the Agreement. Neither the Agreement, nor any rights, interests, obligations and duties arising hereunder may be assigned or otherwise conveyed by Claimants without the express consent in writing of Galactic TH. Galactic TH may (a) assign its rights and

obligations under the Agreement; and (b) provide any co-funder or counterparty under a co-investment participation agreement with all or a portion of its rights under the Agreement.

- 14.4 Independent Parties. Each Party is independent to one another with respect to the Agreement and no Party is an agent or employee of another Party by virtue of the Agreement. Nothing in the Agreement will constitute a Party as a partner or fiduciary of one another Party. No Party will have any power, right or authority to bind any other Party to any obligation or liability, to assume or create any obligation or liability or transact any business in the name or on behalf of the other, or make any promises or representations on behalf of the other, except as expressly set forth herein.
- 14.5 Amendment; No Waiver. The Agreement may not be amended, and no term or provision of the Agreement may be waived, except in writing signed by a duly authorized representative of each Party. No delay on the part of a Party in exercising any right, power or remedy under the Agreement will operate as a waiver thereof, and no single or partial exercise of any right power or remedy by a Party will preclude any further exercise thereof.
- 14.6 Counterparts. The Agreement may be executed in counterparts, each of which will be deemed an original but all of which will constitute the same instrument. The Agreement may be delivered by any Party by facsimile or other electronic means and any copy so delivered will be deemed to be an original.
- 14.7 Severability. If any provision of the Agreement, or the application thereof to any Person or circumstances, is or becomes invalid or unenforceable, the remaining provisions will not be affected and each remaining provision will remain valid and be enforceable to the full extent permitted by applicable law.
- 14.8 Currency. All references to dollar amounts or "\$" in the Agreement are references to the lawful currency of Canada.
- 14.9 Further Assurances. Each Party will promptly execute all documents and do all things that another Party may reasonably require from time to time to effect, perfect or complete the provisions of the Agreement and the transactions proposed therein. If this Agreement, or any part of it, is annulled, avoided or held unenforceable, the Claimants will forthwith do all things necessary, including without limitation, signing any further or other agreement or instrument, to ensure that Galactic TH receives any remuneration, entitlement or other benefit to which this Agreement refers or which is contemplated by this Agreement.
- 14.10 Court Order. The Claimants irrevocably agree that production of a copy of the Agreement will be conclusive evidence of the Claimants' obligations as set in this Clause 14.10. The Claimants will not seek any order from any court that may detrimentally affect Galactic TH's rights under this Agreement other than with the consent of Galactic TH or as arises out of any material breach of Galactic TH of this Agreement.

14.11 General. Claimants and Galactic TH will save as otherwise expressly provided in this Agreement, not do or permit to be done anything likely to deprive any Party of the benefit for which the Party entered this Agreement.

EXHIBIT B

EXAMPLE OF EXHIBIT A. SECTION 3.3 CALCULATIONS

• Assume \$20,000,000.00 in Litigation Proceeds (\$15,000,000.00 repayment to the Ad Fund plus \$5,000,000.00 paid to the Class Members) is recovered twenty-six (26) months after commencement of the Proceeding. Assume as well that the Court orders the release of \$120,000.00 in respect of Security for Costs. Assume as well that Galactic TH paid \$400,000.00 in Disbursements and Claimants paid an additional \$10,000.00 in Disbursements over and above that \$400,000.00.

• First, Galactic TH will be paid out of Court the \$120,000.00 that it had posted as Security for Costs;

• Second, Galactic TH will be paid \$4,800,000.00 being twenty-four percent (24%) of \$20,000,000.00 plus HST at a rate of thirteen percent (13%) in the amount of \$ 624,000.00.

Galactic TH's total recovery will therefore be \$5,424,000.00, plus return of the Security for Costs;

• Third, the Claimants will be paid \$10,000.00 for the additional Disbursements;

• Fourth, Lawyers will be paid \$500,000.00 being two and one-half percent (2.5%) of \$20,000,000.00 plus HST at a rate of thirteen percent (13%) in the amount of \$65,000.00. Lawyer's total recovery will therefore be \$565,000.00; and

• Fourth, Class Members will be paid \$14,124,000.00, being the remainder of the litigation Proceeds.

Class Members' total recovery will therefore be \$14,011,000.00

EXHIBIT C**FUNDING REQUEST**

To: Galactic TH Litigation Funders LLC ("Galactic TH")

[● email address(es)]

We, ● [Rep Plaintiff 1] and ● [Rep Plaintiff 2] approve the Lawyers' invoice attached to this email and request payment to the Lawyers in the amount set out therein.

As at the date of this request for funding, we certify that:

- a. We have not defaulted on any of our obligations in the litigation Funding Agreement entered into with Galactic TH in any manner that could adversely affect Galactic TH in any material manner;
- b. No other event has occurred and is continuing or circumstance exists that could permit Galactic TH to terminate the Agreement;
- c. All of our representations and warranties in the Agreement are true and correct; and
- d. We will not do anything to make any of the above statements untrue or incorrect on the day of funding.

[INSERT SIGNATURES]

1523428 ONTARIO INC.

-and-

THE TDL GROUP CORP.

PLAINTIFF

DEFENDANT

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at **TORONTO**

ORDER
Funding Agreement Approval Motion
Substitute Plaintiff Motion
(Ad Fund Action)

HIMELFARB, PROSZANSKI
Barristers & Solicitors
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Tel: 416-599-8080
Fax: 416-599-3131

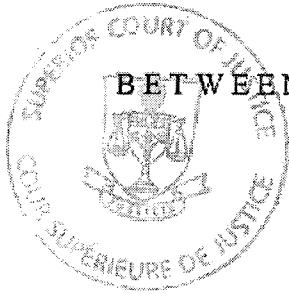
Lawyers for the Plaintiff

Court File No. CV-17-584058-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE MORGAN)

MONDAY, THE 11TH
DAY OF FEBRUARY, 2019



BETWEEN:

JB & M WALKER LTD., and
1128419 Alberta Ltd.

Plaintiffs

- and -

THE TDL GROUP CORP.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
Funding Agreement Approval and Motion
(Association Action)**

THIS MOTION, made by the Plaintiffs, for an Order approving a litigation funding agreement dated November 15, 2018 among the Plaintiffs, Galactic TH Litigation Funders LLC and Himelfarb Proszanski, a copy of which is attached to this Order as **Schedule "A"** (the "Litigation Funding Agreement"), was heard this day at the court house, Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5, and Judgment being reserved until February 11, 2019.

ON READING the Plaintiffs' Motion Record, Supplementary Motion Record and Factum, and on hearing submissions from counsel for the parties;

- 2 -

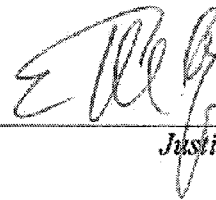
AND BEING ADVISED THAT the Defendant does not oppose this Order and the parties to the Litigation Funding Agreement are content that approval of the Galactic TH Return and the Lawyers' Return (as defined in the Litigation Funding Agreement) be reserved until the outcome of the action is known:

1. **THIS COURT ORDERS** *nunc pro tunc* that the Plaintiffs may serve and file a copy of the Litigation Funding Agreement with the Funding Agreement Budget redacted;
2. **THIS COURT FURTHER ORDERS** *nunc pro tunc* that the Plaintiffs may serve and file an unredacted copy of the Funding Agreement Budget under seal with the Court;
3. **THIS COURT FURTHER ORDERS** that the Litigation Funding Agreement and the Funding Agreement Budget are approved, save and except the Galactic TH Return and the Lawyers' Return;
4. **THIS COURT FURTHER ORDERS** that the body of the Affidavit of David Hughes, sworn January 22, 2019, found in the Plaintiffs' Motion Record (the "Hughes Affidavit"), excluding exhibits, shall be sealed or removed from the Court record, but the exhibits to the Hughes Affidavit shall remain in evidence.
5. **THIS COURT FURTHER ORDERS** that the title of this proceeding shall be amended to reflect that 1128419 Alberta Ltd. is no longer a plaintiff.

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

MAR 21 2019

PER/PAR



Justice Morgan

Schedule A

LITIGATION FUNDING AGREEMENT

This Litigation Funding Agreement is dated the 15th day of November 2018

Between:

Galactic TH Litigation Funders LLC ("Galactic TH")

and

1523428 Ontario Inc., JB &M Walker Ltd. and 1128419 Alberta Ltd. ("Claimants")

and

Himelfarb Proszanski ("Lawyers")

RECITALS WHEREAS:

- A. Claimants seek to enforce their Claims and those of the proposed Class Members against Defendant, and wish to pursue the Proceedings to enforce the Claims.
- B. Claimants have agreed, subject to any certification order, to act as the representative plaintiffs in the Proceedings, which have been commenced on their own behalf and on behalf of the Class Members against the Defendant in respect of their Claims.
- C. Lawyers are not prepared to take the risk of litigation or to pay disbursements or any Court Ordered Costs of the Proceedings.
- D. Claimants in their capacity as the proposed representative plaintiffs in the Proceedings, have requested funding from Galactic TH to assist with paying certain legal fees and disbursements in respect of the Proceedings.
- E. Galactic TH is prepared to provide such funding to Claimants on the terms of this Agreement, including paying the Lawyers fees plus the disbursements as they arise from time to time.
- F. Galactic TH will also fund any Court Ordered Costs and any Security for Costs ordered against the Claimants on the terms of this Agreement.
- G. Parties acknowledge that each have, by virtue of their respective contributions, obligations and entitlements set out in this Agreement, an interest in the Claims, the Proceedings and any Litigation Proceeds.
- H. In exchange for the funding, Claimants wish to assign to Galactic TH a share of the Litigation Proceeds (if any), in accordance with this Agreement.

