

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

IN RE FERRERO LITIGATION

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: Case No. 11-CV-205 H (CAB)
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CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is entered into this 18th day of January, 2012, by and between Plaintiffs Athena Hohenberg and Laura Rude-Barbato (“Plaintiffs”) in their individual and representative capacities and Defendant Ferrero U.S.A., Inc. (“Ferrero” or “Defendant”) (Defendant and collectively with Plaintiffs, the “Settling Parties”). Each of the foregoing Settling Parties acting by and through their respective counsel, agree that this lawsuit, subject to Court approval, and the matters raised in the litigation are hereby settled, compromised and dismissed, on the merits and with prejudice, on the terms and conditions set forth herein (the “Settlement”).

RECITALS

I. PROCEDURAL BACKGROUND

1. WHEREAS, on February 1, 2011, Plaintiff Athena Hohenberg (“Plaintiff Hohenberg”) filed an action in the United States District Court for the Southern District of California, *Hohenberg v. Ferrero USA, Inc.*, Civil Action No. 3:11-cv-00205-H-CAB (“*Hohenberg*”), bringing claims under California’s Unfair Competition Law (“UCL”), Calif. Bus. & Prof. Code §17200, *et seq.*, False Advertising Law (“FAL”), Calif. Bus. & Prof. Code §17500, *et seq.*, the Consumer Legal Remedies Act (“CLRA”), Calif. Bus. & Prof. Code §1750,

et seq., and asserting breach of express and implied warranty of merchantability (the “Hohenberg Complaint”).

2. WHEREAS, on February 4, 2011, Plaintiff Laura Rude-Barbato (“Plaintiff Rude-Barbato”) filed an action in the United States District Court for the Southern District of California, *Rude-Barbato v. Ferrero USA, Inc.*, Civil Action No. 3:11-cv-00249-DMS-BLM (“*Rude-Barbato*”), bringing claims under California’s Unfair Competition Law (“UCL”), Calif. Bus. & Prof. Code §17200, *et seq.*, False Advertising Law (“FAL”), Calif. Bus. & Prof. Code §17500, *et seq.*, the Consumer Legal Remedies Act (“CLRA”), Calif. Bus. & Prof. Code §1750, *et seq.*, the New Jersey Consumer Fraud Act (“NJCFA”), N.J.S.A. §§56:8–1, *et seq.*, and asserting breach of express and implied warranty of merchantability (the “Rude-Barbato Complaint”).

3. WHEREAS, on February 27, 2011, Plaintiff Marnie Glover (“Plaintiff Glover”) filed an action alleging similar claims in the United States District Court for the District of New Jersey, *Glover v. Ferrero USA, Inc.*, Civil Action No. 3:11-cv-01086-FLW-DEA, which was later consolidated in the District of New Jersey with a similar action styled *Kaczmarek v. Ferrero USA, Inc.*, No. C 11-4353-FLW (D.N.J.) as “*In re Nutella Marketing and Sales Litigation.*”

4. WHEREAS, on March 22, 2011, this Court entered an order consolidating the *Hohenberg* and *Rude-Barbato* actions as *In re Ferrero Litigation*, and appointed The Weston Firm and The Law Offices of Ronald A. Marron, APLC as interim lead co-class counsel (collectively “Class Counsel”) for the putative class. Dkt. No. 11.¹ On March 23, Plaintiffs filed a Master Consolidated Complaint. Dkt. No. 14.

¹ Unless otherwise noted, all references to “Dkt. No. ___” are to docket entries in the lower-numbered *Hohenberg* action.

5. WHEREAS, on March 24, 2011, Ferrero filed a motion to transfer this Action to the District of New Jersey (Dkt. No. 19), which was denied by this Court on May 11, 2011. Dkt. No. 37.

6. WHEREAS, on April 11, 2011, Ferrero joined in a motion filed by Plaintiff Glover with the Judicial Panel on Multidistrict Litigation (“JPML”) requesting centralization of this Action and the *Glover* action, under 28 U.S.C. §1407. MDL No. 2248, Dkt. No. 1. On July 28, 2011, the JPML denied Plaintiff Glover’s motion for centralization. MDL No. 2248, Dkt. No. 28.

7. WHEREAS, on July 7, 2011, following the Court’s ruling on Defendant Ferrero’s 12(b) motion to dismiss, Plaintiffs filed their First Amended Consolidated Complaint (“FAC”). Dkt. No. 45.

8. WHEREAS, the FAC alleges that Ferrero’s representations that Nutella is a healthy, balanced and nutritious product, are and were misleading and deceptive.

9. WHEREAS, the FAC alleges that Ferrero made such representations in television, on the NutellaUSA website, and on the label of the product to Plaintiffs and other consumers.

10. WHEREAS, the parties began fact discovery in this Action in March 2011, and the parties have each served and responded to multiple discovery requests, including requests for production of documents, interrogatories and depositions, as well as third party discovery subpoenas.

11. WHEREAS, on August 1, 2011, Plaintiffs moved for Class Certification and appointment of Class Representatives and Class Counsel (Dkt. No. 51), which Ferrero opposed as reflected in its October 10, 2011 opposition (Dkt. No. 76).

12. WHEREAS, following oral argument held on November 7, 2011, this Court granted Plaintiffs motion for class certification, certifying a class of “all persons who, on or after August 1, 2009, bought one or more Nutella products in the state of California for their own or household use rather than resale or distribution.” Dkt. No. 95.

13. WHEREAS, the parties began initial settlement discussions in the summer of 2011 and attended an Early Neutral Evaluation on October 19, 2011, before the Honorable Cathy Ann Bencivengo (“First ENE”). At the conclusion of the First ENE, the parties agreed to attend a private mediation, together with the plaintiffs in *In re Nutella Marketing and Sales Litigation*.

14. WHEREAS, on November 2, 2011, the parties in this Action and plaintiffs in *In re Nutella Marketing and Sales* attended a private mediation session before the Honorable (ret.) Nicholas J. Politan in West Palm Beach, Florida. Following the conclusion of that mediation, Ferrero continued settlement discussions with Plaintiffs in this Action.

15. WHEREAS, on November 28, 2011, the parties attended a second conference before Judge Bencivengo during which the parties agreed on the terms of the settlement reflected in this Agreement. Plaintiffs and Class Counsel believe this Settlement provides substantial injunctive and monetary benefits, is fair, reasonable and adequate to, and is in the best interests of Plaintiffs and the Class Members.

16. WHEREAS, Ferrero has denied and continues to deny any wrongdoing or liability in this Action and stands by its products and advertising.

17. WHEREAS, Class Counsel have conducted an investigation, which included discovery of Defendant’s advertising and marketing at issue and an examination of the facts and law relating to their claims against and the defenses of Ferrero.

