


FORM 109
(RULE 22-2 (2) AND (7))



This is the 1st Affidavit of
Scott Leaf
in this case and was made on
December ~~11~~, 2020
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No. S-202785
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SCOTT LEAF

PLAINTIFF

AND:

**HERSHEY CANADA INC., THE HERSHEY COMPANY and
HERSHEY CHOCOLATE & CONFECTIONARY CORPORATION**

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

AFFIDAVIT #1 OF SCOTT LEAF
[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

I, Scott Leaf, of Maple Ridge, British Columbia, SWEAR THAT:

1. I am a proposed representative plaintiff in this proceeding and, as such, have knowledge of the matters contained in this affidavit. Where I am advised by another person as to certain information, I believe that information to be true.
2. This Affidavit is based on my personal knowledge, except where such knowledge is based on information and belief, in which case I state the source of the information expressly, and believe it to be true. I have been provided with information by Adam Tanel and Nathalie Gondek of Koskie Minsky LLP ("Koskie Minsky"), which I verily believe to be true.

3. In 2018 and prior, I purchased and consumed multiple chocolate products manufactured and marketed by the Defendants, at various retail stores within British Columbia. When I made these consumer decisions, I was unaware that the Defendants rely on, permit, encourage and benefit from child slavery and trafficked children in their supply chains.

4. Based on the Defendants' marketing, packaging and corporate social standing, I believed that the Defendants did not rely on and benefit from child slavery and trafficked children in their supply chains.

5. In or around June 2019, I became aware that the Defendants rely on and benefit from child slavery and trafficked children in their supply chains. As a result of this awareness, I no longer purchase the Defendants' chocolate products.

6. If I had been aware of the fact that the Defendants use of child slavery and trafficked children in their supply chains, I would have stopped purchasing their chocolate products sooner.

7. After becoming aware of the Defendants' reliance on slavery, I retained Koskie Minsky to prosecute a class action against the Defendants.

8. The class definition that the within application seeks to certify is:

All persons resident in Canada who:

- (i) purchased chocolate products manufactured and/or marketed by the Defendants;
- (ii) at the time that they purchased chocolate products manufactured and/or marketed by the Defendants were unaware of the use of child labour and slavery in the Defendants' supply chain; and,
- (iii) would not have purchased chocolate products manufactured and/or marketed by the Defendants as often or at all, or would not have paid as much for the chocolate products, if they had been aware of the use of child labour and slavery in the Defendants' supply chain.

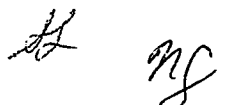
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I Am Prepared to Act as Representative Plaintiff

9. I am prepared to act as a representative of the class.

10. I have been advised that while Koskie Minsky can ask the Court to be reimbursed for expenses incurred in prosecuting this class action, I will not be entitled to any recovery unless the Court so orders.

11. I have been advised that the major steps in a class action generally are as follows:
 - (a) The action starts by the plaintiff issuing a statement of claim;
 - (b) Before or after an application for class certification, the defendants are required to file statements of defence;
 - (c) The plaintiff brings an application asking the Court to certify the case as a class action;
 - (d) If the Court certifies the case as a class action, notice of certification is given to class members;
 - (e) The plaintiff and the defendants must list all relevant documents they have or previously had in their possession or control;
 - (f) Examinations for discovery will be held during which counsel for the defendants will ask questions of the plaintiff, and the plaintiff's counsel will ask questions of the defendants' representatives;
 - (g) Conferences will be held from time to time with the judge managing the class action;
 - (h) If the action is not settled, there will be a trial where the Court will determine the common issues identified in the certification order;



- (i) If the class is successful at the trial of the common issues, notice must be given to the class members to give them an opportunity to participate in the award;
 - (j) The Court, at the trial of the common issues or sometime after, will determine what amount the defendants are required to pay and how the monies will be distributed for the benefit of the class members;
 - (k) Appeals may be taken at different stages of the class action;
 - (l) The parties could agree to attend a mediation at any stage of the proceedings; and,
 - (m) The class action may be settled with some or all of the defendants at any stage of the proceedings, but only with Court approval.
12. I have been advised that in agreeing to seek and accept appointment by the Court as representative plaintiff, I will have the responsibility to, among other things:
- (a) Have a general understanding of the issues to be decided by the Court;
 - (b) Assist in the preparation and execution of an affidavit in support of the application for class certification;
 - (c) Attend, if necessary, with class counsel to be cross-examined on my affidavit;
 - (d) Assist, if necessary, in the preparation and execution of an affidavit listing relevant documents I have or previously had in my possession or control;
 - (e) Attend, if necessary, with class counsel for an examination for discovery where I will be asked questions;
 - (f) Attend, if necessary, with class counsel at the trial of the common issues and give evidence;
 - (g) Receive briefings from class counsel from time to time;
 - (h) Express opinions to class counsel on strategy;

