

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE P.M. PERELL

) MONDAY, THE 23RD DAY
)
) OF NOVEMBER, 2009

BETWEEN

2038724 ONTARIO LTD. and 2036250 ONTARIO INC.

Plaintiffs

- and -

**QUIZNO'S CANADA RESTAURANT CORPORATION,
QUIZ-CAN LLC, THE QUIZNO'S MASTER LLC,
CANADA FOOD DISTRIBUTION COMPANY, GORDON FOOD SERVICE, INC.
and GFS CANADA COMPANY INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER (CERTIFICATION)

THIS MOTION made by the plaintiffs for an Order certifying this action as a class proceeding was heard on February 14, 15, 19, 20, 21 and 22, 2008 at 393 University Avenue, Toronto, Ontario and was dismissed by Order dated March 4, 2008.

AN APPEAL was taken from the dismissal of the certification motion to the Divisional Court resulting in an Order of the Divisional Court made April 27, 2009 conditionally certifying this action as a class proceeding, subject to approval by the Honourable Justice P. M. Perell of the plaintiffs' revised Plan of Proceeding,

ON READING the Order of the Divisional Court dated April 27, 2009, and on

approving herein the plaintiffs' revised Plan of Proceeding,

1. **THIS COURT ORDERS** that this action be certified as a class proceeding against the defendants.
2. **THIS COURT ORDERS** that the class be defined as: "all persons, including firms and corporations, carrying on business in Canada under a 'Quiznos' Franchise Agreement at any time between May 12, 2006 and November 23, 2009" (the "Class").
3. **THIS COURT ORDERS** that 2038724 Ontario Ltd. and 2036250 Ontario Inc. be and hereby are appointed as the representative plaintiffs on behalf of the Class.
4. **THIS COURT ORDERS** that, in accordance with the Divisional Court Order made April 27, 2009, the following common issues ("Common Issues") are certified for the purposes of this proceeding:
 - (a) Have the Quiznos Defendants, or any of them, engaged in conduct contrary to Section 61(1) of the *Competition Act*, R.S.C. 1985, c. 19 (2nd Supp.)?
 - (b) Have the Defendants, or any of them, engaged in conduct that amounts to civil conspiracy?
 - (c) Have the Quiznos Defendants, or any of them, engaged in conduct which constitutes a breach of their contractual obligations to the Class Members?
 - (d) Have the Class Members suffered loss or damage as a result of any of the conduct referred to in issues (a), (b), (c) or (d)? If so, what is the appropriate measure or amount of such loss or damages?
 - (e) Should the Court award an aggregate assessment of monetary relief on behalf of

some or all Class Members? If so, what is the amount of the aggregate assessment and how should the Class Members share in the award?

(f) Should the defendants pay punitive, exemplary or aggravated damages to the Class Members? Should such damages be assessed in the aggregate? If so, what is the amount of such damages including pre-and post-judgment interest thereon?

(g) Are the Class Members entitled to recover from the Quiznos Defendants the full costs of their investigations and the full costs of this proceeding, including contingent legal fees on a complete indemnity basis, under section 36(1) of the *Competition Act*?

5. **THIS COURT ORDERS** that the Plan of Proceeding attached hereto as Schedule "A" be and is hereby approved.

6. **THIS COURT ORDERS** that the defendant, Quizno's Canada Restaurant Corporation, provide Class counsel by no later than November 16, 2009 with the last known mailing addresses of each Class Member as an electronic mailing list.

7. **THIS COURT ORDERS** that Notice to the Class (the "Notice") in the form attached hereto as Schedule "B" be delivered to the Class Members on November 23, 2009 by the following means:

- (a) Pre-paid regular mail to the last known address for each Class Member shown on the list provided under paragraph 5 hereof; and
- (b) publication of the Notice on a dedicated website for this action maintained by Class Counsel.

8. **THIS COURT ORDERS** that a Class Member may opt out of the class proceeding by delivering to Sotos LLP either the Opt-Out Coupon attached to the Notice, or some other legible, written, signed request to opt out containing substantially the same information as the Opt-Out Coupon, on or before January 7, 2010.

9. **THIS COURT ORDERS** that Class Members may not opt out of the class proceeding after January 7, 2010.