18. WHEREAS, based upon the discovery taken to date, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, Plaintiffs and Class Counsel have agreed to settle the claims asserted in the Action pursuant to the provisions of this Agreement. In so doing, Class Counsel have considered numerous risks of continued litigation and other factors, including but not limited to the following:

- A. the expense and length of time necessary to prosecute the Action through trial;
- B. the uncertainty of outcome at trial and the possibility of an appeal by either side following the trial;
- C. the possibility that class certification could be reversed on appeal;
- D. the fact that Ferrero would file a motion for summary judgment that, if granted, would dispose of all or many of the claims in this Action; and
- E. the substantial benefits being made available to Plaintiffs and the Class Members under the terms of this Agreement.

19. WHEREAS, weighing the above factors, as well as all other risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, Plaintiffs and Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and in the best interests of the Plaintiffs and the Class Members.

20. WHEREAS, Defendant expressly disclaims any liability or any wrongdoing of any kind whatsoever. Nevertheless, Defendant considers it desirable that this Action be resolved upon the terms and conditions set forth in this Agreement in order to avoid the expense, risk, uncertainty, and interference with ongoing business operations inherent in any litigation, and to put to rest and to obtain its peace, forever, from all claims that will be barred by the releases described herein.

NOW, THEREFORE, subject to the Final Approval of the Court as required herein and by applicable law and rules, the Settling Parties hereby agree, in consideration of the mutual promises and covenants contained herein, that any Released Claims against any Released Parties shall be settled, compromised and forever released upon the following terms and conditions.

TERMS AND CONDITIONS OF SETTLEMENT

II. DEFINITIONS

21. As used in this Agreement and in exhibits hereto, in addition to any definitions set forth elsewhere in this Agreement, the following terms shall have the meanings set forth below:

A. “Action”

“Action” means the civil actions filed by Plaintiffs Athena Hohenberg and Laura Rude-Barbato and consolidated under the caption *In re Ferrero Litigation*, Civil Action No. 3:11-cv-00205-H-CAB, in the United States District Court for the Southern District of California.

B. “Cash Settlement Amount”

“Cash Settlement Amount” shall be the \$550,000 deposited by Ferrero into the settlement fund described in paragraph 43 of this Agreement.

C. “Claim Form”

“Claim Form” shall mean the claim form, in the form of Exhibit A hereto (which is incorporated herein) but which may be modified as necessary to comply with the provisions of any order of Preliminary Approval entered by the Court.

D. “Claimant”

“Claimant” means a Class Member that submits a valid Claim Form.

E. “Claims Administration Expenses”

“Claims Administration Expenses” means the expenses incurred by the Claims Administrator in the publication of Class Notice, establishment of the Settlement Website and the processing, handling, reviewing and paying of claims made by Claimants. All Claims Administration Expenses shall be paid from the Cash Settlement Amount.

F. “Claims Administrator”

“Claims Administrator” means the Person selected by the Settling Parties and approved by the Court to oversee, among other things, publication of Class Notice, the settlement website and the processing, handling, reviewing, approving and paying of claims made by Claimants.

G. “Claims Period”

“Claims Period” shall be the 90 calendar days (not including the day of the event) following the later of (i) the initial publication of the Class Notice or (ii) establishment of the Settlement Website.

H. “Class Counsel”

“Class Counsel” means the Weston Firm and the Law Offices of Ronald. A. Marron.

I. “Class Members”

“Class Members” means “all persons who, on or after August 1, 2009, bought one or more Nutella products in the state of California for their own or household use rather than resale or distribution” as certified by the Court on November 11, 2011. Dkt. No. 95.

J. “Class Notice”

“Class Notice” means the Court-approved notices of this Agreement that are directed to the Class Members.

K. “Court”

“Court” means the United States District Court for the Southern District of California.

L. “Defense Counsel”

“Defense Counsel” means the law firm of Wilson Sonsini Goodrich & Rosati.

M. “Effective Date”

“Effective Date” means thirty five (35) days after the Court enters an Order and Final Judgment, if no appeal is taken. If an appeal is taken, the Effective Date shall mean the first date all appellate rights (including proceedings in the Supreme Court) with respect to said Order and Final Judgment have expired or been exhausted in such a manner as to affirm the Order and Final Judgment.

N. “Fairness Hearing”

“Fairness Hearing” means the hearing to be conducted by the Court to finally determine the fairness, adequacy and reasonableness of this Agreement.

O. “Fee Award”

“Fee Award” means the award of fees and costs sought by application to and approved by the Court that is payable to Class Counsel, including both the Injunctive Fee Award and Cash Settlement Amount Fee Award as described in paragraphs 50 and 51 below.

P. “Final Approval”

“Final Approval” means the Court’s entry of an Order and Final Judgment following the Fairness Hearing.

Q. “Ferrero”

“Ferrero” means Ferrero USA, Inc. and all of its current and former parents, predecessors, successors, assigns, subsidiaries, divisions, departments, and affiliates, and any and

all of their past, present and/or future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, representatives, advisors, consultants, resellers, brokers, distributors, wholesalers, retailers, subrogees and assigns of any of the foregoing, and representatives of any and all of the foregoing.

R. “Gross Settlement Fund”

“Gross Settlement Fund” means the Cash Settlement Amount, as defined herein, and any interest earned thereon.

S. “Incentive Award”

“Incentive Award” means any award sought by application to and approved by the Court that is payable to the named Plaintiffs (Athena Hohenberg and Laura Rude-Barbato) from the Gross Settlement Fund.

T. “Net Settlement Fund”

“Net Settlement Fund” shall mean the Gross Settlement Fund, as defined herein, less Claims Administration Expenses, Notice Expenses, any Cash Settlement Fee Award as described in paragraph 51 below, reimbursement of expenses, any Incentive Award, taxes on interest earned by the Cash Settlement Amount, and tax expenses.

U. “Notice Expenses”

“Notice Expenses” means all reasonable costs and expenses expended in publishing the Class Notice and providing notice to the appropriate State and Federal officials, including: (i) preparing, printing, mailing, disseminating, posting, promoting, internet hosting and publishing the Class Notice; (ii) obtaining any expert opinions regarding the sufficiency of notice program; and (iii) any other necessary notice or notice-related activities.

V. “Notice of Missing Information”

“Notice of Missing Information” means the notice sent by the Claims Administrator to a Class Member who has submitted a Claim Form with incomplete or missing information that is required for the Class Member to be considered eligible for the class relief provided by this Settlement.

W. “Objection”

“Objection” is the written communication that a Settlement Class Member may file with the Court in order to object to this Agreement as provided for in paragraphs 33-35 below.

X. “Order and Final Judgment”

“Order and Final Judgment” means the final order to be entered by the Court approving the settlement pursuant to the terms and conditions of this Agreement, dismissing the Action with prejudice, releasing claims, and otherwise directing as the Court or the Settling Parties deem necessary and appropriate in order to effectuate the terms and conditions of this Agreement.

Y. “Person”

“Person” means any individual, corporation, trust, partnership, limited liability company, or other legal entity and their respective successors or assigns.