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- (i) Express opinions to class counsel on possible settlements; and
 - (j) Assist in the preparation and execution of an affidavit in support of Court approval of any settlement.
13. To date, I have taken several steps to represent the interests of class members, including the following:
- (a) Retained Koskie Minsky to prosecute this class action;
 - (b) Authorized Koskie Minsky to prosecute this case on a national basis;
 - (c) Assisted in the preparation of this affidavit.
14. I have been advised I am required to provide a litigation plan. I further understand that the litigation plan must provide a workable means of advancing the proceeding through completion and a plan for notifying class members of certification of the proceeding.
15. Koskie Minsky has informed me that it has developed a litigation plan. I do not have any experience that would allow me to evaluate the litigation plan, but I understand Koskie Minsky has extensive expertise in litigating class actions and would be knowledgeable of the steps required to prosecute this proceeding through completion. A copy of the litigation plan is attached as **Exhibit "A"** to this affidavit.
16. I have been advised that as part of the certification process, class members must be given an opportunity to be excluded from, or "opt out" of, the class action.
17. I believe that I can fairly and adequately represent the interests of the class. I am committed to fulfilling my responsibilities.
18. I have reviewed a copy of the list of proposed common issues in this action, which is attached to the notice of application. I am not aware of, on the common issues or issues arising

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out of them, any interest that I have that is in conflict with the interests of any other class member.

19. I swear this affidavit in support of the application for certification of this matter as a class proceeding and for no other or improper purpose.

20. The deponent was not physically present before the commissioner, but was linked with the commissioner utilizing video technology and the process described for remote commissioning of affidavits in *COVID-19 Notice No. 2, Notice to the Profession, the Public and the Media, Affidavits for use in Court Proceedings*, issued March 27, 2020, was utilized.

SWORN via video-link by Scott Leaf, in the City of Maple Ridge, the Province of British Columbia, before me, in the City of Toronto, in the Province of Ontario, this 14th day of December, 2020, remotely due to COVID-19, in accordance with *COVID-19 Notice No. 2, Notice to the Profession, the Public and the Media, Affidavits for use in Court Proceedings*.

(S)



A Commissioner for taking affidavits, etc.

NATHALIE GONDEK LSO # 776604



Scott Leaf

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**THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF SCOTT LEAF SWORN VIA VIDEO-LINK IN THE CITY OF
MAPLE RIDGE, THE PROVINCE OF BRITISH COLUMBIA, BEFORE ME,
IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO, THIS 14TH ^{MS}
DAY OF DECEMBER, 2020, REMOTELY DUE TO COVID-19, IN
ACCORDANCE WITH COVID-19 NOTICE NO. 2, NOTICE TO THE
PROFESSION, THE PUBLIC AND THE MEDIA, AFFIDAVITS FOR USE IN
COURT PROCEEDINGS**



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

NATHALIE GONDEK LSO #776604

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SCOTT LEAF

PLAINTIFF

AND:

**HERSHEY CANADA INC., THE HERSHEY COMPANY and
HERSHEY CHOCOLATE & CONFECTIONARY CORPORATION**

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

PLAINTIFF'S LITIGATION PLAN

PART I – THE CLASS DEFINITION AND COMMON ISSUES

1. The Plaintiff seeks to represent a class described as:

All persons resident in Canada who:

- (i) purchased chocolate products manufactured and/or marketed by the Defendants;
- (ii) at the time that they purchased chocolate products manufactured and/or marketed by the Defendants were unaware of the use of child labour and slavery in the Defendants' supply chain; and,
- (iii) would not have purchased chocolate products manufactured and/or marketed by the Defendants as often or at all, or would not have paid as much for the chocolate products, if they had been aware of the use of child labour and slavery in the Defendants' supply chain.