10. **THIS COURT ORDERS** that Sotos LLP shall serve on the defendants and file with the court, within 7 days after the end of the opt-out period, an affidavit containing a list of persons who have opted out of the class proceeding and attaching copies of all Opt-Out Coupons, or other legible, written, signed request to opt out containing substantially the same information as the Opt-Out Coupon, received from Class Members.

Penell, J

FILED IN CASE NO. 09-1000000
CLERK OF COURT
JAN 23 2009

JAN 23 2009

FILED IN CASE NO. 09-1000000
CLERK OF COURT
JAN 23 2009



SCHEDULE "A"

Court File No.: 06-CV-311330CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2038724 ONTARIO LTD. and 2036250 ONTARIO INC.

Plaintiffs

- and -

**QUIZNO'S CANADA RESTAURANT CORPORATION,
QUIZ-CAN LLC, THE QUIZNO'S MASTER LLC,
CANADA FOOD DISTRIBUTION COMPANY, GORDON FOOD SERVICE, INC.
and GFS CANADA COMPANY INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**REVISED PLAN OF PROCEEDING
PURSUANT TO S. 5(1)(e)(ii) OF THE *CLASS PROCEEDINGS ACT, 1992***

Overview

1. This action is brought on behalf of approximately 500 franchisees and former franchisees of the Quiznos franchise chain.
2. The action alleges that the defendants have unlawfully conspired to inflate the cost of goods which each of the Class Members must purchase for their businesses and that the conduct complained of constitutes breaches by Quiznos of various contractual and other duties owed to the Class Members.
3. The action was certified by the Divisional Court on April 27, 2009, subject to approval of this revised Plan by the Honourable Justice P.M. Perell.

A. Identification of Class Members

4. The class is defined as: “all persons, including firms and corporations, carrying on business in Canada under a ‘Quiznos’ Franchise Agreement at any time between May 12, 2006 and November 23, 2009”.

5. All Class Members are known to the defendant, Quiznos Canada Restaurant Corporation, which is the franchisor of the Canadian Quiznos franchise system. There are no class identification issues in this action.

6. The proposed Certification Order requires Quiznos to provide to plaintiffs’ counsel contact information for all Class Members by no later than November 16, 2009.

B. Particulars of the notice

7. A copy of the draft Notice to Class is attached as Schedule B to the proposed certification order.

8. The certification order contemplates that the defendant, Quizno’s Canada Restaurant Corporation, provide Class counsel with the last known addresses of each Class Member by no later than November 16, 2009. On November 23, 2009, the Notice will be sent to all Class Members by the following means:

- (a) Pre-paid regular mail to the last known address for each Class Member; and
- (b) publication of the notice on a dedicated website for this action maintained by Class Counsel.

9. The cost of such notification will be borne by the plaintiffs at first instance.

10. So long as the list of current and former franchisees provided by Quiznos is complete and accurate, the plaintiffs do not consider it necessary to cause the Notice to be published in a national newspaper or other medium. However, if such list is found to be materially incomplete or inaccurate, the plaintiffs will request that Quiznos pay the cost of publishing the Notice in such media as is considered necessary in order to come to the attention of the omitted Class Members.

11. Lawyers for the plaintiffs, Sotos LLP, have established a link within their website for this class action. Copies of the Notice to Class, court decisions and other information related to the class proceeding will be available from the website. Email contacts are also available on the website.

12. The Notice will be published on the website of the Canadian Quiznos franchisee association known as Denver Subs Canada Franchise Association (“Denver Subs”).

C. Timetable

13. The plaintiffs propose the following schedule:

Pleadings

- (a) The statement of claim amended to include Canada Food Distribution Company (CFD) (as contemplated by the Order of Perell J.) and other changes will be served following the release of Perell J.'s ruling on the pleadings motions returnable Friday, October 16, 2009.
- (b) Statements of defence will be served by December 7, 2009 (i.e. 30 days following service of the statement of claim so amended).
- (c) Reply, if any, will be delivered by December 16, 2009.

Productions

- (d) The timing of productions is addressed separately below.

Discovery/Expert Reports

- (e) Discovery dates and matters relating to expert reports will be determined at regularly scheduled case conferences, the first of which is scheduled for March 5, 2010 at 10:00 AM.

Common Issues Trial and Following

- (f) If the common issues are resolved by judgment in favour of the plaintiff class, the timing, form and content of the notice of resolution of the common issues will be addressed by the common issues judge.
- (g) Individual hearings, if any, will be conducted according to the timelines and other directions to be set down by the common issues judge.