Z. “Preliminary Approval”

“Preliminary Approval” means the Court’s entry of an order, substantially in the form attached hereto as Exhibit B, approving the timing, content and manner of Class Notice, preliminarily approving this Agreement, and enjoining the commencement or continued prosecution by any of the Related Actions and any Releasing Party of any Released Claim against any Released Party.

AA. “Related Actions”

“Related Actions” means the actions filed in other state or federal courts in California asserting claims and alleging facts substantially similar to those asserted and alleged in this Action, including but not limited to the following: *Patrick v. Ferrero U.S.A., Inc.*, No 11-3361 (N.D. Cal.).

BB. “Released Claim”

“Released Claim” means any claim, cross-claim, liability, right, demand, suit, matter, obligation, damage, restitution, disgorgement, loss or cost, attorney’s fee or expense, action or cause of action, of every kind and description that the Releasing Party had or has, including assigned claims, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that is, has been, could reasonably have been or in the future might reasonably be asserted by the Releasing Party either in the Action or in the Related Actions or in any action or proceeding in this Court or any other court or forum, regardless of legal theory or the law under which such action may be brought, and regardless of the type or amount of relief or damages claimed, against any of the Released Parties arising out of or relating to the allegations in the Complaint or Defendant’s marketing and advertising of Nutella at issue in the Complaint and prior to the Effective Date of this Settlement, including but not limited to all claims that were brought or could have been brought in the Action or the Related Actions.

CC. “Released Parties”

“Released Parties” means Ferrero as defined above.

DD. “Releasing Party”

“Releasing Party” means the Plaintiffs, each Class Member, and any Person claiming by or through him/her/it as his/her/its spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee, or affiliate.

EE. “Request for Exclusion”

“Request for Exclusion” is the written communication that a Class Member may submit to the Claims Administrator in order to be excluded from the Settlement as provided for in Paragraph 37 below.

FF. “Settled Defendant’s Claims”

“Settled Defendant’s Claims” means any and all claims, rights or causes of action or liabilities whatsoever, whether based on United States federal, state, local, statutory or common law, or any other law, rule or regulation, whether foreign or domestic, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, foreseen or unforeseen, whether class or individual in nature, including both known claims and unknown claims, that have been or could have been asserted in the Action or any other forum by Defendant or the successors and assigns of it against any of the Plaintiffs, Class Counsel, or any counsel representing Plaintiffs in this Action, which arise out of or relate to the institution, prosecution, or Settlement of the Action (except for claims to enforce the Settlement and/or this Agreement).

GG. “Settlement Website”

“Settlement Website” means the dedicated website to be administrated by the Claims Administrator for purposes of receiving Claim Forms and providing notice and other information regarding this Agreement to Class Members and others.

III. PRELIMINARY APPROVAL

Motion for Preliminary Approval

22. Following execution of this Agreement, Class Counsel shall promptly submit this Agreement to the Court and petition the Court for an order that: (1) appoints Rust Consulting, Inc. as the Claims Administrator; (2) preliminarily approves this Agreement for purposes of issuing Class Notice; (3) approves the timing, content and manner of the Class Notice; (4) enjoins the commencement or continued prosecution by any Releasing Party of any Released Claim against any Released Party or any Related Actions; (5) schedules the Fairness Hearing; and (6) makes such orders as are necessary and appropriate to effectuate the terms and conditions of this Agreement.

Stay of this Action

23. Following Preliminary Approval, all activity in the Action shall be stayed except to the extent necessary to effectuate this Agreement unless and until this Agreement is terminated pursuant to its terms and conditions. Further, upon Preliminary Approval, the commencement or continued prosecution of any Related Actions shall be enjoined.

Cooperation

24. The Settling Parties shall cooperate in good faith and undertake all reasonable actions and steps in order to accomplish the events described in this Agreement.

IV. NOTICE

Cost of Notice

25. All Notice Expenses shall be paid from the Cash Settlement Amount as described in paragraph 43 below.

Notice to State and Federal Officials

26. In compliance with the attorney general notification provision of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §1715, within ten (10) days after the motion for Preliminary Approval is filed, Ferrero shall provide notice of this proposed Settlement to the Attorney General of the United States, and the attorneys general of each state or territory in which a Class Member resides. Defendant shall file with the Court a certification stating the date(s) on which the CAFA notices were sent. Defendant will provide Class Counsel with any substantive responses received in response to any CAFA notice served by it.

Notice to the Class Members

27. Upon Preliminary Approval of this Agreement, the Settling Parties or their designees shall cause the Class Notice to be made as follows:

A. Publication Notice. The Claims Administrator will cause the Class Notice, in the form approved by the Court in an order of Preliminary Approval, to be published to the Class Members within 90 days of, but not before (i) Preliminary Approval in this Action or (ii) preliminary approval of the settlement in In re Nutella Marketing and Sales Practice Litigation, Case No. 3:11-cv-01086-FLW-DEA (D.N.J.), whichever is later. In the event that the court does not approve the settlement in In re Nutella Marketing and Sales Practice Litigation, the Settling Parties in this Action shall meet and confer regarding an amended form of notice, which shall be submitted along with a revised schedule for Class Notice to the Court. Having

consulted with the Settlement Administrator, and subject to Court approval, the Settling Parties agree that Class Notice shall be published in the following media:

i. Print Magazines (Half Page Advertisements)

People Magazine

Woman's Day

Parents

Ser Padre

ii. Online Media (Banner Ads)

24/7 Real Media Network --Parenting Channel (5 million impressions)

Facebook (10 million impressions)

B. Website Notice. The Claims Administrator will establish a Settlement Website for the purposes of disseminating the Class Notice, this Agreement, information relating to filing a claim, opting out of the Settlement, objecting to the Settlement, deadlines relating to the Settlement, pleadings and other information relevant to the Settlement, to Class Members. The Claims Administrator shall establish the Settlement Website within 30 days of: (i) Preliminary Approval in this Action or (ii) preliminary approval of the settlement in In re Nutella Marketing and Sales Practices Litigation, whichever is later. In the event that the court does not approve the settlement in In re Nutella Marketing and Sales Practices Litigation, the Settling Parties in this Action shall meet and confer regarding an amended form of Website Notice. The Settlement Website also shall contain an electronic Claim Form to allow on-line submission of claims as well as a Claim Form which can be downloaded, printed and mailed to the Claims Administrator.

Contents of Notice

28. Notice to the Class Members: The Class Notice shall advise Class Members of their rights, including the right to opt-out from or object to this Agreement and the applicable procedures for doing so, shall direct them to the Settlement Website where an electronic Claim Form shall be located, shall provide instructions for contacting Class Counsel and the Claims Administrator in order to obtain a paper Claim Form or otherwise, and shall contain other information as is agreed by the Settling Parties. The Class Notice shall advise Class Members that objections to the Agreement, and papers submitted in support of said objections, shall only be considered at the Fairness Hearing if they are submitted pursuant to the procedures set forth in paragraphs 33-35 below. The Class Notice shall advise Class Members that the time and place of the Fairness Hearing may change and shall be posted on the Settlement Website. Subject to the Court's approval, a copy of the Class Notices, which will be disseminated via Publication Notice and via the Settlement Website are attached hereto as Exhibits C & D.