- I. Before entering into discussions with Galactic TH for the purposes of this Agreement, Claimants had already engaged the Lawyers pursuant to an hourly rate retainer agreement (the "Retainer Agreement").
- J. Claimants in their capacity as the proposed representative plaintiffs agree to seek a Litigation Funding Agreement Approval Order in respect of this Agreement.
- K. This Agreement is necessary to provide the Claimants and the Class Members with access to justice in respect of the Claims.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree:

KEY TERMS

1. ARTICLE 1- DEFINITIONS

- 1.1 Capitalized terms used in this Agreement will have the meanings ascribed to them in the General Terms and Conditions attached as Exhibit A or as otherwise may be defined in the remainder of this Agreement.
- 1.2 References in this Agreement to Sections and Articles refer to the Sections and Articles in these Key Terms. References in this Agreement to Clauses and Parts refer to the Clauses and Parts in the General Terms and Conditions, Exhibit A.

2. ARTICLE 2- FUNDING COMMITMENT

- 2.1 It is acknowledged and agreed that, as the proposed representative plaintiffs in the Proceedings, the Claimants will be liable to the Defendant for any Court Ordered Costs or Security for Costs ordered by the Court, and the Claimants will be entitled to receive any costs awards made by the Court in their favour. Pursuant to the terms set out below, Galactic TH agrees to pay the Litigation Funding Amount, any Court Ordered Costs and/or any Security for Costs on behalf of the Claimant.
- 2.2 Litigation Funding Commitment. Galactic TH agrees to pay the Legal Fees and Disbursements in respect of the Proceedings ("**Litigation Funding Amount**").
- 2.3 Court Ordered Costs Commitment. Galactic TH will pay any Court Ordered Costs In accordance with the terms of this Agreement.
- 2.4 Security for Costs Commitment. In the event that the Court orders Security for Costs in favour of the Defendant, Galactic TH will provide such Security for Costs.

- 2.5 Over-Budget Fees and Disbursements. Any Over-Budget Fees and Disbursements will be the sole responsibility of the Claimants, and the Claimants will be compensated for any Over-Budget Fees and Disbursements as set out in Section 3.
- 2.6 Conditions for Funding and Funding Dates. Galactic TH will pay the Litigation Funding Amount, any Security for Costs and any Court Ordered Costs subject to the conditions set out in Clause 2.8 of Exhibit A and on the dates set out in Clause 2.7 of Exhibit A.

3. **ARTICLE 3- RETURNS AND PAYMENT WATERFALL**

3.1 Galactic TH Return. Subject to the order of priority detailed in Section 3.3 of the Key Terms, Galactic TH will receive from the Litigation Proceeds, an amount to be calculated as follows:

3.1.1 if any Litigation Proceeds are received at any time on or before the 18-month anniversary of the commencement of each Proceeding, an amount equal to twenty-two percent (22%) of the Litigation Proceeds plus HST;

3.1.2 If any Litigation Proceeds are received after the 18-month anniversary of the commencement of each Proceeding, and on or before the 36-month anniversary of the Agreement, an amount equal to twenty-four percent (24%) of the Litigation Proceeds plus HST; or

3.1.3 If any Litigation Proceeds are received after the 36-month anniversary of the commencement of each Proceeding, an amount equal to twenty-six percent (26%) of the Litigation Proceeds plus HST (the "Galactic TH Return").

3.2 Lawyers' Return. Subject to the order of priority detailed in Section 3.3 of the Key Terms, Lawyers will receive, from the Litigation Proceeds, an amount to be calculated as follows:

3.2.1 if any Litigation Proceeds are received at any time on or before the 18-month anniversary of the date of the Agreement, an amount equal to two percent (2%) of the Litigation Proceeds plus HST;

3.2.2 If any Litigation Proceeds are received after the 18-month anniversary of the date of this Agreement and on or before the 36-month anniversary of the Agreement, an amount equal to two and one half percent (2.5%) of the Litigation Proceeds plus HST; or

3.2.3 If any Litigation Proceeds are received after the 36-month anniversary of the date of the Agreement, an amount equal to three percent (3%) of the Litigation Proceeds plus HST (the "Lawyers' Return").

- 3.3 Payment Waterfall. Litigation Proceeds and any amounts paid by Galactic TH as Security for Costs will be paid in the following order of priority:
- 3.3.1 First, to Galactic TH, any amounts ordered to be repaid by the Court in respect of Security for Costs posted by Galactic TH;
 - 3.3.2 Second, to Galactic TH, the Galactic TH Return;
 - 3.3.3 Third, if approved by the Court, to the Claimants, an amount equal to any Disbursements incurred by the Claimants over and above the Disbursements paid by Galactic TH as part of the Litigation Funding Amount;
 - 3.3.4 Fourth, if approved by the Court, to the Lawyers, an amount equal to the Lawyers' Return;
 - 3.3.5 Fifth, to the Class Members (including all subrogated claims of provincial health insurers or otherwise) as directed by the Court (the "Class Members' Return").

All payments made under this Section 3.3 will be made without reduction, set-off or counterclaim. For certainty, Galactic TH's sole recourse for the Galactic TH Return will be from the litigation Proceeds. Lawyers' sole recourse for the Lawyers Return will be from the Litigation Proceeds, unless this Agreement is terminated, in which case the Lawyers shall be entitled to such remuneration as set out in the Retainer Agreement between the Lawyers and the Claimants, and as approved by the Court.

An example of the calculation made pursuant to this Section 3.3 is contained in Exhibit B.

- 3.4 Settlement Proceeds. All Litigation Proceeds recovered as a result of a Settlement will be received by, or sent to, the Lawyers and will remain in the Trust Account pending the deadline for appealing the order approving the Settlement. If an appeal is filed within the prescribed time for doing so, the Litigation Proceeds will remain in the Trust Account pending the outcome of the appeal and the prescribed time for appealing any order made on the appeal. The Settlement Proceeds will then be disbursed in accordance with the Court's settlement approval order and in accordance with Section 3.3.

4. **ARTICLE 4-RETAINER AND LAWYERS**

- 4.1 Lawyers' Retainer and Additional Lawyers. The Lawyers have been retained by Claimants pursuant to the Retainer Agreement. If this Agreement is approved by the court, the Lawyers and Claimants will amend the Retainer Agreement to confirm that the only remuneration to be paid to the Lawyers in respect of the Proceedings will be the Lawyers' hourly fees and the Lawyers' Return, and this Agreement shall be appended as a schedule to the amended Retainer Agreement. A copy of the amended Retainer

Agreement will be provided to Galactic TH. Lawyers represent, warrant and covenant that at all times, the Retainer Agreement between the Lawyers and Claimants is, and will be in accordance with and comply with all applicable laws, including the Solicitors Act, (Ontario) in effect from time to time and with all applicable Rules of Professional Conduct issued by the Law Society of Upper Canada or other applicable governing body.

- 4.2 If Claimants terminate their retainer of the Lawyers, then at Galactic TH's option this Agreement may continue with the new lawyers or require that their Galactic TH's funding advances to date be protected by any such new lawyers.

5. ARTICLE 5-COURT APPROVAL

- 5.1 Court Approval. All obligations of Galactic TH under this Agreement are subject to and conditional upon the Court making a Litigation Funding Agreement Approval Order. In the event a Litigation Funding Agreement Approval Order is not granted by the Court, this Agreement will automatically terminate, subject to Clauses 10.4.5 and 10.4.6 of Exhibit A. Submission of the Agreement to the Court for approval is not and will not be a waiver of any applicable privilege insofar as this Agreement contains information regarding litigation strategy or budget, which parts shall be redacted when provided to the Defendant, but provided to the Court in an unredacted form, under seal.

6. ARTICLE 6-ATTORNMENT

- 6.1 Attornment. Each Party attorns to the jurisdiction of the Court, including in respect of the implied undertaking of confidentiality and agrees to comply with any protective orders made by the Court. Galactic TH shall be deemed to be a party to the Proceedings for the purpose of Rule 30.1.01 of the Rules of Civil Procedure, R.R.O.1990, Reg.194.

7. ARTICLE 7- INDEPENDENT LEGAL ADVICE

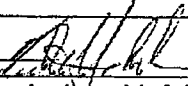
- 7.1 Representation and Warranty. Claimants represent and warrant that competent counsel has reviewed the Agreement on their behalf and Claimants have received independent legal advice regarding the terms of the Agreement and the execution and delivery of the Agreement by Claimants and their performance of its obligations hereunder.

8. ARTICLE 8- AMENDMENTS TO PROCEEDINGS OR CHANGE IN LAWYERS

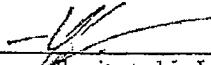
- 8.1 The Parties agree that the terms of this Agreement may need to be renegotiated if a material change occurs, including by way of example, if there was a material change or amendment to the Proceedings (including if an additional defendant is added or new causes of action are pleaded), or if additional lawyers are sought to be added as part of the consortium of lawyers prosecuting the Proceedings. However, should the Lawyers retain other lawyers to provide specialized expertise and advice to them in respect of any issue in the proceeding that shall not constitute a material change.

IN WITNESS WHEREOF, the Parties have executed the Agreement as of the date first above written.