D. Productions

14. The plaintiffs seek to require the defendants to produce documents in tranches, on a rolling basis.

15. After the close of pleadings, and before delivering the first tranche of documents, the parties shall meet and confer to discuss a discovery plan for the production of documents.

16. By no later than February 24, 2010 (i.e. 70 days after the close of pleadings), each party will deliver the 1st of a series of tranches of relevant documents using best efforts to provide the documents most relevant to the common issues.

17. The parties will present a draft discovery plan at the first scheduled case conference and report on the status of productions.

E. Method of communication with the class

18. Class counsel are in regular communication with the representative plaintiffs regarding all aspects of this action.

19. The representative plaintiffs have and will continue to communicate certain information on a regular ongoing basis to the Class Members by periodic email and other communications.

20. Due to confidentiality issues arising from the continuing relationship of the parties, information communicated to the Class Members is of a limited and non-strategic nature.

21. Limited and non-strategic information will also be communicated to the Class Members by regular updates to the Sotos LLP site and Denver Subs website.

F. Possibility of settlement

22. The parties will conduct settlement negotiations from time to time, as circumstances dictate.

23. The timetable includes mandatory mediation following the exchange of expert reports.

G. Individual issues, method for valuation of damages, distribution of damage award

24. The treatment of individual issues, if any, following the common issues trial, the method(s) of valuation of damages, and the distribution of the damage award will be addressed as directed by the common issues judge.

25. If requested by the individual Class Member, class counsel will represent such Class Members in any individual hearings to recover direct damages following the common issues trial. Plaintiffs' counsel agree to act on a contingent-fee basis for such individual hearings, subject to terms to be approved by the Court. Separate notice will be given to Class Members concerning the participation in any individual hearings, if necessary, and any costs implications of participating in those hearings.

H. Funding

26. The plaintiff's legal fees are to be paid on a contingency basis, as provided for in *Class Proceedings Act 1992*, and are subject to the Court's approval. Funding of all disbursements necessary to properly prosecute this action will be paid by the plaintiffs in addition to voluntary contributions from the Class members. An application may be made to the Class Proceedings Fund.

27. The plaintiffs will seek recovery of the full costs of this action as well as full investigation costs from the Quiznos defendants pursuant to s. 36(1) of the *Competition Act*.

DATE: November 23, 2009

SOTOS LLP

Barristers and Solicitors

180 Dundas Street West

Suite 1250

Toronto, Ontario M5G 1Z8

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Lawyers for the plaintiffs

SCHEDULE "B"

Court File No. 06-CV-311330CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2038724 ONTARIO LTD. and 2036250 ONTARIO INC.

Plaintiffs

- and -

**QUIZNO'S CANADA RESTAURANT CORPORATION,
QUIZ-CAN LLC, THE QUIZNO'S MASTER LLC,
CANADA FOOD DISTRIBUTION COMPANY, GORDON FOOD SERVICE, INC.
and GFS CANADA COMPANY INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

Notice published under the *Class Proceedings Act, 1992*

TO ALL CANADIAN QUIZNOS FRANCHISEES

If you operated a Quiznos franchise in Canada at any time between May 12, 2006 and November 23, 2009, this Notice will be important to you. A legal claim against the above named defendants (hereafter "Quiznos" and "GFS") has been certified as a Class Proceeding (the "Class Proceeding") by the Ontario Superior Court of Justice. The Class Proceeding will deal with claims alleged against the defendants which, if proven, could entitle you to a monetary payment.

This Notice is published by Order of the Ontario Superior Court of Justice dated November 23, 2009 (the "Certification Order") and deals with:

- Nature of the Class Proceeding and Common Issues;
- Inclusion In/Opting Out of the Class Proceeding;
- Consequences of the Class Proceeding; and
- Other Matters.

Nature of the Class Proceeding and Common Issues

2038724 Ontario Ltd. and 2036250 Ontario Inc. (the “Representative Plaintiffs”) commenced an action against the defendants by having a Statement of Claim (“Claim”) issued on behalf of a class that is defined in the Certification Order as:

all persons, including firms and corporations, carrying on business in Canada under a ‘Quiznos’ Franchise Agreement at any time between May 12, 2006 and November 23, 2009 (“Class Members”).

On behalf of Class Members, the Representatives Plaintiffs claim damages and other relief for alleged overcharging on supplies purchased by the Class Members. A claim is also made for punitive damages.