V. ELIGIBILITY FOR RELIEF

29. To be eligible to receive the relief identified in paragraph 48, Class Members must make a claim to the Claims Administrator by *either*: 1) completing, certifying and mailing the Claim Form included with the Class Notice to the Claims Administrator, annexed as Exhibit A hereto; or 2) electronically completing, certifying and emailing the Claim Form on the Settlement Website maintained by the Claims Administrator for this Settlement.

30. The Claim Form must be postmarked or electronically submitted no later than the last day of the applicable Claims Period. Claim Forms postmarked or electronically submitted after the end of the applicable Claims Period shall be denied by the Claims Administrator and the Claims Administrator will not be obligated to make any payment on such claims. The Settling

Parties shall take all reasonable steps, and direct the Claims Administrator to take all reasonable steps, to ensure that Claim Forms completed and signed electronically by Class Members conform to the requirements of the federal Electronic Signatures Act, 15 U.S.C. §7001, *et seq.*

Review of Claims

31. The Claims Administrator shall review all submitted Claim Forms within a reasonable time to determine each Class Member's eligibility for class relief, and the amount of such relief, if any. Copies of submitted Claim Forms shall be provided to Defendant and to Class Counsel upon request. Class Members submitting completed Claim Forms shall be entitled to the relief identified in paragraph 48, unless the Claims Administrator has a good faith belief that one or more required fields containing material fact(s) identified in the Claim Form is/are fraudulent or materially inaccurate. Within 60 days after the Claims Period ends, the Claims Administrator shall submit a report to Class Counsel regarding all claims made, the disposition thereof, and the basis for rejection of any claims. Any Claimant whose Claim is rejected may seek reconsideration by contacting the Claims Administrator. Completed Claim Forms that are timely submitted to the Claims Administrator and to which the Claims Administrator does not believe are fraudulent or materially inaccurate, shall be deemed Accepted Claim Forms.

Incomplete Claim Forms

32. Submitted Claim Forms omitting required information shall be returned via first class mail by the Claims Administrator to the Class Member's address indicated on the Claim Form as part of a Notice of Missing Information. Class Members whose Claim Forms are returned because of missing required information shall have until the end of the Claims Period, or 15 calendar days from when the Notice of Missing Information was mailed, whichever is

later, to reply to the Notice of Missing Information and provide a revised Claim Form that includes all required information. If a Class Member fails to respond by the end of the Claims Period or within 15 calendar days from when the Notice of Missing Information was mailed, whichever is later, or the Claims Administrator is unable to return the Submitted Claim Form as result of the omitted information, the Claims Administrator will not be obligated to make any payment on such claims.

VI. OBJECTIONS AND OPT-OUTS

Objections

33. Class Members shall have the right to appear and show cause, if they have any reason why the terms of this Agreement should not be given Final Approval. Any objection must be in writing, filed with the Court, with a copy delivered to Class Counsel and Defense Counsel at the addresses set forth in the Class Notice, no later than 30 days before the Fairness Hearing. Class Members may object either on their own or through an attorney hired at their own expense.

34. If a Class Member hires an attorney to represent him or her at the Fairness Hearing, he or she must do so at his or her own expense. No Class Member represented by an attorney shall be deemed to have objected to the Agreement unless an objection signed by the Class Member also is filed with the Court and served upon Class Counsel and Defense Counsel at the addresses set forth in the Class Notice 30 days before the Fairness Hearing.

35. Any objection regarding or related to the Agreement shall contain a caption or title that identifies it as “Objection to Class Settlement in *In re Ferrero Litigation*, Civil Action No. 11-cv-205” and also shall contain information sufficient to identify and contact the objecting Class Member (or his or her attorney, if any), as well as a clear and concise statement of the

Class Member's objection, documents sufficient to establish the basis for their standing as a Class member, i.e., verification under oath as to the approximate date(s) and location(s) of their purchase(s) of Nutella or receipt(s) reflecting such purchase(s), the facts supporting the objection, and the legal grounds on which the objection is based. If an objecting party chooses to appear at the hearing, no later than 30 days before the Fairness Hearing, a notice of intention to appear, either in person or through an attorney, must be filed with the Court and list the name, address and telephone number of the attorney, if any, who will appear.

Right to Respond to Objections

36. Class Counsel and Ferrero shall have the right to respond to any objection no later than seven (7) days prior to the Fairness Hearing. The Settling Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objector (or counsel for the objector) and to counsel for Plaintiffs and Defendant.

Opt Outs

37. Any Class Member who does not wish to participate in this Settlement must write to the Claims Administrator stating an intention to be "excluded" from this Settlement. This written Request for Exclusion must be sent via first class United States mail to the Claims Administrator at the address set forth in the Class Notice and postmarked no later than 30 days before the date set for the Fairness Hearing. The Request for Exclusion must be personally signed by the Class Member. So-called "mass" or "class" opt-outs shall not be allowed.

38. Any Class Member who does not request exclusion from the Settlement has the right to object to the Settlement. Any Class Member who wishes to object must timely submit an objection as set forth in paragraphs 33-35 above. If a Class Member submits an objection and a written Request for Exclusion, s/he shall be deemed to have complied with the terms of the opt-out procedure and shall not be bound by the Agreement if approved by the Court. However, any

objector who has not timely requested exclusion from the Settlement will be bound by the terms of the Agreement upon Final Approval of the Settlement.

VII. SETTLEMENT RELIEF AND SETTLEMENT CONSIDERATION

Injunctive Relief

39. Ferrero agrees to make the following changes to its advertising and labeling in accordance with the timing set forth in each paragraph below.

40. **Product Label for Nutella.** Ferrero agrees to modify the current product label for Nutella as follows:

A. The front panel of the label of Nutella (the “PDP” or “Principle Display Panel”) shall include “Nutrition Keys” consistent with the Grocery Manufacturers Association (“GMA”) front-of-pack nutrition labeling program (the “Program”). Based on the Program guidelines, the PDP of the Nutella jar shall include icons indicating the quantity/content of Calories, Saturated Fat, Sodium and Sugar in Nutella based on the serving size (the “Icons”).

1. A depiction of the revised PDP for Nutella is attached hereto as Exhibit E for representative purposes only. Ferrero retains the right to determine, in its sole discretion, the location, size and other characteristics of the Icons (including, without limitation, color) so long as they appear on the PDP of the Nutella jar and are consistent with the applicable Program guidelines; the Food, Drug & Cosmetic Act; and other relevant laws and regulations.

2. The requirements set forth in subparagraphs 40(A) of this Agreement (i.e., including Icons on the “PDP”) shall remain in place (i) for two years from the date of implementation of the Icons (i.e., when Ferrero begins including the Icons on the PDP); or (2) until or unless inconsistent with future government regulations; or (3) until or unless future

government regulations concerning nutritional-related labeling on the front label of food packaging become effective.