2. At the certification motion, the Plaintiff will seek certification of some or all of the following common issues ("Common Issues"):

- (a) Were any of the Defendants' explicit representations pertaining to child labour and slavery, negligently made to the Plaintiff and other Class Members? If so:



- (i) Did the Defendants owe a duty of care to the Plaintiff and other class members?
 - (ii) If so, did the Defendants breach their duty?
 - (iii) In the circumstances of this case, can the reliance of the Plaintiff and Class Members on the representations be inferred?
- (b) Did the Defendants' omission of any representation with respect to the prevalence of child labour and slavery and in its supply chain amount to a negligent misrepresentation? If so:
 - (i) Did the Defendants owe a duty of care to the Plaintiff and other class members?
 - (ii) If so, did the Defendants breach their duty?
 - (iii) In the circumstances of this case, can the reliance of the Plaintiff and Class Members on the representations be inferred?
- (c) Did the Defendants contravene Part VI of the *Competition Act*, R.S.C. 1985, c. C-34? If so, are the Plaintiff and Class Members entitled to recover damages pursuant to section 36 of the *Competition Act*, R.S.C. 1985, c.C-34?
- (d) Has the conduct of the Defendants resulted in an unjust enrichment to the Defendants, or any of them?
- (e) By virtue of waiver of tort, are the Defendants, or any of them, liable to account to any of the Plaintiff and Class Members on a restitutionary basis, for any part of the proceeds from the Defendants' sale of chocolate products? If so, in what amount and for whose benefit is such an accounting to be made?
- (f) If one or more of the above common issues are answered affirmatively, can the amount of damages payable by the Defendants, or any of them, be determined on an aggregate basis? If so, in what amount and who should pay such damages to the class?

Handwritten signature

Handwritten initials

- (g) Should punitive and/or aggravated damages be awarded against the Defendants, or any of them? If so, in what amount?

PART II - NOTIFICATION OF CERTIFICATION AND OPT OUT PROCEDURE

3. The Plaintiff will request that the Court settle the form and content for notification of the certification of this action (the "Notice of Certification"), the timing and manner of providing Notice of Certification and set out an opt-out date as being **four (4) months** following the date of the issuance of the certification order.

4. Notice of Certification will be disseminated as follows:

- (a) by posting a notice on class counsels' and Crawford and Company's (the "Administrator") websites;
- (b) by forwarding the notice to any class member who requests it;
- (c) by the Administrator establishing a toll-free telephone support line to provide assistance to class members, or other persons who make inquiries on their own behalf or on behalf of class members;
- (d) by publishing the notice in newspapers across Canada, including *The Globe and Mail*, *The National Post*, *Calgary Herald*, *Edmonton Journal*, *Vancouver Sun*, *Winnipeg Free Press*, *Halifax Chronicle-Herald*, *Saint John Telegraph Journal*, *Charlottetown Guardian*, *St. John's Telegram*, *Le Journal de Montreal*, *Montreal La Presse*, *Saskatoon Star Phoenix*, and the *Regina Leader Post*;
- (e) by posting the notice in internet banners across the Google Display Network and Facebook; and
- (f) by such other notice as counsel may request and the Court directs.

5. The costs of the Notice of Certification set out in paragraph 4 above are to be borne by the Defendants.

6. The Plaintiff will ask the Court to approve an opt-out form to be used by class members wishing to opt out of the class action, which will require the class member to provide sufficient information to establish their membership in the class.

7. The Plaintiff will ask that the Court appoint the Administrator to organize and receive opt out forms or other written documentation from any class member opting out of the class action.



Only written elections to opt out will be accepted and must be delivered to the Administrator within the aforementioned deadline.

8. Within **sixty (60) days** after the expiration of the opt out period, the Administrator will deliver to the Court and the parties an affidavit listing the names of all persons who have opted out of the class action.

PART III - LITIGATION STEPS PRIOR TO THE DETERMINATION OF THE COMMON ISSUES

Pleadings

9. The Defendants shall provide statements of defence no later than **thirty (30) days** following the date on which the Court renders a decision with respect to certification.

10. The Plaintiff shall have **thirty (30) days** from service of the defendant's statement of defence to serve a reply, if any.

11. Within **ninety (90) days** from the certification order, the parties shall agree upon a timetable for production of documents and examinations, to be approved by court order.

12. The Plaintiff shall apply for such further directions as may be required.

Case Management Conference

13. The Plaintiff proposes that a CMC of this action be fixed for hearing within **sixty (60) days** of the certification order to:

- (a) address the following issues:
 - (i) content of documentary productions and deadline;
 - (ii) deadline for examinations for discovery;
 - (iii) deadline for motions arising from examinations for discovery;
 - (iv) deadline for re-attendances at examinations for discovery, if any;
 - (v) deadline for service of trial record;



- (vi) deadline for requests to admit;
- (vii) deadline for exchange of expert reports; and
- (viii) set dates for further CMCs as necessary.

Common Issues Trial

14. The common issues trial will determine the Common Issues at a time and place fixed by the Court, in the City of Toronto or otherwise in accordance with the order of the Court.