Quiznos and GFS have denied the allegations in the Claim and will defend the proceeding. Quiznos will also assert by way of defence that certain Class Members no longer have a claim because of releases signed by these Class Members. The Representative Plaintiffs’ position is that these releases are not enforceable.

This action has been certified as a class proceeding by the court and will proceed to trial to determine the following common issues:

- (a) Have the Quiznos Defendants, or any of them, engaged in conduct contrary to Section 61(1) of the *Competition Act*, R.S.C. 1985, c. 19 (2nd Supp.)?
- (b) Have the Defendants, or any of them, engaged in conduct that amounts to civil conspiracy?
- (c) Have the Quiznos Defendants, or any of them, engaged in conduct which constitutes a breach of their contractual obligations to the Class Members?
- (d) Have the Class Members suffered loss or damage as a result of any of the conduct referred to in issues (a), (b), (c) or (d)? If so, what is the appropriate measure or amount of such loss or damages?
- (e) Should the Court award an aggregate assessment of monetary relief on behalf of some or all Class Members? If so, what is the amount of the aggregate assessment and how should the Class Members share in the award?
- (f) Should the defendants pay punitive, exemplary or aggravated damages to the Class Members? Should such damages be assessed in the aggregate? If so, what is the amount of such damages including pre-and post-judgment interest thereon?
- (g) Are the Class Members entitled to recover from the Quiznos Defendants the full costs of their investigations and the full costs of this proceeding, including contingent

legal fees on a complete indemnity basis, under section 36(1) of the *Competition Act*?

Inclusion In / Opting Out of the Class

A. Automatic inclusion in the Class

If you carried on business in Canada on May 12, 2006 under a Quiznos Franchise Agreement, then you are automatically included in the Class. No steps are necessary to “join” the Class.

B. How to be excluded from the Class

If you do not wish to be included in the Class, you must fill out the attached coupon and send it to Sotos LLP, the lawyers for the Class. The deadline for opting out is 45 days after the date on this notice (i.e. January 7, 2010). If your written request to opt out is not received by that date, you will remain a member of the Class.

C. Consequences of opting out

If you opt out of the Class, you will not be affected by or benefit from any decision the Court makes on the common issues.

Possible Consequences of the Lawsuit

The Court will be asked to decide whether the defendants should pay any monies to the Class Members, and if so, how much the affected Class Members should receive. The Court may also order the defendants to stop engaging in certain practices.

Class Members, other than the Representative Parties, are not liable for costs except with respect to the determination of their individual claims.

Whether or not the Class Proceeding is successful, all Class Members who do not opt out will be bound by the judgment. This means, for example, that after the Class Proceeding has concluded a Class Member cannot start its own individual claim against any of the defendants based on the same or similar allegations.

Other matters

The Representative Plaintiffs have retained the law firm of Sotos LLP (www.sotosllp.com) to represent the Class in the Class Proceeding. The law firm will be paid legal fees only if the Class Proceeding is successful. The Representative Plaintiffs have agreed that the law firm’s fees will be 25% of the amount recovered plus disbursements, in addition to any costs the defendants are required to pay. The retainer agreement and any fees charged by class counsel must be approved by the Court.

For further information about the class action lawsuit you may contact:

Sotos LLP, Barristers and Solicitors, Suite 1250, 180 Dundas St. West, Toronto, Ontario M5G 1Z8, attention: David Sterns (dsterns@sotosllp.com) or Allan D.J. Dick (adjdick@sotosllp.com), telephone (416) 977-0007, fax (416) 977-0717.

The statement of claim and other court papers in this action are available on Sotos LLP's website.

PLEASE DO NOT CONTACT the Court with any questions about the lawsuit.

November 23, 2009

OPT OUT COUPON

TO:

SOTOS LLP
Barristers and Solicitors
Suite 1250
180 Dundas Street West
Toronto, Ontario M5G 1Z8

Attention: David Sterns

Facsimile: (416) 977-0717

I wish to opt out of the Quiznos/GFS class action lawsuit.

Signature

Name of Company:
please print

Store No:

Address:

Postal code:

Telephone:

Note: To opt out, this coupon must be completed and received at the above address before January 7, 2010.

2038724 ONTARIO LTD. et al.

and
Plaintiffs

QUIZNO'S CANADA RESTAURANT
CORPORATION et al.

Defendants

Court File Number:06-CV-311330CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

ORDER

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