B. Ferrero will modify the back panel of the label for Nutella (the “Information Panel”) by removing the phrase “An example of a tasty yet balanced breakfast” and replacing it with “Turn a balanced breakfast into a tasty one” (the “Revised Statement”). Ferrero retains the right to determine, in its sole discretion, the location, size and other design characteristics relating to the Revised Statement.

1. Nothing herein shall limit Ferrero’s ability to use additional characterizing language or imaging on the label (including without limitation current characterizing language or imaging), e.g., “Spread Nutella on multigrain toast, add a glass of milk, and a serving of fruit”; and the depiction attached hereto as Exhibit F, or the color, size or other attributes thereof.

2. Ferrero retains the right to remove, in its sole discretion, the Revised Statement from the Nutella label altogether.

C. Ferrero shall use reasonable efforts to add the Icons and the Revised Statement (collectively, the “Modifications”) to the label for Nutella within four (4) months of the Effective Date. The parties understand and agree that Ferrero does not exercise control over the jars of Nutella distributed and/or sold into the market prior to the date of this Agreement and nothing herein shall be construed as requiring Ferrero to undertake or attempt to replace any jars of Nutella that were manufactured, sold, or labeled prior to the Effective Date. The parties further understand and agree that Ferrero shall have the right to continue to distribute and sell Nutella jars bearing the label in use as of the Effective Date until such time as Ferrero is able to implement the Modifications set forth in this paragraph 40.

D. The Settling Parties acknowledge and understand that the obligations set forth in this paragraph 40 of this Agreement shall only apply to the Nutella packages sold in stores and in no way require Ferrero to include the Modification on images of the Nutella jar that appear in television commercials, print advertisements, point of sale/point of purchase materials, the Internet or other advertising and promotional materials for Nutella.

41. **New Television Advertisements for Nutella.** Ferrero agrees to replace and not further air the television advertisements at issue in this lawsuit (referred to as “Mom”, “Pass” and “Silence”) (the “Existing Commercials”) (a copy of said advertising is transcribed and attached as Exhibit G) consistent with the following protocols.

A. Ferrero will use reasonable efforts to develop, test, and produce one or more television advertisement(s) with the goal that the new television advertisement(s) replace the Existing Commercials by July 2012.

B. As part of the parties’ settlement negotiations, Ferrero has provided Class Counsel with three (3) storyboard mock-ups, which include draft scripts (collectively, the “Concepts”), depicting possible replacement television advertisements. Class Counsel have reviewed the language of such replacement television advertising in each of the Concepts and agree that they are acceptable to Plaintiffs and Class Members, and cure any alleged deficiencies in the Existing Commercials.

C. As the television advertisements progress from the concept stage into testing and development, Ferrero retains the sole discretion to modify the creative elements of the television advertisements. Following testing, but prior to production (i.e., filming) of the television advertisements, Ferrero shall provide Class Counsel with another opportunity to comment on the television advertisement. Following production, but prior to airing the final television

advertisements, Ferrero shall provide Class Counsel with a final opportunity to comment on the final television advertisement. The express purpose of the comment period is to allow non-binding input as to whether the creative development of the final television advertisements has altered the Concepts approved by Class Counsel and the Plaintiffs. Class Counsel recognizes that time is of the essence in the development process and Class Counsel undertakes to make themselves available on an expedited timeframe and agree to review and submit any comment to Ferrero within three (3) business days of Class Counsel's receipt of the final television advertisements. In the event Class Counsel fails to provide comments within the aforementioned review and comment period, Class Counsel shall be deemed to have waived their right to review and comment on the final television advertisements.

D. Plaintiffs acknowledge that the review process set forth in this paragraph 41 shall only apply to the Concepts created by or on behalf of Ferrero to immediately replace the Existing Commercials and that nothing herein shall provide Class Counsel with an ongoing right to review any other advertising created by or on behalf of Ferrero prior to Ferrero's public dissemination of such advertising.

E. The Settling Parties acknowledge and agree that Ferrero will have the right to continue airing the Existing Commercials known as "Pass" and "Silence" until production on the new television advertisements has been completed and the new television commercials are able to be aired.

F. The requirements set forth in this paragraph to not air the Existing Commercials known as "Mom", "Pass" and "Silence" shall be in effect for a period of three years from the date of the replacement of the Existing Commercials with the first of any of the new television commercials as described in subparagraphs 41(A), (B), (C) and (E).

42. **Website for Nutella.** Ferrero agrees to modify the content on the website for Nutella (www.nutellausa.com) (the “Website”) as follows:

A. All content referencing or attributable to Ms. Connie Evers will be removed from the Website.

B. Ferrero will replace the “Nutella and Nutrition,” “About Nutella,” and “Breakfast Builder” with the pages as set forth in Exhibit H hereto.

Settlement Fund

43. Defendant shall pay \$550,000 (the “Cash Settlement Amount”) into escrow in an interest-bearing account established by the Claims Administrator and for the benefit of Plaintiffs and the Class Members. The Cash Settlement Amount shall be paid within ten (10) calendar days after the later of (i) entry of the order granting Preliminary Approval of the Settlement, or (ii) Claims Administrator’s notification to Defendant’s Counsel of the wire transfer instructions, tax identification number associated with the escrow fund and physical address of the bank which will hold the interest-bearing escrow account. The Cash Settlement Amount and any interest earned thereon shall be the “Gross Settlement Fund.” Except as provided for in Paragraph 47 as to Claims Administration Expenses, prior to the Effective Date, no withdrawal or payment may be made from the Gross Settlement Fund by any Person without the prior written consent of Ferrero.

44. Plaintiffs and Class Members shall look solely to the Cash Settlement Amount as satisfaction of all claims that are released hereunder. Under no circumstances will Defendant be required to pay more than the Cash Settlement Amount pursuant to this Agreement set forth herein, including for Claims Administration Expenses, Class Notice, and/or any Incentive Award. Plaintiffs and Class Members acknowledge that as of the Effective Date, the releases

given herein shall become effective immediately by operation of the Order and Final Judgment and shall be permanent, absolute and unconditional.

45. All taxes on the income of the Gross Settlement Fund and (i) expenses and costs incurred in connection with the taxation of the Gross Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) (collectively “Taxes”) shall be paid out of the Gross Settlement Fund, shall be considered to be a cost of administration of the Settlement and shall be timely paid by the Claims Administrator without prior order of the Court. Defendant and the Released Parties shall have no liability or responsibility for the payment of any Taxes.

VIII. ADMINISTRATION OF SETTLEMENT

46. The Claims Administrator shall administer the Settlement subject to the jurisdiction of the Court. The Claims Administrator agrees to be subject to the jurisdiction of the Court with respect to the administration of the Settlement and the distribution of the Gross Settlement Fund pursuant to the terms of this Agreement. Defendant shall have no responsibility or liability for the administration of the Settlement and shall have no liability to the Class Members in connection with, as a result of, or arising out of such administration.

