

Dear Fellow Franchisee,

I have commenced an action against the TDL Group Corp. and Tim Hortons Inc. I seek to have the action certified as a class action. Some franchisees, including all the members of the Advisory Board, will bring a motion to obtain intervenor status at the certification motion. They seek such status to oppose certification, thus taking the same position as TDL.

I want to reassure you that I do not presume to speak for all franchisees in this litigation. If this litigation is certified as a class action, the court will define who is a class member with reference to your license agreement and the Always Fresh conversion and lunch menu program. If you come within the definition of a class member and you disagree with my claims, you will have an opportunity to opt out of the class action if it is certified.

The issues I seek to address in my lawsuit should be clearly understood. The Always Fresh conversion to frozen product started the decline in margins which has continued and is ongoing. The issue with the Always Fresh system is not the frozen product process but the fact that we pay too much for the product. It erodes rather than enhances franchisees' margins, contrary to TDL management's promises. Similarly, the lunch menu program and the pricing of certain lunch menu items has had the same impact on franchisees' margins. The reduction of franchisees' margins enables TDL to meet its corporate profit forecasts, but threatens the viability of a growing number of stores.

A concern conveyed to franchisees is that publicity generated by this litigation will have a negative impact on the chain in terms of store sales and value. The Tim Hortons franchise is iconic in Canada and we have always symbolized a well-run, profitable business. The fact that there is a dispute now between management and franchisees, I believe, will not diminish this image of the franchise and will not negatively reflect on your business to the mind of the public. Franchise disputes are a fact of business life and we have all heard, via news sources, of litigation involving chains such as McDonalds. Those chains continue to flourish and thrive, notwithstanding litigation and the publicity surrounding the litigation. I believe Tim Hortons will do the same, and that the necessary changes that this action could bring will strengthen Tim Hortons in the future.

When you consider whether publicity (media attention) is a complete justification for opposing certification, you should understand that even if this action is not certified as a class action, it can continue as litigation that will attract publicity. Another Tim Hortons franchisee has recently issued a claim against TDL and Tim Hortons, and part of the claim is for damages suffered as a result of the Always Fresh conversion. Media coverage of these lawsuits are inevitable but typically short-lived and so media coverage is inevitable with or without a class action.

What is the likelihood customers are going to stop buying coffee, donuts, baked goods, soups and sandwiches because there is litigation against the corporation? In my opinion, none. There was no impact on sales volume when the action was commenced. Our customers are concerned about a fresh, well-made product served in a clean store by friendly, efficient staff. At our pricing level and based on our costs, they are getting a bargain. This is not a food safety or customer relation issue.

I urge you not to make a premature decision in joining TDL and the Advisory Board members in opposing this proposed class action. Get the facts. Make an informed decision. By being rushed into coming forward with your opposition to the proposed class action, you are denied a balanced and accurate picture of the issues and opportunities. Have you discussed it with your accountant and your lawyer? Feel free to discuss it with me.

If the action has no merit, then why is there such strong activity in trying to prevent it from being heard by a judge? If it has no merit as suggested, it will not get certified. End of class action saga. If it has merit, which we know it has, then you are entitled to know how and to what degree you have been negatively financially impacted and how your franchise agreement has been violated not only to date but for the duration of your agreement.

If this action is certified and you qualify as a class member, you will have the chance to opt out of the class. If our action is not certified there is no impact on or consequence to you. If this action is certified as a class action and succeeds, all class members who have not opted out will benefit.

While we support the need and concept of growth in corporate profits in order to increase shareholder value, it should not be done by marginalizing the franchisee. The role of leadership is to develop strategies to increase top line growth in profits while ensuring the margins of franchisees are maintained. It takes thoughtful leadership to do both.

Our concerns about continual decline in margins, management's contempt shown to many franchisees and intimidation by management were shared by Advisory Board members when we met in August and were shared openly with franchisees at subsequent regional meetings. We believed as did most board members that margins have been reduced substantially depending on product mix. Can we as prudent business people allow our margins to be determined strictly by the same company that manufactures an increasing portion of our supplies. The advantage of competitive pricing is steadily slipping away. To date, we have not been effective as franchisees and Advisory Board members in halting the erosion of margins. Should we be concerned about what we pay for product or just leave it to the discretion of management? The questioning of what we pay for product and the quality of product we receive still seems to be taboo and there appears to be no desire or mechanism to change that.

As margins have eroded, franchisees have cut more and more corners to try to regain lost profits. This will continue as margins are worsened. This in my opinion presents a bigger danger to the name and reputation of Tim Hortons than short term media reporting concerning litigation of business issues.

One of the unique aspects of the Tim Hortons' culture was the deep trust we placed in Management to look after our best interests to enable us to grow and prosper. Do you believe trust in present management to make wise informed decisions that effects your future is well placed? What management priorities have been evident since the Always Fresh conversion?

The recent and sudden move by management to listen to franchisee concerns is welcome but, to date, without result. Management's recent change in attitude could be said to be a direct reaction to this action being commenced. It has focused today's management on the importance of taking franchisees' concerns seriously--today.

There is no reason for you to oppose certification of this action or to oppose this action generally at this time since, aside from a court decision, this action may create an impetus for a settlement with management that will bring about positive changes for franchisees. Without a corporate mechanism for change, I believe that it will take intervention such as this to change management's attitude towards franchisees' concerns. Beyond opposing certification of this action as a class action, TDL management has not offered a plan to effect future change. nor do the group of concerned franchisees who oppose certification have a commitment from TDL management to offer a concrete plan to effect change.

Please feel free to call me should you have any questions, suggestions or comments. The privacy of your conversations and communications will be respected.

You may read the Amended Statement of Claim by accessing the website of the law firm Adair Morse LLP and click on "Latest News". I encourage you to check the website frequently as more information will be posted shortly. It is important for you to understand the certification process and the various stages involved. Feel free to call or email Jerome Morse or Agape Lim if you have any questions or suggestions.

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