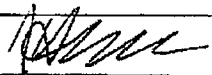
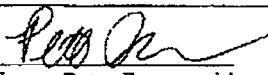
Galactic TH Litigation Funders LLC

By:  "I have authority to bind the Corporation" Name: Friedrich Schulze Title: Managing Member	By: _____ "I have authority to bind the Corporation" Name: _____ Title: _____
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Claimants

1523428 Ontario Inc. By: _____ "I have authority to bind the Corporation" Name: _____ Title: _____	JB & M Walker Ltd. By:  "I have authority to bind the Corporation" Name: Mark Walker Title: CEO
1128419 Alberta Ltd. By: _____ "I have authority to bind the Corporation" Name: _____ Title: _____	

Himelfarb Proszanski Lawyers

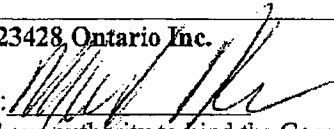
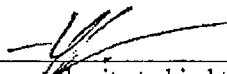
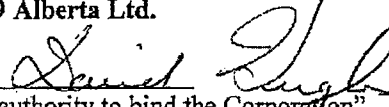
 Name: David Himelfarb	 Name: Peter Proszanski
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IN WITNESS WHEREOF, the Parties have executed the Agreement as of the date first above written.

Galactic TH Litigation Funders LLC

By: _____ "I have authority to bind the Corporation" Name: Title:	By: _____ "I have authority to bind the Corporation" Name: Title:
--	--

Claimants

1523428 Ontario Inc. By:  "I have authority to bind the Corporation" Name: Mark Kuziora Title: President	JB & M Walker Ltd. By:  "I have authority to bind the Corporation" Name: Mark Walker Title: CEO
1128419 Alberta Ltd. By:  "I have authority to bind the Corporation" Name: DAVID HUGHES Title: OWNER (PRESIDENT)	

Himelfarb Proszanski Lawyers

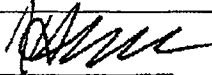
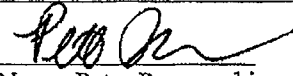
 Name: David Himelfarb	 Name: Peter Proszanski
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EXHIBIT A**GENERAL TERMS AND CONDITIONS**

The following General Terms and Conditions form part of the Litigation Funding Agreement to which this Exhibit A is attached.

1. PART 1- DEFINITIONS

Capitalized terms used in this Agreement have the meanings ascribed to them below or otherwise as specifically defined elsewhere in the Agreement.

"Affiliate"	<p>In relation to:</p> <p>(i) the Claimants and the Lawyers, their Representatives, and any additional lawyers retained by the Lawyers to assist in the prosecution of the Proceedings; and</p> <p>(ii) in relation to Galactic TH:</p> <p>a. Galactic Litigation Partners LLC, being the parent company of Galactic TH ("Galactic THParentCo");</p> <p>b. any subsidiary company Controlled by Galactic TH ("Subsidiary");</p> <p>c. an entity or trust Controlled or advised or managed, directly or indirectly, by Galactic TH, Galactic THParentCo or a Subsidiary; or</p> <p>d. the Representatives of Galactic TH, Galactic THParentCo or any Subsidiary.</p>
"Agreement"	Means this litigation Funding Agreement, including its recitals and Exhibits as any of the foregoing may be amended by the Parties in writing from time to time.
"Galactic TH"	
Return"	The meaning assigned to such term in Section 3 of the Key Terms.

- "Business Day" Means a day, which is not a Saturday, Sunday, or public holiday in the place of receipt of that communication.
- "Claims" The claim or claims that the Class Members have or may have against the Defendant.
- "Class Members" or "Class" In respect of the Proceedings:
- (i) class members in Ontario Superior Court of Justice Court File No. CV-17-577371 (the Ad Fund Class)
 - (ii) class members in Ontario Superior Court of Justice Court File No. CV-17-584058 (the Association Class),
- in each case to the extent such persons have not opted out, or such other definition as may be approved by the Court.
- "Class Members' Return" The meaning assigned to such term in Section 3 of the Key Terms.
- "Confidential Information" Any information relating to any of the Agreement's provisions or terms, the Claims or the Proceedings, including any discussions and negotiations related thereto, regardless of whether such information is:
- (i) Written or oral and irrespective of the form or storage medium; or
 - (ii) Specifically identified as "Confidential" or which, by virtue of its nature, would be understood to be confidential by a reasonable Recipient.
- Confidential Information includes analyses and summaries derived from other Confidential Information. Confidential Information does not include information that:
- (i) was or becomes generally available to the public other than as a result of a disclosure by the Recipient in breach of the Agreement;
 - (ii) was actually known to the Recipient on a non-confidential basis prior to its disclosure;
 - (iii) is rightfully received by the Recipient from a third party not in breach of any obligation of confidentiality to the Disclosing Party; or
 - (iv) was developed independently of any information derived from any Confidential Information.
- "Control" Means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or

otherwise and "Controlled" and "Controlled" have corresponding meanings.

"Court"	The Court in which the Proceedings are conducted.
"Court Ordered Costs"	Means any legal fees and disbursements that a Court orders the Claimants to pay to the Defendant in respect of the Proceedings, provided that the applicable legal fees and disbursements incurred by the Defendant were incurred during the term of this Agreement only.
"Defendant"	The TDL Group Corp., Tim Hortons Advertising and Promotion Fund (Canada) Inc., Restaurant Brands International Inc., Daniel Schwartz, Elias Diaz Seze, Sami Siddiqui, Andrea John and Jon Domanko, or as amended from time to time in the Proceedings.
"Disbursements"	out-of-pocket costs and relating to the Claims and Proceedings and including, for certainty, the costs of expert witnesses and consultants.
"Disclosing Party"	A Party to the Agreement that provides Confidential Information to another Person.
"Expended Litigation Funding Amount"	Amounts paid by Galactic TH pursuant to the Agreement in respect of the Litigation Funding Amount.
"Final Resolution"	The resolution of the Proceedings, which concludes the Proceedings pursuant to: <ul style="list-style-type: none"> (i) A legal and valid judgment of the Court for which the appeal period has elapsed or expired and no appeal has been commenced; (ii) A final, non-appealable judgment of the Court; (iii) A Settlement between Claimant and Defendant that has been approved by the Court; or (iv) A discontinuance or permanent stay of the Proceedings <p>"General Terms and Conditions" Means the general terms and conditions detailed in this Exhibit A.</p>
"HST"	Means taxes in respect of a taxable supply made in Ontario and Canada at the rates of 5% and 8% respectively, pursuant to section 165 of the Excise Tax Act (Canada).
"Key Terms"	The initial part of the Agreement under heading titled Key Terms.

- "Lawyers" The law firm of Himelfarb Proszanski and additional lawyers engaged by the Lawyers to assist in the prosecution of the Proceedings in accordance with the term of the Claimants' Retainer Agreement, or any other lawyers who the Claimants engage to replace Himelfarb Proszanski and who have been approved by Galactic TH to become signatories to this Agreement.
- "Lawyers' Remaining Fees" Means all of the Lawyers' total docketed time over and above the Legal Fees.
- "Lawyers' Return" The meaning assigned to such term in Section 3 of the Key Terms.
- "Legal Fees" The fees budgeted by the provided in relation to the Claims, Proceedings and seeking to obtain the Litigation Funding Agreement Approval Order, payable subject to the terms of the Agreement. For the avoidance of doubt, Legal Fees does not include the Lawyers' Remaining Fees.
- "Litigation Funding Amount" The meaning assigned to such term in Section 2.2 of the Key Terms. For certainty, Litigation Funding Amount does not include legal fees and disbursements of any personal lawyers that may be retained by any Class Member to represent their interests in any individual issues.
- "Litigation Funding Agreement Approval Order" The Court order approving this Agreement and declaring that the agreement is binding on Class Members.
- "Litigation Proceeds" Any and all amounts paid or to be paid directly or indirectly to or for the benefit of Claimants and/or Class Members or received directly or indirectly by or for the benefit of Claimants and/or Class Members in connection with or as a result of the Claims and the Proceedings, whether by judgment, settlement or otherwise.
- Such amounts may include:
- (i) amounts in respect of any damages (punitive or otherwise), penalties, interest, costs, cost awards and orders and any other amounts, paid or to be paid regardless of type or characterization of same;
 - (ii) any ex gratia payments, and
 - (iii) any interest earned on any of the amounts referred paragraphs (i) and (ii) above.
- Without limiting the generality of the foregoing, the amount of Litigation Proceeds will not be reduced by:

- (i) Any costs or fees, paid or payable, to collect the Litigation Proceeds;
- (ii) Recoupments or set-offs in respect of any counterclaims, cross-claims or third party claims asserted against Class Members by any party to the Proceedings, including Defendant, that are unrelated to the Claims; and
- (iii) Any set off applied by the Court.

Litigation Proceeds do not include any amount paid in respect of Security for Costs that is returned by Court order.

"Over-Budget Fees and Disbursements"

Any amounts that exceed:

- (a) being the total budgeted amount (inclusive of HST) for legal fees and
- (b) the total budgeted amount (inclusive of HST) for disbursements.

"Party"

A party to this Agreement.

"Payment"

The meaning assigned to such term in Clause 2.8 of this Exhibit A.

"Person"

Any person, natural or legal, including, without limitation, a corporation, partnership, limited partnership, limited liability company, joint stock company, joint venture, association, company, estate, trust or other organization whether or not a legal entity, custodian, trustee, executor, administrator, nominee or entity in a representative capacity and any government or agency or political subdivision thereof.