47. Class Counsel may pay from the Cash Settlement Amount to the Claims Administrator, without further approval from Defendant or the Court, the reasonable costs and expenses associated with the establishment of the Settlement Website and the Claims Administration Expenses, including without limitation, the actual costs of Class Notice, and any expenses incurred and fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims.

IX. DISTRIBUTION TO AUTHORIZED CLAIMANTS

48. For each Class Member submitting an Accepted Claim Form, the Claims Administrator will pay to that Class Member \$4.00 for each jar of Nutella purchased during the Class Period, up to a maximum total of \$20.00 for each Class Member, family member of a Class Member, or any person who resides in the same household as such Class Member. Payments to Claimants may be subject to *pro rata* reduction if the aggregate number of claims exceeds the Net Settlement Fund. Such payment shall be made by check and mailed to the Claimants following, but no later than 45 days after, the Effective Date.

49. If all eligible Claims have been paid and funds remain in the Net Settlement Fund 270 days following the close of the Effective Date, the Parties shall meet and confer regarding, subject to an application to be filed by Class Counsel to the Court and the Court's approval thereof, the distribution of any remaining funds to an appropriate organization approved by the Court (as a cy pres award) or to Claimants (as a supplemental distribution) or a combination thereof. The remaining funds, if any, shall not revert to Ferrero.

X. FEE AND INCENTIVE AWARDS

The Injunctive Fee Award

50. In addition to and separate from the Cash Settlement Amount, Ferrero shall neither object to nor challenge Class Counsel's application for a Fee Award, to be paid by Defendant or its insurance carrier, not to exceed Nine Hundred Thousand Dollars (\$900,000) in connection with the Injunctive Relief described above in Section VII (the "Injunctive Fee Award"). Class Counsel shall neither request nor accept from the Court an Injunctive Fee Award of fees and costs more than the \$900,000.

The Cash Settlement Amount Fee Award

51. In addition to an award associated with the Injunctive Relief obtained for Class Members, Class Counsel will apply for a Fee Award from the Gross Settlement Fund of attorneys' fees and reimbursement of expenses (the "Cash Settlement Amount Fee Award"). Defendant shall neither object to nor challenge Class Counsel's application for a Cash Settlement Amount Fee Award from the Gross Settlement Fund.

Application and Payment of the Injunctive Fee Award and the Cash Settlement Amount Fee Awards

52. Class Counsel's final application for any Fee Award, and any documents submitted in support thereof, shall be filed no later than forty-five (45) days before the Fairness Hearing. Any attorneys' fees, expenses, and interest as are awarded by the Court to Class Counsel shall be paid within fourteen (14) days following an award by the Court, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Class Counsel's obligation to make appropriate repayments to Defendant or the Settlement Fund, plus accrued interest at the same net rate as is earned by the Gross Settlement Fund, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or cost award is reduced or reversed or return of the Gross Settlement Fund is required. If the Order and Final Judgment approving the Settlement is reversed, a refund or repayment of the Fee Award shall be made to Defendant or other entity that made the payment (the "Payor") plus accrued interest thereon at the six-month London Interbank Offered Rate ("LIBOR") if and when: (a) the Fee and Expense Award and/or the Incentive Fees are reduced, vacated, or reversed, without remand, by order of the United States Court of Appeals for the Ninth Circuit or by final, non-

appealable, order of the United States District Court for the Southern District of California; (b) the Effective Date does not occur; (c) this Settlement is terminated or cancelled for any reason; (d) this Settlement is voided by any party; (e) the Fee and Expense Award and/or Incentive Fees do not become final; or (f) the Settlement is not approved, or is reversed, or modified, without remand, by order of the United States Court of Appeals for the Ninth Circuit or by final, non-appealable, order of the United States District Court for the Southern District of California. The full amount of the Fee and Expense Award and/or Incentive Fees, or the amount by which any such award or fee is reduced, or modified, without remand, by order of the United States Court of Appeals for the Ninth Circuit or by final, non-appealable, order of the United States District Court for the Southern District of California shall be paid to the Payor within ten (10) business days of the date of the event requiring the refund and repayment as set forth in this Paragraph.

53. When an obligation to refund or repay the Fee and Expense Award and/or Incentive Fees arises under the preceding Paragraph, Class Counsel and the individuals Ronald A. Marron, Greg S. Weston and John Fitzgerald, by and through personal guarantees executed under separate agreement and incorporated herein by reference, shall be jointly and severally obligated to refund or repay to the Payor the full amount that is required to be refunded or repaid, plus accrued interest at six-month LIBOR, regardless of whether any portion of the Fee and Expense Award and/or Incentive Fees have already been distributed amongst Class Counsel or to any other person or entity. The obligations in this Paragraph and the preceding Paragraph shall survive and remain in full force and effect and be binding in all respects on Class Counsel, even if the Settlement is terminated, the Settlement is not approved, or the Effective Date does not occur.

54. Any award of attorneys' fees and costs shall be wired to an account established by

the law offices of Ronald A. Marron for distribution to Class Counsel. Defendant shall bare no responsibility or liability for the apportionment and distribution of fees among Class Counsel.

55. Notwithstanding any other provision of this Agreement to the contrary, the procedure for the allowance (in whole or in part) by the Court of any application by Class Counsel for attorney's fees, costs, and expenses, to be paid directly by Defendant as the Injunctive Fee Award or out of the Gross Settlement Fund as the Cash Settlement Amount Fee Award are to be considered by the Court separately and apart from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceeding relating to the award of fees and expenses, or any appeal of any order relating thereto, shall not operate to terminate or cancel this Agreement and Settlement of the Action.

The Incentive Award to Named Plaintiffs

56. Subject to approval by the Court and in recognition of Plaintiffs' time and effort expended on behalf of the Class Members, Plaintiffs may seek an Incentive Award to be paid from the Gross Settlement Fund.

XI. FINAL APPROVAL

Motion for Final Approval

57. No later than forty-five (45) days before the Fairness Hearing, Class Counsel shall petition the Court for a final order that: (1) dismisses this Action, with prejudice, upon the Effective Date; (2) decrees that neither the Final Approval nor this Agreement constitutes an admission of liability, fault or wrongdoing; (3) enjoins the Releasing Parties from asserting any Released Claims against any Released Parties; (4) releases the Released Parties from the Released Claims of the Releasing Parties; (5) finds that this Agreement is entered into in good faith, is reasonable, fair and adequate, and is in the best interest of the Class Members; (6)

preserves the Court's continuing and exclusive jurisdiction over the Settling Parties, including Ferrero and all Class Members, to administer, supervise, construe and enforce this Agreement in accordance with its terms and conditions, but without affecting the finality of the Final Approval; and (7) making such orders as are necessary and appropriate to effectuate the terms and conditions of this Agreement.