PART IV - LITIGATION STEPS FOLLOWING THE COMMON ISSUES TRIAL

Notice of Resolution of Common Issues

15. The Court shall settle the form and content for notification of the resolution of the Common Issues and the claims and individual issues processes, if applicable (“**Notice of Resolution**”), the timing and manner of providing the Notice of Resolution (“**Resolution Notice Plan**”) and requiring class members to file claims (“**Claim Forms**”) by a fixed date with the Administrator.

16. The Plaintiff suggests a similar method of notice be ordered as per paragraph 4, above.

Valuation of Damages

17. Assuming that one or both of Common Issues 5 and 6 are resolved in favour of the Plaintiff, the Plaintiff will propose the following methods for assessing and distributing damages for the class members as follows:

- (a) aggregate damages pursuant to Common Issue 5 are restitutionary in nature (based on disgorgement and waiver of tort). It is proposed that such damages be allocated on a *pro rata* basis. Each individual Class member's recovery should have a direct relationship to the amount of money the Class member spent on the relevant products over the Class Period. Each individual Class member's claim will be capped at \$100.00. Any unclaimed funds awarded pursuant to Common Issue 5 will revert to a *cy près* award to organizations that assist child slaves and trafficked children in Western Africa;



- (b) it is proposed that damages pursuant to Common Issue 6 be distributed equally amongst each individual Class member or on the basis of a *cy près* award to organizations that assist child slaves and trafficked children in Western Africa; and
- (c) if necessary, damages of individual claimants to be determined in individual assessments in a manner to be determined by the Court.

Resolution of the Individual Issues

18. The Plaintiff is seeking an aggregate assessment of monetary relief as a common issue. If aggregate damages are not awarded, or if the Court concludes that assessments are required in addition to a determination of aggregate damages, it may still be necessary to establish a procedure in accordance with section 27 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 ("*CPA*") to determine the individual damages of Class Members, or any other individual issues as directed by the court.

19. Within **ninety (90) days** of the issuance of the judgment on the common issues, the parties will convene for argument relating to section 27 of the *CPA* to determine the appropriate process to determine the individual issues, if any.

20. At that hearing, both parties will be at liberty to make submissions regarding the methodology for resolving the remaining individual issues. Potential methods include claims processes, references, mini-trials, mediation, arbitration or other means approved by the court pursuant to section 27 of the *CPA*. At this time, the Plaintiff intends to propose a method of resolving outstanding individual issues as set out below.

21. The court will be asked to specify procedures and deadlines by which class members shall identify themselves as claimants wishing to make claims for individual compensation.

22. The Plaintiff will ask the court to settle the form and content the Notice of Resolution and to set a date by which class members will be required to file a claim with the Administrator.



23. The Plaintiff will ask the court to order that the Notice of Resolution be distributed in accordance with the Resolution Notice Plan set out above, except it shall not be mailed to class members who validly opted out of the class action.

24. The Defendants' involvement in the claims process is unnecessary in these particular circumstances. As indicated above, the damages sought are strictly restitutionary and punitive in nature. The Plaintiff anticipates that given the nature of the damages suffered by class members, adjudication of the claims could be resolved through an efficient process which could involve the following steps, and which would be subject to the court's discretion:

- (a) Each claimant could submit an online claim form indicating that they purchased relevant products during the class period, the number and identity of relevant products that they purchased over the class period, that they were unaware of the presence of child slavery in the Defendant's supply chain when they made the purchases, and that they would not have made the purchases if they had been aware of the presence of slavery in the Defendant's supply chain.
- (b) Damages would be distributed to each Class member who submitted a claim form, with a cap of \$100.00 per Class member.
- (c) If the damages from disgorgement exceed the damages claimed by Class members, any residual sum will revert to a *cy pres* award to organizations that assist child slaves and trafficked children in Western Africa.

PART V - MISCELLANEOUS REQUIREMENTS OF THE LITIGATION PLAN

Review of the Plan

25. This Litigation Plan may be reconsidered and revised under the continuing case-management authority of the Court after the determination of the common issues or upon application by the Parties.

Funding

26. Class Counsel has entered into an agreement with the representative Plaintiff with respect to legal fees and disbursements. This agreement provides that counsel will not receive payment for their work unless and until the class proceeding is successful or costs are recovered from the Defendants. Class Counsel will fund all disbursements necessary to vigorously prosecute the action.



27. Class Counsel's legal fees are subject to court approval under the *CPA*.

Applicable Law

28. The applicable law is the law of the Province of British Columbia.

Amendments to the Litigation Plan

29. This Litigation Plan may be amended from time to time by directions given at case conference or by further order of the Court.

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