"Proceedings"

The legal proceedings in connection with all claims, actions and/or proceedings relating to or arising from the class action proceedings, 1523428 Ontario Inc. v. The TDL Group Corp., et al. Court File No CV-17-577371 (the "Ad Fund Proceeding"), and JB & M Walker Ltd. et al v. The TDL Group Corp., et al, Court File No CV-17-584058-00CP (the "Association Proceeding") commenced pursuant to the provisions of the *Class Proceedings Act, 1992*.

"Recipient"

The Person that receives Confidential Information from a Party.

"Representatives"

A director, officer, partner, member, employee, auditor, insurer, prospective insurer, insurance broker, legal counsel, trustee, consultant and other professional adviser.

"Request"

The meaning assigned such term in Clause 2.8.1.1 of this Exhibit A.

"Retainer Agreement"	The meaning assigned to such term in Recital of the Key Terms
"Security for Costs"	Means any security for the costs of the Defendant as ordered by the Court in respect of the Proceedings.
"Settlement"	Any compromise, discontinuance, waiver, payment (including any ex gratia payment), release or other form of settlement whatsoever where value passes (or it is agreed will pass in the future) from or on behalf of Defendant to or for the benefit of Class Members in circumstances in which the Proceedings do not continue as a result of or in connection with the passing of that value; and "Settle", "Settles" and "Settled" have corresponding meanings.
"Taxes"	Other than HST, any and all applicable taxes, duties, charges or levies of any nature imposed by any taxing or other governmental or regulatory authority, including, without limitation, income, gains, capital gains, surtax, capital, franchise, capital stock, value-added taxes, taxes required to be deducted or withheld from payments made by the payer and accounted for to any tax authority, employees' income withholding, back-up withholding, withholding on payments to foreign Persons, social security, unemployment, worker's compensation, payroll, disability, real property, personal property, sales, use, goods and services or other commodity taxes, business, occupancy, excise, customs and import duties, transfer, stamp, and other taxes (including interest, penalties or additions to tax in respect of the foregoing), and includes all taxes payable pursuant to any provision of local, provincial, federal or foreign law. For the avoidance of doubt, Taxes does not include HST.
"Termination"	Any termination of the Agreement in accordance with Part 10.
"Trust Account"	The account referred to in Clause 3.1 of this Exhibit A.

2. PART 2- PAYMENT OF LITIGATION FUNDING AMOUNT. PAYMENT OF COURT ORDERED COSTS. INVOICES. FUNDING DATES. INTERIM COST AWARDS AND PAYMENT

- 2.1 General. Galactic TH will provide the Litigation Funding Amount subject to the terms and conditions set forth in the Agreement.
- 2.2 Use of Funding. Under no circumstances may any part of the Litigation Funding Amount be used to pay any amount other than as specifically contemplated by this Agreement.

- 2.3 Court Ordered Costs. Lawyers are required to deliver to Galactic TH a copy of any order for Court Ordered Costs within one (1) Business Day of the order being received by them.
- 2.4 No Affirmative Liability. Except for payment of the litigation Funding Amount, Court Ordered Costs and Security for Costs, under no circumstances will Galactic TH have any obligation to pay any liability of the Claimants including fees, costs, expenses, counterclaims, cross-claim awards or third party awards, nor will Galactic TH be liable for any liability or obligation of the Class Members whatsoever, except as expressly provided for in the Agreement.
- 2.5 Lawyers' Invoices. Lawyers will provide monthly invoices addressed to Claimants, with a copy to Galactic TH in a form acceptable to Galactic TH, setting out all Legal Fees and Disbursements incurred by the Lawyers for such month, which will contain (i) summaries of time details for the fees of the Lawyers (date, time spent, lawyer performing work, hourly rate,(ii) the Legal Fees for the month, indicating the total docketed time, and a separate figure for the Legal Fees for which Payment is sought; and,(iii) copies of all invoices for Disbursements.
- 2.6 Assessment. Galactic TH may, in its discretion, require that the Lawyers submit any one or more of their invoices to assessment. The Claimants hereby irrevocably authorize Galactic TH to take all appropriate actions, in the Claimants' name, to assess any of the Lawyers' invoices. Any costs of any assessment will be paid by Galactic TH as part of the Legal Fees.
- 2.7 Funding Dates. Subject to any conditions or limitations set out in this Part 2 or in Article 2 of the Key Terms, Galactic TH will pay:
- 2.7.1 Any amount that relates to a Litigation Funding Amount, no later than thirty (30) days after receipt by Galactic TH of all of the items required to be delivered pursuant to Clause 2.8 of this Exhibit A;
- 2.7.2 Any amount that relates to Security for Costs in accordance with the period stipulated in the relevant order of the Court (unless the Security for Costs order is stayed pending an appeal or otherwise); and
- 2.7.3 Any amount that relates to Court Ordered Costs in accordance with the period stipulated in such order (unless such order is stayed pending an appeal or otherwise).
- 2.8 Conditions for Funding. Galactic TH will pay amounts in respect of the Litigation Funding Amount, from time to time, (each a "Payment") upon satisfaction of the following conditions (as applicable):
- 2.8.1 In respect of each Payment, Galactic TH will have received from Claimants:
- 2.8.1.1 copies of relevant invoices from the Lawyers that comply with Clause 2.5 and a written email request for payment from Claimants in the form attached as Exhibit C (a "Request") that is emailed to Galactic TH in accordance with Clause

- 13.1 of this Exhibit A and also emailed to an email address as directed in writing by Galactic TH;
- 2.8.2 In respect of Payment regarding an order for Security for Costs, Galactic TH will have received the relevant Court order and absent the Security for Costs order being stayed pending an appeal or otherwise, Galactic TH will comply with such order.
- 2.8.3 In respect of Payment regarding an order for Court Ordered Costs, Galactic TH will have received the relevant Court order. Galactic TH will, absent the Court Ordered Costs being stayed pending an appeal or otherwise, comply with such order.
- 2.8.4 Galactic TH will make all Payments by electronic fund transfer or wire transfer to Lawyers as specified to Galactic TH in the relevant invoice or Request.
- 2.9 Interim Costs Award If during the course of the Proceedings, the Court awards costs to the Claimants on a motion or other interlocutory proceeding and such costs are paid by the Defendants, such court costs shall be paid into the Trust Account, and the Lawyers shall pay to Galactic TH from such court costs the amount of Disbursements already incurred and paid by Galactic TH, and to the extent that any such court costs remain in trust after repayment of the Disbursements paid by Galactic TH, the court costs may be paid to the Lawyers to reimburse them for any Disbursements not paid by Galactic TH. Should any court costs remain in trust after the repayment of all incurred Disbursements, the Lawyers shall hold the remaining court costs in trust. Such court costs may be applied towards the payment of future Disbursements and Lawyers' invoices, in which case the Disbursements and Lawyers' invoices paid from the trust funds shall not be paid by Galactic TH, and shall not count towards the calculation of the litigation Funding Commitment. To the extent that any such costs award have not been applied against Disbursements at the time of the final resolution of the Proceeding, the costs award will be applied first toward the Galactic TH Return and if any amount remains thereafter, then second to the Lawyers' Return payable under this Agreement.

3. PART 3- RECEIPT OF LITIGATION PROCEEDS

- 3.1 Trust Account. Claimants will cause and hereby irrevocably direct the Lawyers:
- (a) to arrange to receive any and all Litigation Proceeds and to immediately deposit all Litigation Proceeds into a separate trust account (the "Trust Account") established by the Lawyers at a Toronto, Ontario branch of a Schedule A Canadian bank to be held in trust for and on behalf of the Party or Parties that are intended to be the ultimate recipient thereof under this Agreement;
- (b) not to permit the funds in the Trust Account to be mixed with any other funds that are not Litigation Proceeds;
- (c) not to disburse the funds in the Trust Account except in accordance with the Agreement and an order of the court; and

- (d) to pay out of the Trust Account to Galactic TH, all amounts to which Galactic TH is entitled as the Galactic TH Return. The Lawyers will provide Galactic TH with all identifying particulars of the trust account.
- 3.2 Class Member's Receipt of Litigation Proceeds. The Claimants and the Lawyers will not consent to any settlement that provides for the payment of Litigation Proceeds directly to Class Members, and in the event of a successful conclusion to any common issues trial or determination of individual issues, the Lawyers will draw to the attention of the court or individual issues adjudicator the fact of this Agreement, and its approval by the court, including the fact that there is a first charge on any Litigation Proceeds in favour of Galactic TH and the Lawyers with respect to the Galactic TH Return and the Lawyers Return, and request that any Litigation Proceeds be directed to be paid to the Lawyers in accordance herewith.

4. PART 4- APPLICATION OF LITIGATION PROCEEDS

- 4.1 Payment Waterfall. Claimants will cause the Lawyers to pay promptly out of the Trust Account in accordance with the provisions of the Key Terms pursuant to Article 3 thereof titled "Returns and Payment Waterfall", the amounts required to be paid thereunder as and when any Litigation Proceeds are received and may be paid out of the Trust Account.
- 4.2 Taxes. Each Party will be responsible for the payment of Taxes arising from its receipt of its share of the Litigation Proceeds. Payment to Galactic TH and the Lawyers will not be reduced by payment of any Taxes owed by any other Party or Person.