Fairness Hearing

58. No sooner than one-hundred and fifty (150) days after Preliminary Approval and no later than one-hundred and eighty (180) days after Preliminary Approval, the Court shall conduct a Fairness Hearing so that the Court may review any objections to this Agreement, consider the fairness, reasonableness and adequacy of this Agreement, consider Class Counsel's petition for a Fee Award, and consider Class Counsel's petition for Final Approval. The date of the Fairness Hearing shall be posted on the Settlement Website in advance of the hearing. If the date of the Fairness Hearing is subsequently modified by the Court, no further notice is required to be published to Settlement Class Members, except that, the Parties will notify any Objector in writing of any modifications to the date of the Fairness Hearing.

Dismissal of this Action

59. The Final Approval shall provide that this Action shall be dismissed, with prejudice, upon the Effective Date.

Dismissal of the Related Actions

60. Following Final Approval, Class Counsel shall cooperate with and assist Ferrero in seeking the dismissal, with prejudice, of any Related Actions.

Cooperation

61. The Settling Parties shall cooperate in good faith and undertake all reasonable

actions and steps in order to accomplish the events described in this paragraph, to defend any appeal from an order granting Final Approval, to respond to any collateral attack on the settlement, this Agreement and/or its preclusive effect, and to take any appeal from an order denying Final Approval. Notwithstanding the foregoing, however, Ferrero shall have no obligation to take any position with respect to amounts not awarded to Class Counsel as part of the Fee Award or to amounts not awarded to the Plaintiffs as part of the Incentive Award.

XII. TERMINATION

Right to Terminate

62. This Agreement is contingent on Final Approval as defined above. Ferrero may terminate this Agreement in its entirety at any time and without further obligation if: (1) any court rejects or denies approval of any term or condition of this Agreement; (2) any court makes any order purporting to alter, amend or modify any term or condition of this Agreement; (3) any court makes any order purporting to preclude Plaintiffs and/or Ferrero from proceeding in whole or in part with any of the terms and conditions of this Agreement; or (4) more than 500 Class Members submit timely and valid Requests for Exclusion.

Notice of Termination

63. In the event Ferrero exercises its right to terminate this Agreement, it shall promptly notify the Court and Class Counsel in writing and cause the Claims Administrator to notify the Class Members by posting information on the Settlement Website and by emailing information to those Claimants who provided an email address to the Claims Administrator.

Effect of Termination

64. In the event Defendant exercises its right to terminate this Agreement, this Agreement shall be considered null and void and have no force or effect, no person or entity shall be bound by any of its terms or conditions, and the rights of all persons or entities with

respect to the claims and defenses asserted in this Action shall be restored to the positions existing immediately prior to execution of this Agreement.

65. Except as otherwise provided herein, in the event the Agreement is terminated in accordance herewith, vacated, or fails to become effective for any reason, then the Settling Parties to this Agreement shall be deemed to have reverted to their respective status in the Action as of the date of this Agreement and, except as otherwise expressly provided, the Settling Parties shall proceed in all respects as if this Agreement and any related orders had not been entered, and any portion of the Cash Settlement Amount previously paid by or on behalf of Defendant, together with any interest earned thereon (and, if applicable, re-payment of any attorneys' fee and expense award referred to in paragraph__ hereof), less any Taxes due with respect to such income, and less costs from the Settlement Administrator for administration and notice actually incurred and paid or payable from the Cash Settlement Amount, shall be returned to Defendant.

XIII. RELEASE

Release

66. Upon Final Approval, each Class Member who has not validly and timely opted out of the Settlement shall be deemed to release and forever discharge any and all Released Parties of and from liability for any and all Released Claims, and shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim(s) against any Released Party in any court or forum. This Agreement shall be the sole and exclusive remedy for any and all Released Claims against the Released Parties. No Released Party shall be subject to liability or expense of any kind to any Releasing Party with respect to any Released Claim.

67. Upon Final Approval, Defendant shall be deemed to release and forever discharge Plaintiffs, Class Counsel and or any counsel representing Plaintiffs in this Action of any and all Settled Defendant's Claims.

Binding Effect

68. The Settling Parties agree that they may hereafter discover facts in addition to or different from those they believe to be true with respect to the subject matter of this Agreement. The Settling Parties agree that, notwithstanding the discovery of the existence of any such additional or different facts that, if known, would materially affect its decision to enter into this Agreement, the releases herein given shall be and remain in effect as a full, final and complete general release of the Released Claims and the Settling Parties shall not be entitled to modify or set aside this Agreement, either in whole or in part, by reason thereof. The Settling Parties hereby waive and relinquish, to the fullest extent permitted by law, the rights and benefits of any statute which might otherwise render unenforceable a release contained in this Agreement, including but not limited to Section 1542 of the California Civil Code, which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

XIV. SETTLEMENT PURPOSES ONLY

Non-Admission

69. This Agreement, whether or not consummated, and any communications exchanged or actions taken pursuant to or during the negotiation of this Agreement are for settlement purposes only. Neither the fact of nor the contents of this Agreement or its exhibits,

nor any communications exchanged nor actions taken pursuant to or during the negotiation of this Agreement, shall constitute, be construed as, or be admissible in evidence as an admission of the validity of any claim asserted or fact alleged in this Action or any Related Actions or of any wrongdoing, fault, violation of law or liability of any kind on the part of Ferrero.

Non-Admissibility

70. This Agreement and all negotiations, correspondence and communications leading up to its execution shall be deemed to be within the protection of Federal Rule of Evidence 408 and any analogous state or federal rules or principles. Neither this Agreement, nor any terms, conditions, contents or provisions hereof or exhibits hereto, nor any negotiations, correspondence or communications leading up to the execution of this Agreement, shall constitute a precedent or be admissible for any purpose in any proceeding; provided, however, that this Agreement shall be admissible in any proceeding related to the approval of this Agreement, to enforce any of its terms and conditions, to support or defend this Agreement in an appeal from an order granting or denying Final Approval, or to enforce or assert a claim or defense of res judicata, collateral estoppel, claim preclusion, issue preclusion, settlement, release, merger and bar, or any similar claim or defense against the Plaintiffs, any Class Member, or any third party.

Reservation of Rights

71. This Agreement is made without prejudice to the rights of Ferrero to: (1) appeal class certification in this Action should this Agreement not be approved or implemented; (2) oppose class certification in any Related Actions or in any other putative or certified class action should those actions not be dismissed; or (3) use the certification of the Class Members to

oppose certification of any other proposed or existing class arising out of or related to the Released Claims should those actions not be dismissed.

XV. WARRANTIES AND REPRESENTATIONS

Authority to Execute

72. The Settling Parties warrant and represent that the persons executing this Agreement are duly authorized to do so.

Assignment of Claims

73. The Settling Parties warrant and represent that no claim or any portion of any claim referenced or released in this Agreement has been sold, assigned, conveyed, or otherwise transferred to any other entity or Person.

Reading and Understanding

74. The Settling Parties warrant and represent that they have carefully read this Agreement, have consulted their attorneys regarding this Agreement, and fully understand and voluntarily accept the terms and conditions of this Agreement.

Reliance on Own Judgment

75. The Settling Parties warrant and represent that they have relied upon their own judgment and that of their legal counsel regarding the sufficient and agreed upon consideration for this Agreement and that no statement or representation by any of the other Settling Parties or their agents, employees, officers, directors or legal representatives influenced or induced them to execute this Agreement.

