

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**IN RE: CHOCOLATE** : **MDL DOCKET NO. 1935**  
**CONFECTIONARY ANTITRUST** : **(Civil Action No. 1:08-MDL-1935**  
**LITIGATION** :  
\_\_\_\_\_ : **(Judge Conner)**  
:   
**THIS DOCUMENT APPLIES TO:** : **JOINT STIPULATION**  
**ALL CASES** : **REGARDING AN EXCEPTION TO**  
: **THE STIPULATION FOR THE**  
: **PRESERVATION AND**  
: **PRODUCTION OF DOCUMENTS**  
: **AND ELECTRONICALLY STORED**  
: **INFORMATION**

Pursuant to Paragraph 6(d) and (e) of the Stipulation for the Preservation and Production of Documents and Electronically Stored Information (the "Preservation and Production Stipulation"), the Parties (as defined below) stipulate and agree to an exception to the original Preservation and Production Stipulation as follows:

1. Nestlé U.S.A., Inc., Nestlé S.A., and Nestlé Canada Inc. each separately represent through persons knowledgeable that they have preserved Retained Records (as defined in the original Preservation and Production Stipulation) using one or more of the methods agreed to in Paragraph 3 of the Preservation and Production Stipulation.

2. Nestlé U.S.A., Inc., Nestlé S.A., and Nestlé Canada Inc., each separately represent through persons knowledgeable that they utilize Tivoli Storage Manager Backup Systems located in Phoenix, Arizona; Bussigny, Switzerland; and Frankfurt, Germany. These systems are used to backup electronic mail, transactional data, and non-transactional server data to thousands of backup tapes.

3. Nestlé U.S.A., Inc., Nestlé S.A., and Nestlé Canada Inc., each separately represent through persons knowledgeable that the Tivoli backups of non-transactional server data are scheduled to retain one to three months of each system's backup cycle, and are striped across numerous backup tapes in a way that would be costly to preserve, restore or search.

4. Nestlé U.S.A., Inc., Nestlé S.A., and Nestlé Canada Inc., each separately represent through persons knowledgeable that the preservation of non-transactional server data backup data saved using Tivoli Storage Manager as described in Paragraph 3, would pose a significant burden and, given their use of one or more of the methods agreed to in Paragraph 3 of the Preservation and Production Stipulation, Nestlé U.S.A., Inc., Nestlé S.A., and Nestlé Canada Inc. have not undertaken the separate preservation of these backup tapes.

5. In light of the foregoing representations, the Parties stipulate that the Tivoli backup-systems and media identified in Paragraph 2 are exempt from the back-up media preservation requirements of paragraph 3.e(5) of the Preservation

and Production Stipulation, except as to electronic mail Retained Records which have been preserved in accord with the original Preservation and Production Stipulation.

IT IS SO STIPULATED AND ORDERED.

Dated: January \_\_, 2009

Respectfully submitted,

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