5. PART 5- CONDUCT OF PROCEEDINGS AND SETTLEMENT

- 5.1 Conduct of Proceedings and Right to Settle. Subject to the provisions of this Part 5, Claimants will have the sole and exclusive right to direct the conduct of the Proceedings and to settle the Proceedings.
- 5.2 Communication of Settlement Offers. Claimants will communicate to Galactic TH the amount and terms of any Settlement offers within one (1) Business Day following receipt of the offer, and advise Galactic TH of all Settlement offers proposed to be made by Claimants.

6. PART 6- CONFIDENTIALITY AND PROVISION OF DOCUMENTS

- 6.1 Implied Undertaking of Confidentiality. The Parties acknowledge that Galactic TH will be subject to the implied undertaking of confidentiality imposed upon the parties to the Proceedings with respect to any documents or information about the claims and the Proceedings and the parties to the Proceedings that Galactic TH may receive as a result of its rights under the Agreement. Galactic TH will be relieved of the implied undertaking of confidentiality in the same manner and at the same time as Claimants.
- 6.2 No Waiver of Privilege. In providing to Galactic TH any documents or information about the Claims and the Proceedings, Claimants do not waive any privilege that may attach to the documents or information. For greater certainty, the Parties acknowledge that Claimants and Galactic TH share a common interest in the documents and information

related to the Claims and the Proceedings and disclosure of any such documents and information by confidence.

6.3 Entitled to Documents and Information. Without interfering in the solicitor-client relationship between Claimants and the Lawyers, and subject to:

(a) Galactic TH's confidentiality obligations under the Agreement, including the implied undertaking of confidentiality applicable to Galactic TH pursuant to Clause 6.1 of this Exhibit A;

(b) the Lawyers' reasonable judgment with respect to preservation of all legal privileges of Claimants; and

(c) compliance with Court orders or other legal restrictions on the sharing of information, Claimants will:

6.3.1 Authorize the Lawyers to promptly provide to Galactic TH, upon Galactic TH's request, a copy of any document filed, served, produced or obtained in the course of the Proceedings; and

6.3.2 Authorize the Lawyers to keep Galactic TH fully and continually informed of all material developments with respect to the Claims and the Proceedings.

Claimants agree to reasonably defend any claim made by Defendant that Galactic TH should not be entitled to any of the information or documentation to be provided to Galactic TH pursuant to this Clause 6.3 or otherwise, at Galactic TH's expense. Any legal fees and disbursements expended by the Lawyers with respect to such a challenge shall not be included in the calculation of the Litigation Funding Amount.

6.4 Exclusive Ownership of Information by Disclosing Party. All Confidential Information provided to the Recipient is and will remain at all times the exclusive property of and owned by the Disclosing Party (or its Affiliates or contract counterparties, as the case may be). Recipient's use or awareness of such Confidential Information will create no rights, at law or in equity, in the Recipient in or to such Information, or any aspect or embodiment thereof. The furnishing of any Confidential Information will not constitute:

(a) a grant, whether express or by implication, estoppel or otherwise, of any ownership interest or license, copyright, trademark, service mark, business and trade secret or other proprietary right to such Confidential Information, or of any right to use such Confidential Information for any purpose other than as specified in the Agreement; or

(b) a waiver of any solicitor-client privilege, litigation privilege, common interest privilege, or any other applicable or available similar privilege or protection.

6.5 Non-Disclosure of Information. Subject to Clause 6.6 of this Exhibit A, the Recipient will not for any reason, during the term of the Agreement and thereafter, disclose, use, reveal, report, publish, transfer, or make available, directly or indirectly, to any Person other than its Affiliates, any Confidential Information provided to it in connection with the performance of its obligations or rights under the Agreement or the enforcement of its

rights under the Agreement, unless expressly authorized to do so in writing by the Disclosing Party prior to the contemplated disclosure or required to do so by an express provision of the Agreement, by any applicable law or legally binding order of any court, government, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity acting within its powers

- 6.6 Public Notices. No press release or other announcement concerning the existence of the Agreement, the funding provided under the Agreement, or the identity of the Parties or their respective Affiliates, will be made by a Party without the prior written consent of the other Party, subject to Galactic TH's right and the right of its parent entity, to make disclosure to relevant securities exchange, if any ("Securities Exchange") of its funding of the Proceedings and the Claims, including any key developments in, and the outcome to, the Proceedings in accordance with the Securities Exchange Listing Rules and laws of the United States of America (or either of them), and the Claimant's obligation to disclose the Litigation Funding Agreement Approval Order to the Class. Prior to making any such disclosure, Galactic TH and/or the Lawyers will provide the other Parties with a reasonable opportunity to review and comment on the proposed disclosure, provided, however, that notwithstanding anything else in this Agreement, under no circumstances will Galactic TH be prevented from complying with its legal or regulatory obligations.
- 6.7 Confidentiality Procedures. Subject to Clause 6.5 and Clause 6.6 of this Exhibit A, the Recipient will ensure that the Confidential Information that it receives is not divulged or disclosed to any Person except its Affiliates and any assignee permitted pursuant to Clause 14.3 of this Exhibit A, who have a legitimate "need to know" the Confidential Information. The Recipient will be solely responsible for its and its Affiliates' and assignees' failure to comply with the provisions of the Agreement and the Recipient will ensure its Affiliates' and assignees' compliance with the confidentiality obligations stipulated herein.

7. PART 7- COVENANTS OF CLAIMANTS

- 7.1 Co-operation of Claimants. At all times during the term of the Agreement, Claimants will:
- 7.1.1 intentionally deleted;
 - 7.1.2 intentionally deleted;
 - 7.1.3 intentionally deleted;
 - 7.1.4 Co-operate with Galactic TH including by being reasonably available at Galactic TH's reasonable request to discuss the operation of the Agreement by phone or email or in person;
 - 7.1.5 Provide full assistance and co-operation to the Lawyers and Galactic TH in relation to opposing, taxing, assessing or resolving any application for security for costs or any Defendant's Costs Order.
 - 7.1.6 intentionally deleted;

7.1.7 intentionally deleted.

7.2 Co-operation of Lawyers. At all times during the term of the Agreement, Lawyers will:

7.2.1 intentionally deleted;

7.2.2 intentionally deleted;

7.2.3 intentionally deleted;

7.2.4 Maintain a record of all funding provided by Galactic TH of which they are aware under the Agreement;

7.2.5 intentionally deleted;

7.2.6 Continue to act for Claimants even if the maximum amount of the Litigation Funding Amount has been reached. If the Litigation Funding Amount is exceeded, Claimants are responsible for all Over-Budget Fees and Disbursements, which shall be paid only from the Litigation Proceeds;

7.2.7 Provide to Galactic TH, as and when requested by Galactic TH, a copy of any material document or filing made or obtained in the Proceedings by way of discovery, subpoena or any other lawful means, subject to:

(a) Galactic TH's confidentiality obligations under the Agreement, including the deemed undertaking of confidentiality applicable to Galactic TH pursuant to Part 6 of Exhibit A;

(b) Lawyers' reasonable judgment with respect to preservation of all legal privileges of Claimants; and

(c) compliance with court orders or other legal restrictions on the sharing of information.

7.2.8 Keep Galactic TH fully and continually informed of all material developments with respect to the Claims and the Proceedings, no less often than once every three (3) months unless waived by Galactic TH, subject to the Lawyers' reasonable judgment with respect to preservation of all legal privileges of Claimants.

7.2.9 Within one (1) Business Day, inform Galactic TH of any application for Security for Costs made by Defendant;

7.2.10 Within one (1) Business Day, inform Galactic TH of any Court Ordered Costs or of any circumstances which might reasonably give rise to an order for Court Ordered Costs;

7.2.11 Immediately inform Galactic TH and the Claimants of all Settlement offers or offers to engage in an alternative dispute resolution process received from any Defendant;

- 7.2.12 intentionally deleted;
- 7.2.13 intentionally deleted;
- 7.2.14 Receive all Litigation Proceeds into the Trust Account and comply with Part 3 of this Exhibit A.
- 7.2.15 Promptly pay out of the Trust Account all amounts payable to Galactic TH under the Agreement, once such funds are payable, in accordance with the provisions in the Key Terms pursuant to Article 3 thereof titled "Returns and Payment Waterfalls". Only once the Galactic TH Return and the Lawyers Return are fully paid may Lawyers pay the balance out of the Trust Account to or for the benefit of Claimants, unless otherwise ordered by the court; and
- 7.2.16 Provide commercially reasonable assistance and co-operation to Galactic TH in relation to opposing, taxing, assessing or resolving any application for Security for Costs or any Court Ordered Costs and ensure any costs order that is not an order for Court Ordered Costs that is being funded in accordance with this Agreement, is paid in accordance with its terms.
- 7.3 Ongoing Truth and Completeness of Representations and Warranties. Claimants' representations and warranties to Galactic TH in the Agreement will remain true, correct and complete at all times during the term of the Agreement.
- 7.4 Not a Solicitor Client Relationship. Nothing herein will create a solicitor-client relationship between Lawyers and Galactic TH, and it is understood that Lawyers' professional obligations are owed exclusively to Claimants.