XVI. INTERPRETATION AND ENFORCEMENT

Governing Law

76. This Agreement shall be construed under and governed by the laws of the State of New Jersey, applied without regard to laws applicable to choice of law.

Entire Agreement

77. This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Settling Parties with regard to the subject of this Agreement and shall supersede any previous agreements, representations, communications and understandings among the Settling Parties with respect to the subject matter of this Agreement.

Joint Preparation

78. This Agreement shall be construed as if the Settling Parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against any of the Settling Parties.

Recitals

79. The Recitals are a material part of this Agreement and are incorporated herein in their entirety.

Captions

80. The captions used in this Agreement are for convenience and identification purposes only and are not part of this Agreement.

Modification

81. This Agreement may not be changed, modified, or amended except in writing signed by all Settling Parties and approved by the Court. Notwithstanding the foregoing, however, the claims process set forth above may be modified by mutual agreement of the Settling Parties without Court approval, and the Settling Parties may agree to reasonable

extensions of time in which to accomplish the tasks required by the terms and conditions of this Agreement, which shall not be unreasonably withheld.

Waiver

82. The waiver of any term or condition or breach of this Agreement shall not be deemed to be a waiver of any other term or condition or breach of this Agreement and shall not be deemed to be a continuing waiver.

Binding Effect

83. This Agreement shall be binding upon and inure to the benefit of the Settling Parties and each of their respective heirs, successors, assigns, executors and legal representatives.

Continuing Jurisdiction

84. The Settling Parties agree that the Court shall retain exclusive and continuing jurisdiction of the Action, Settling Parties, Class Members and the Claims Administrator to interpret and enforce the terms, conditions, and obligations of this Agreement.

XVII. MISCELLANEOUS TERMS AND CONDITIONS

Litigation Brought in Good Faith

85. The Settling Parties to this Agreement intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Class Members against the Released Parties with respect to the Settled Claims. Accordingly, Class Counsel and Defendant agree not to assert in any forum that the litigation was brought by Plaintiffs or defended by Defendant in bad faith or without a reasonable basis. The Settling Parties hereto shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure or of 28 U.S.C. § 1927 relating to the prosecution, defense, or settlement of the Action.

86. The Settling Parties agree that the amount paid and the other terms of the Agreement were negotiated at arm's-length in good faith by the Settling Parties with the assistance of Judge Bencivengo, and reflect a Settlement that was reached voluntarily after consultation with experienced legal counsel.

Notices

87. Any notice, instruction, application for Court approval or application for Court orders sought in connection with this Agreement, or any document to be given by any Settling Party to any other Settling Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, to Class Counsel at the following addresses:

LAW OFFICES OF RONALD A. MARRON, APLC
c/o Ronald A. Marron
3636 4th Avenue, Suite 202
San Diego, California 92103

THE WESTON FIRM
c/o Gregory S. Weston
Jack Fitzgerald
1405 Morena Blvd., Suite 201
San Diego, CA 92110

and to Ferrero's counsel at the following address:

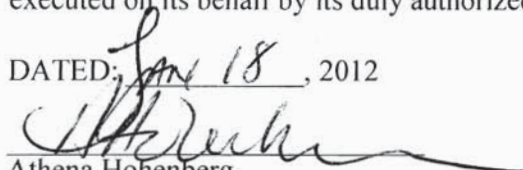
WILSON SONSINI GOODRICH & ROSATI PC
c/o Keith E. Eggleton
Dale R. Bish
650 Page Mill Road
Palo Alto, CA 94304-1050

Execution

88. This Agreement may be executed by facsimile or email signatures in multiple counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same valid and binding agreement.

IN WITNESS WHEREOF, each of the Settling Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

DATED: Jan 18, 2012


Athena Hohenberg
Class Representative

Bernard Kreilmann
President & Chief Executive Officer
Ferrero U.S.A., Inc.

Laura Rude-Barbato
Class Representative

Ronald A. Marron
LAW OFFICES OF RONALD A.
MARRON, APLC
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Telephone: 619-696-9006

Counsel For Plaintiff Athena Hohenberg

Gregory S. Weston
Jack Fitzgerald
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1405 Morena Blvd., Suite 201
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Telephone: 619-798-2006

Counsel For Plaintiff Laura Rude-Barbato

Keith Eggleton
Colleen Bal
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Palo Alto, CA 94304-1050
Telephone: 650-493-9300

Tonia Ouellette Klausner
WILSON SONSINI GOODRICH
& ROSATI PC
1301 Avenue of the Americas, 40th Floor
New York, NY 10019
Telephone: 212-497-7700

Counsel For Defendant Ferrero U.S.A., Inc.

IN WITNESS WHEREOF, each of the Settling Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

DATED: 1-18, 2012

Athena Hohenberg
Class Representative

Bernard Kreilmann
President & Chief Executive Officer
Ferrero U.S.A., Inc.



Laura Rude-Barbato
Class Representative

Ronald A. Marron
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Counsel For Plaintiff Athena Hohenberg

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Counsel For Plaintiff Laura Rude-Barbato

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New York, NY 10019
Telephone: 212-497-7700

Counsel For Defendant Ferrero U.S.A., Inc.

IN WITNESS WHEREOF, each of the Settling Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

DATED: _____, 2012

Athena Hohenberg
Class Representative

Bernard Kreilmann
President & Chief Executive Officer
Ferrero U.S.A., Inc.

Laura Rude-Barbato
Class Representative



Ronald A. Marron
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Gregory S. Weston
Jack Fitzgerald
THE WESTON FIRM
1405 Morena Blvd., Suite 201
San Diego, CA 92110
Telephone: 619-798-2006

Counsel For Plaintiff Laura Rude-Barbato

IN WITNESS WHEREOF, each of the Settling Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

DATED: 1/19, 2012

Athena Hohenberg
Class Representative

Bernard Kreilmann
President & Chief Executive Officer
Ferrero U.S.A., Inc.

Laura Rude-Barbato
Class Representative

Keith Eggleton
Colleen Bal
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Counsel For Plaintiff Athena Hohenberg

Counsel For Defendant Ferrero U.S.A., Inc.



Gregory S. Weston
Jack Fitzgerald
THE WESTON FIRM
1405 Morena Blvd., Suite 201
San Diego, CA 92110
Telephone: 619-798-2006

Counsel For Plaintiff Laura Rude-Barbato

IN WITNESS WHEREOF, each of the Settling Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

DATED: Jan 18th, 2012

Athena Hohenberg
Class Representative

Laura Rude-Barbato
Class Representative

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Counsel For Plaintiff Athena Hohenberg

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1405 Morena Blvd., Suite 201
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Telephone: 619-798-2006

Counsel For Plaintiff Laura Rude-Barbato

Bernard Kreilmann
President & Chief Executive Officer
Ferrero U.S.A., Inc.



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Counsel For Defendant Ferrero U.S.A., Inc.