8. PART 8- REPRESENTATIONS AND WARRANTIES

- 8.1 Claimants' Representations, Warranties and Covenants. The Claimants, jointly and severally, represent and warrant to and covenant in favour of Galactic TH that:
- 8.1.1 intentionally deleted;
- 8.1.2 intentionally deleted;
- 8.1.3 The Claimants are not insolvent or subject to any proceeding in respect of voluntary or involuntary bankruptcy, winding-up, dissolution, liquidation, arrangement or compromise with creditors, or appointment of any Person with powers similar to a receiver;
- 8.1.4 The Claimants disclosed or have made available to Galactic TH all material documentation and other information and facts in their possession or control relevant to the Claims or the Proceedings;
- 8.1.5 There is no information or facts in the knowledge, possession or control of the Claimants that is or is reasonably likely to be material to Galactic TH's assessment of the Claims or the Proceedings that has not been disclosed to Galactic TH;

8.1.6 The Claimants believe that the Claims are meritorious;

8.1.7 Except for the Proceedings, no litigation has been commenced by or against or, to the best of its knowledge, is threatened against the Claimants which may materially and adversely affect the Claims or the recoverability of the Litigation Proceeds;

8.1.8 The Claimants have the full capacity to bring the Claims, pursue the Proceedings and direct the Lawyers;

8.1.9 The Claimants have not failed to disclose to Galactic TH any fact or fact of which they are aware that would, if Galactic TH had been so advised, be reasonably expected, individually or in the aggregate, to have led Galactic TH not to enter into this Agreement;

8.1.10 The Recitals stated on page 1 of the Agreement are true and correct.

9. PART 9- DURATION OF AGREEMENT

Subject to Part 10, the Agreement commences on the date hereof and, absent Termination, continues in effect until:

- (a) Final Resolution;
- (b) The Parties have complied with all of their obligations pursuant to the Agreement; and
- (c) All Litigation Proceeds (if any) have been fully disbursed in accordance with the Agreement.

10. PART 10- TERMINATION

10.1 By Galactic TH. Subject to court approval, Galactic TH will have the right to terminate the Agreement upon ten (10) days' written notice to Claimants from and after the occurrence of any of the following events, so long as such event is continuing at the end of the ten (10) day period:

10.1.1 Any material breach by Claimants of a provision in the Agreement;

10.1.2 The Lawyers seek to withdraw or do withdraw from the Proceedings;

10.1.3 Either of the Claimants becomes insolvent or becomes subject to any proceeding in respect of voluntary or involuntary bankruptcy, winding-up, dissolution, liquidation, arrangement or compromise with creditors, or appointment of any Person with powers similar to a receiver, and the Court does not grant an order permitting the Claimants to continue in their capacity as representative plaintiffs, or the court does not grant an order replacing the Claimants with another representative plaintiff;

10.2 intentionally deleted;

10.3 By Claimants. Claimants will have the right, in their sole discretion, to terminate the Agreement upon ten (10) days' written notice to Galactic TH from and after a failure by

Galactic TH to fulfill (i) Payment of part of the Litigation Funding. Amount, (ii) payment of any Court Ordered Costs or (iii) payment of any Security for Costs in accordance with the terms of this Agreement, so long as such failure is continuing at the end of the ten (10) day period and such failure to fulfill payment is not the subject of a continuing dispute undertaken by Galactic TH in good faith.

10.4 Consequences of Termination.

10.4.1 If Galactic TH terminates the Agreement pursuant to any of Clauses 10.1.1 to 10.1.4 of this Exhibit A, then Galactic TH will continue to be entitled, to the Galactic TH Return out of any litigation Proceeds recovered by Claimants, paid in the order of priority provided for in Article 3 of the Key Terms.

10.4.2 If Galactic TH terminates the Agreement pursuant to Clause 10.1.5 or 10.1.6 of this Exhibit A, or if Claimants terminate the Agreement pursuant to Clause 10.3 of this Exhibit A, then Galactic TH will not be entitled to the Galactic TH Return but will instead be entitled to be paid an amount equal to the Expended litigation. Funding Amount out of any Litigation Proceeds recovered by Claimants, paid in the order of priority provided for in Article 3 of the Key Terms.

10.4.3 If the Agreement is terminated pursuant to Article 4.2. of the Key Terms, and no new funding agreement is entered into with Claimants' new lawyers, then Galactic TH will be entitled to be paid an amount equal to the Expended Litigation Funding Amount out of any litigation Proceeds recovered by Claimants, paid in the order of priority provided for in Article 3 of the Key Terms.

10.4.4 All obligations of Galactic TH under the Agreement will cease on the date the Termination becomes effective, other than obligations accrued prior to that date. Such accrued obligations include:

10.4.4.1 Payment of any outstanding legal Fees, Disbursements, Court Ordered Costs and Security for Costs payable by Galactic TH pursuant to the Agreement incurred up to the date the Termination becomes effective;

10.4.4.2 Payment of any court ordered Security for Costs (which, for the avoidance of doubt; relates only to Security for Costs which are ordered after the date Claimants sign the Agreement but before the date the Termination becomes effective); and

10.4.4.3 Payment of any Court Ordered Costs where the Costs Order or the obligation of the Claimants to pay Court Ordered Costs is made prior to the date the Termination becomes effective.

10.4.5 Upon any Termination, Galactic TH will be entitled, in order to protect its own interest in relation to the Agreement, to keep copies of the Confidential Information provided to it pursuant to the Agreement, subject to Galactic TH's ongoing obligations pursuant to Clause A (Non-Disclosure of Information) and Clause 6.7 of this Exhibit A (Confidentiality Procedures).

10.4.6 The following are continuing obligations and survive Termination, subject to the further conditions set out above in this Clause 10.4 Part 6 of this Exhibit A (Confidentiality and Provision of Documents), Part 7 of this Exhibit A (Covenants of Claimants), Part 11 of this Exhibit A (Governing Law) and Part 12 of this Exhibit A (Notices).

- 10.5 Continued Performance Unless and until the Agreement is terminated under this Part 10, each Party will continue to perform its obligations under the Agreement notwithstanding the existence of any dispute among the Parties.

11. PART 11 GOVERNING LAW

- 11.1 Governing Law. The Agreement is entered into in the Province of Ontario and will be governed by and construed in accordance, with the laws of the Province of Ontario applicable to contracts entered into and fully to be performed in such Province, without regard to that Province's conflict of laws rules.
- 11.2 Resolution of Disputes. The Parties agree to attempt to resolve any disputes by consulting with one another in good faith. In the event that the Parties are unable to resolve matters after consulting with one another in good faith, each Party irrevocably consents and attorns to the exclusive jurisdiction of the competent courts of the Province of Ontario.

12. PART 12 NOTICES

- 12.1 Method. All notices requests demands or other communications required or permitted to be given by one Party to another pursuant to the Agreement will be given in writing by email or by personal delivery, courier, service, prepaid registered mail (in each case accompanied by concurrent delivery of notice by email), addressed or delivered to such other Party as follows:

Galactic TH Litigation Funders LLC
400 Rella Blvd. Suite 301
Suferm New York USA 10901

For Claimants and Lawyers:

Himelfarb Proszanski
480 University Avenue, Suite 1401
Toronto, Ontario, Canada M5G 1V2

or at such other address of which written notice is given to the other Parties. It is Galactic TH's preference that wherever possible, written communications between the Parties will be by email and not by other methods of delivery.

- 12.2 Receipt. Any communication under or in connection with this Agreement will be deemed to have been received:

12.2.1 (in the case of delivery by hand) on delivery at the address of the addressee as provided in Clause 12.1, unless that delivery is made on a non-Business Day, or after 5.00pm local time on a Business Day, when that communication will be deemed to be received at 9.00 am on the next Business Day;

12.2.2 (in the case of regular mail) on the third Business Day after posting;

12.2.3 (in the case of overnight courier) on the first Business Day after it is sent by overnight courier for next Business Day delivery; and

12.2.4 (in the case of email) on the day it is transmitted by email, provided it is transmitted by email no later than 5:00 p.m., otherwise, such notice will be considered to have been received on the first Business Day thereafter.

13. PART 13- ACKNOWLEDGEMENTS

- 13.1 By executing the Agreement, Claimants acknowledge that Galactic TH is not a law firm and neither Galactic TH nor its Affiliates (other than professional advisers) are engaged in the practice of law or any other professional activity. Galactic TH and its Affiliates are not providing any legal advice to Claimants, and Claimants have not and will not rely on Galactic TH or its Affiliates for legal, tax, accounting or other professional advice. Claimants acknowledge that they have received independent legal advice with respect to this Agreement.
- 13.2 Subject to Part 5, by executing the Agreement, Galactic TH acknowledges that Claimants are the sole persons with authority to direct Lawyers with respect to the Proceedings and possess the exclusive authority to make all decisions relating to the Proceedings, provided that Claimants considers Lawyers' reasonable advice with respect to any such decision.

14. PART 14-GENERAL

- 14.1 Interpretation. Section, Article, Clause and Part headings in the Agreement are for convenient reference only and will not affect the interpretation or construction of the Agreement. The singular includes the plural in the Agreement and vice versa. Examples and words like "including" are deemed to mean "without limitation".
- 14.2 Entire Agreement. The Agreement constitutes the entire agreement between the Parties in relation to the subject matter of the Agreement, and supersedes all prior agreements, understandings and negotiations between the Parties with respect to the subject matter. If the Parties entered into any earlier agreements (other than a confidentiality agreement) relating to the Claims or the Proceedings, those agreements are hereby terminated and the Agreement will be the sole agreement governing the Parties' relationship. A prior confidentiality agreement is not superseded by the Agreement (notwithstanding anything else that may be contained therein) and continues in full force and effect. However, to the extent that there is a conflict between the Agreement and the prior confidentiality agreement, the Agreement will prevail.
- 14.3 Assignment. The Agreement will ensure to the benefit of, and will be binding upon, the Parties hereto and their respective successors and assigns. All representations, warranties, covenants and indemnities made herein will survive the execution and delivery of the Agreement. Neither the Agreement, nor any rights, interests, obligations and duties arising hereunder may be assigned or otherwise conveyed by Claimants without the express consent in writing of Galactic TH. Galactic TH may (a) assign its rights and

obligations under the Agreement; and (b) provide any co-funder or counterparty under a co-investment participation agreement with all or a portion of its rights under the Agreement.

- 14.4 Independent Parties. Each Party is independent to one another with respect to the Agreement and no Party is an agent or employee of another Party by virtue of the Agreement. Nothing in the Agreement will constitute a Party as a partner or fiduciary of one another Party. No Party will have any power, right or authority to bind any other Party to any obligation or liability, to assume or create any obligation or liability or transact any business in the name or on behalf of the other, or make any promises or representations on behalf of the other, except as expressly set forth herein.
- 14.5 Amendment; No Waiver. The Agreement may not be amended, and no term or provision of the Agreement may be waived, except in writing signed by a duly authorized representative of each Party. No delay on the part of a Party in exercising any right, power or remedy under the Agreement will operate as a waiver thereof, and no single or partial exercise of any right power or remedy by a Party will preclude any further exercise thereof.
- 14.6 Counterparts. The Agreement may be executed in counterparts, each of which will be deemed an original but all of which will constitute the same instrument. The Agreement may be delivered by any Party by facsimile or other electronic means and any copy so delivered will be deemed to be an original.
- 14.7 Severability. If any provision of the Agreement, or the application thereof to any Person or circumstances, is or becomes invalid or unenforceable, the remaining provisions will not be affected and each remaining provision will remain valid and be enforceable to the full extent permitted by applicable law.
- 14.8 Currency. All references to dollar amounts or "\$" in the Agreement are references to the lawful currency of Canada.
- 14.9 Further Assurances. Each Party will promptly execute all documents and do all things that another Party may reasonably require from time to time to effect, perfect or complete the provisions of the Agreement and the transactions proposed therein. If this Agreement, or any part of it, is annulled, avoided or held unenforceable, the Claimants will forthwith do all things necessary, including without limitation, signing any further or other agreement or instrument, to ensure that Galactic TH receives any remuneration, entitlement or other benefit to which this Agreement refers or which is contemplated by this Agreement.
- 14.10 Court Order. The Claimants irrevocably agree that production of a copy of the Agreement will be conclusive evidence of the Claimants' obligations as set in this Clause 14.10. The Claimants will not seek any order from any court that may detrimentally affect Galactic TH's rights under this Agreement other than with the consent of Galactic TH or as arises out of any material breach of Galactic TH of this Agreement.

14.11 General. Claimants and Galactic TH will save as otherwise expressly provided in this Agreement, not do or permit to be done anything likely to deprive any Party of the benefit for which the Party entered this Agreement.

EXHIBIT B

EXAMPLE OF EXHIBIT A. SECTION 3.3 CALCULATIONS

• Assume \$20,000,000.00 in Litigation Proceeds (\$15,000,000.00 repayment to the Ad Fund plus \$5,000,000.00 paid to the Class Members) is recovered twenty-six (26) months after commencement of the Proceeding. Assume as well that the Court orders the release of \$120,000.00 in respect of Security for Costs. Assume as well that Galactic TH paid \$400,000.00 in Disbursements and Claimants paid an additional \$10,000.00 in Disbursements over and above that \$400,000.00.

• First, Galactic TH will be paid out of Court the \$120,000.00 that it had posted as Security for Costs;

• Second, Galactic TH will be paid \$4,800,000.00 being twenty-four percent (24%) of \$20,000,000.00 plus HST at a rate of thirteen percent (13%) in the amount of \$ 624,000.00.

Galactic TH's total recovery will therefore be \$5,424,000.00, plus return of the Security for Costs;

• Third, the Claimants will be paid \$10,000.00 for the additional Disbursements;

• Fourth, Lawyers will be paid \$500,000.00 being two and one-half percent (2.5%) of \$20,000,000.00 plus HST at a rate of thirteen percent (13%) in the amount of \$65,000.00. Lawyer's total recovery will therefore be \$565,000.00; and

• Fourth, Class Members will be paid \$14,124,000.00, being the remainder of the litigation Proceeds.

Class Members' total recovery will therefore be \$14,011,000.00

EXHIBIT C**FUNDING REQUEST**

To: Galactic TH Litigation Funders LLC ("Galactic TH")

[● email address(es)]

We, ● [Rep Plaintiff 1] and ● [Rep Plaintiff 2] approve the Lawyers' invoice attached to this email and request payment to the Lawyers in the amount set out therein.

As at the date of this request for funding, we certify that:

- a. We have not defaulted on any of our obligations in the litigation Funding Agreement entered into with Galactic TH in any manner that could adversely affect Galactic TH in any material manner;
- b. No other event has occurred and is continuing or circumstance exists that could permit Galactic TH to terminate the Agreement;
- c. All of our representations and warranties in the Agreement are true and correct; and
- d. We will not do anything to make any of the above statements untrue or incorrect on the day of funding.

[INSERT SIGNATURES]

JB & M WALKER LTD., et al.

-and-

THE TDL GROUP CORP.

PLAINTIFFS

DEFENDANT

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at **TORONTO**

ORDER
Funding Agreement Approval Motion
(Association Action)

HIMELFARB, PROSZANSKI
Barristers & Solicitors
Suite 1401
480 University Avenue
Toronto, ON M5G 1V2

Peter Proszanski (LSO# 274660)
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Email: richard@himprolaw.com

Tom Arndt (LSO# 43417K)
Email: tom@himprolaw.com

Tel: 416-599-8080
Fax: 416-599-3131

Lawyers for the Plaintiffs

CITATION: JB & M Walker Ltd. v. TDL Group, 2019 ONSC 1837
COURT FILE NOS: CV-17-584058 and CV-17-577371-00CP
DATE: 20190322

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JB & M Walker Ltd., Plaintiff

– AND –

The TDL Group Corp., Defendant

BEFORE: EM Morgan J.

COUNSEL: *Richard Quance, Tom Arndt, and Emily Dubis*, for the Plaintiffs
Mark Gelowitz and Jennifer Dolman, for the Defendant

HEARD: March 21, 2019

CERTIFICATION MOTION

[1] The Plaintiff in both of these actions is a Tim Hortons franchisee and the Defendant is the Tim Hortons franchisor. Court File No. CV-17-577371 relates to a dispute over use of the Ad Fund for the franchise system, while Court File No. CV-17-584058 relates to the formation of a franchisee Association by franchise owners.

[2] The parties in each of the actions have reached a tentative settlement. The Plaintiff brings these motions for certification of each of the claims under the *Class Proceedings Act, 1992*, SO 1992, c. 6 (“CPA”), for the purposes of the settlement. On that basis, the Defendant consents to certification of the two claims.

[3] The CPA is remedial legislation and should be given a large and liberal interpretation to meet its primary objectives: a) access to justice; b) judicial economy; and c) behaviour modification for wrongdoers: *Hollick v Toronto (City)*, [2001] 3 SCR 158, at paras 14-16. This is particularly the case where certification is sought in anticipation of a settlement. Strathy J. (as he then was) pointed this out in *Osmun v Cadbury Adams Canada Inc.*, 2009 CanLII 72092, at para 21: “although the certification requirements are the same in a settlement context as in a litigation context, it is generally accepted that they need not be as rigorously applied in a settlement context.”

[4] Class counsel submits that all of the criteria for certification under section 5 of the CPA are met here, and counsel for the Defendant does not disagree. The language of section 5(1) of the CPA is mandatory, and states that, “The court *shall* certify a class proceeding on a motion if”

the 5 certification requirements are met [emphasis added]. Under the circumstances, I concur with counsel that this is a proper case for certification.

[5] Turning briefly to the specific sub-parts of the certification test, section 5(1)(a) requires that the pleadings disclose a cause of action. The test for this requirement is low; in order to refuse certification on this requirement the court would have to find that the action cannot possibly succeed at trial. This low bar has been passed here. The current version of the claim is the result of a pleadings motion in which the causes of action were paired down to ones that have been held to be viable.

[6] Section 5(1)(b) requires that there be an identifiable class. The classes here are all persons that were Tim Hortons franchisees during the class period. The class period in the case concerning the Ad Fund commences on the date the Defendant was acquired by the South American-based private equity firm 3G Capital – December 15, 2014. The class period in the case concerning the franchisee Association commences on the date the Great White North Franchisee Association was incorporated – March 9, 2017. The classes consist of approximately 1,500 current franchisees having 3,800 stores, plus those individuals that were franchisees during the class period but are no longer franchisees. They are all readily identifiable business owners and entities.

[7] Section 5(1)(c) requires that there be common issues. The parties have now agreed on the common issues in both actions for the purposes of the settlement.

[8] The proposed Common Issues for the Ad Fund action are:

- a) whether the Defendant is a franchisor as defined by the Wishart Act?
- b) whether the Defendant breached the statutory duty of fair dealing in its use and administration of the Ad Fund?
- c) whether the Defendant breached the common law duty of good faith or Quebec Civil Code with its use and administration of the Ad Fund?
- d) whether the Ad Fund moneys were used or administered in breach of the Franchise Agreement prior to the Opt-Out Deadline?

[9] The proposed common issues for the Association action are:

- a) whether the Defendant is a franchisor as defined by the Wishart Act?
- b) whether the Defendant interfered with or breached the class members statutory right to associate or restricted, by contract or otherwise, any class member from forming or joining an association?
- c) whether the Defendant breached the common law or statutory duties of good faith and fair dealing in relation to the class members' right to associate?

d) whether the Defendant breached any terms of the Franchise Agreements as a result of any alleged interference with the class members' right to associate?

[10] There is some basis in fact for each of the common issues. The Supreme Court of Canada has observed that, "The 'some basis in fact' standard does not require the court to resolve conflicting facts and evidence at the certification stage... The certification stage does not involve an assessment of the merits of the claim and is not intended to be a pronouncement on the viability or strength of the action; 'rather, it focuses on the form of the action in order to determine whether the action can appropriately go forward as a class proceeding'": *Pro-Sys Consultants Ltd. v Microsoft Corporation*, [2013] 3 SCR 477, at para 102, quoting *Infineon Technologies AG v Option consommateurs*, [2013] 3 SCR 600, at para 65.

[11] Section 5(1)(d) requires that a class proceeding be the preferable procedure for litigating the claim. A class proceeding is fair, efficient, manageable, and generally preferable to individual trials and other procedures: *Rumley v British Columbia*, [2001] 3 SCR 184, at para 35.

[12] The CPA's policy objectives of access to justice, judicial economy, and behaviour modification are fostered by certifying the common issues for the purposes of settlement rather than requiring individual trials for each class member. For the two actions in issue here, there is a "strong basis" for concluding that a class proceeding is the preferable procedure: *Krajewski v Now Entertainment Group, Inc.*, 2012 ONSC 3908, at para 32; *Coleman v Bayer Inc.*, [2004] OJ No 1974, at para 80; *Paramount Pictures (Canada) Inc. v Dillon*, [2006] OJ No 2368, at para 36.

[13] Section 5(1)(e) seeks to ensure that there is a representative Plaintiff that is adequate to the task, that has produced a litigation plan, and that has no conflict of interest. The representative Plaintiff in both actions is a current franchisee and is the President of the Great White North Franchisee Association, the association at issue in the Association Action. The Plaintiff has no conflict and has been involved with counsel in negotiating the proposed settlement and communicating its terms to class members. It has directed class counsel to publish the Settlement Agreement on a public access website.

[14] The parties produced a Notice Plan for both actions that sets out a workable method of administering and resolving the claims of the class notifying class members of the certification and settlement of the proceedings. The Notice Plan, which is attached as Schedule A to the Settlement Agreement, provides notice and protects the interest of class members, including current and former franchisees, pursuant to the requirements of section 17 of the CPA.

[15] The content of the Notice Plan is three fold:

- i. The Defendant is to send First Notice to all current franchisees using its Intranet;
- ii. The Defendant is to provide last known address for all former franchisees and class counsel will then email/regular mail the First Notice to those addresses; and
- iii. Class counsel will also post the First Notice on a dedicated website.

[16] As set out in section 17(6) of the CPA, the First Notice contains a description of the actions, the key terms of the proposed settlement, an explanation of each class member's right to opt out, a summary of the litigation funding agreement and the arrangement with respect to class counsel fees and disbursements, and an address for any inquiries that class members may have. It also directs class members to view the Settlement Agreement online.

[17] In all, the requirements for certifying a class action are met in both actions.

[18] There shall be an Order certifying each of the actions as class proceedings. Notice of this certification and the proposed settlement shall be effected as set out in the Settlement Agreement and Notice Plan.

Morgan J.

Date: March 22, 2019

Court File No. CV-17-577371-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	FRIDAY, THE 22 ND
)	
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.

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 December 15, 2014 (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 breach the duty of fair dealing under section 3 of the Wishart Act and other common law provincial franchise statutes owed to Class Members in those provinces in its use and administration of the Ad Fund at any time prior to the Opt-Out Deadline?
- c) Did the Defendant breach the Civil Code of Quebec, S.Q. 1991, c. 64 with Class Members located in the province of Quebec in its use and administration of the Ad Fund at any time prior to the Opt-Out Deadline?
- d) Did the Defendant breach the common law duty of good faith in performance and enforcement of the franchise agreements to the Class Members in the exercise of the discretionary rights affecting the use and administration of Ad Fund contributions at any time prior to the Opt-Out Deadline?
- e) Were Ad Fund moneys used or administered in breach of the Class Members' franchise agreements, at any time prior to the Opt-Out Deadline?

- 3 -

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 Ad Fund 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 Ad Fund 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 Ad Fund 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.

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

MAR 28 2019

Morgan J.

PER/PAR *l*

Schedule 1

NOTICE OF CERTIFICATION AND PROPOSED SETTLEMENT OF TIM HORTONS FRANCHISEE AD FUND 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.* (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").

The Ad Fund Action alleged that The TDL Group Corp. ("Tim Hortons") breached its contractual obligations to the Class Members through its administration of the Tim Hortons national advertising fund which was created by the Franchisees' contractually mandated contributions from revenues (the "Ad Fund"). Tim Hortons denies the allegations made in the Ad Fund Action, makes no admission as to the truth of these allegations and denies any wrongdoing.

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

WHO IS INCLUDED?

If the Ad Fund 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 December 15, 2014 (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 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 Ad Fund Settlement was reached at the same time as settlement of another class action titled *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" and the "Association Settlement"). The Ad Fund Settlement is contingent on the Association 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 Ad Fund Action, and/or by the Ad Fund 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 Ad Fund Settlement.

THE SETTLEMENT REQUIRES COURT APPROVAL

In order for the Ad Fund Settlement to become effective, it must be approved by the Court. The Court must be satisfied that the Ad Fund 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 Ad Fund 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 Ad Fund 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 Ad Fund Settlement and/or would like to obtain more information and/or copies of the Ad Fund 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 Ad Fund Settlement. If there is a conflict between this Notice and the Ad Fund Settlement, the terms of the Ad Fund 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 AD FUND CLASS ACTION

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

NOTICE OF SETTLEMENT APPROVAL

A Canada-wide settlement has been reached in the proposed class action *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").

The Ad Fund Action alleged that The TDL Group Corp. ("Tim Hortons") breached its contractual obligations to the Class Members through its administration of the Tim Hortons national advertising fund which was created by the franchisees' contractually mandated contributions from revenues (the "Ad Fund"). Tim Hortons denies the allegations made in the Ad Fund Action, makes no admission as to the truth of these allegations and denies any wrongdoing.

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 Ad Fund Settlement Agreement (the "Ad Fund Settlement") as being fair, reasonable and in the best interest of Class Members. The approved Ad Fund Settlement therefore settles all litigation in Canada relating to the Ad Fund Action. The Approval Orders can be reviewed at <https://www.himprolaw.com/class-actions> or by contacting Class Counsel.

WHO IS INCLUDED?

The Ad Fund 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 December 15, 2014 (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 Ad Fund Settlement was reached at the same time as settlement of another class action titled *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" and the "Association Settlement Agreement"). The Ad Fund Settlement is contingent on the Association Settlement receiving Court approval, and vice versa. The Ad Fund Settlement and the 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 Ad Fund 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 Ad Fund Settlement and/or would like to obtain more information and/or copies of the Ad Fund Settlement and related documents, please visit the settlement website at <https://www.himprolaw.com/class-actions> or by contacting 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

- 2 -

This Notice contains a summary of some of the terms of the Ad Fund Settlement. If there is a conflict between this Notice and the Ad Fund Settlement, the terms of the Ad Fund 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 3

**TIM HORTONS FRANCHISEE
AD FUND 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 Ad Fund Settlement Agreement of the Ontario class action with Court File No. CV-17-577371-00CP. 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 December 15, 2014)

--	--	--	--

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
THIER REPRESENTATIVE ON THEIR BEHALF**

Print Name: _____

Print Name: _____

Completed Opt-Out Forms should be sent to: Tim Hortons Ad Fund 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)
Ad Fund Action**

HIMELFARB PROSZANSKI
Barristers & Solicitors
480 University Avenue, Suite 1401
Toronto, ON M5G 1V2

Peter Proszanski (274660)
peter@himprolaw.com
Richard P. Quance (18939U)
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Tom Arndt (43417K)
tom@himprolaw.com
Emily Dubis (74532R)
edubis@himprolaw.com

Tel: 416-599-8080
Fax: 416-599-3131

Lawyers for the Plaintiff

Court File No. CV-17-584058-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

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

BETWEEN:

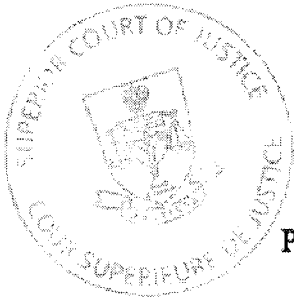
JB & M WALKER LTD.

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

- 2 -

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.

- 3 -

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.

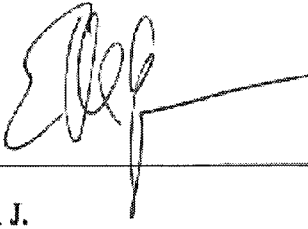
- 4 -

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.



A handwritten signature in black ink, appearing to read 'Morgan J.', is written over a horizontal line.

Morgan J.

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

MAR 28 2019

PER/PAR



Handwritten initials, possibly 'R', written in black ink.

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.

PARTICIPATING 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.

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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

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

NOTICE OF SETTLEMENT APPROVAL

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 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:

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

Phone: 416.599.8080
Fax: 416.599.3131
tom@himprolaw.com

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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 3

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**

**MOTION RECORD
(Settlement Approval)**

HIMELFARB PROSZANSKI
Barristers & Solicitors
480 University Avenue, Suite 1401
Toronto, ON M5G 1V2

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