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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THOMAS IGLESIAS individually and on behalf of all others similarly situated,)	Case No. 3:17-cv-00849-VC
)	
Plaintiff,)	[CLASS ACTION]
)	
vs.)	CLASS ACTION SETTLEMENT
)	AGREEMENT
FERRARA CANDY CO., and DOES 1 through 10, inclusive,)	Hon. Judge Vince Chhabria
)	Courtroom 4
Defendants.)	Complaint Filed: February 21, 2017
)	
)	
)	

This Class Action Settlement Agreement (the “Settlement”), dated May 10, 2018, is made and entered into by and between the Class Representative Thomas Iglesias (“Class Representative”), on behalf of himself and the Settlement Class, and Defendant Ferrara Candy Company (“Defendant”) to settle and compromise this Action, as defined below, and settle,

1 resolve, and discharge the Released Claims, as defined below, according to the terms and
2 conditions herein.

3 **PREAMBLE**

4 1. WHEREAS, on February 21, 2017, Class Representative filed the above-captioned
5 class action lawsuit against Defendant entitled *Iglesias v. Ferrara Candy Company*, United States
6 District Court for the Northern District of California, Case No. 3:17-cv-00849-VC.

7 2. WHEREAS, Class Representative alleges that Defendant has engaged in acts that
8 violate state consumer protections laws (including California's False Advertising Laws ("FAL"),
9 Bus. & Prof. Code § 17500 *et seq.*, California's Unfair Competition Laws ("UCL"), Bus. & Prof.
10 Code § 17200 *et seq.*, and California's Consumers Legal Remedies Act ("CLRA"), Civil Code §
11 1750 *et seq.*), as well as Federal and California slack-fill laws, 21 C.F.R. § 100.100 and Cal. Bus. &
12 Prof. Code § 12606.2, respectively, and that as a direct result of such violations, Class
13 Representative and the putative class have suffered monetary damages and also seek equitable
14 remedies.

15 3. WHEREAS, the Settling Parties participated in two full day mediations with ADR
16 Clerk-appointed Mediator Martin Quinn on August 25, 2017, and Honorable William Cahill (Ret.)
17 on February 7, 2018, respectively, in San Francisco, California.

18 4. WHEREAS, based upon the discovery taken to date, investigation, and evaluation of
19 the facts and law relating to the matters alleged in the pleadings, plus the risks and uncertainties of
20 continued litigation and all factors bearing on the merits of settlement, Class Representative has
21 agreed to settle the claims asserted in the Action pursuant to provisions of this Settlement.

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

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TERMS AND CONDITIONS OF THE SETTLEMENT

1. DEFINITIONS

As used in this Class Action Settlement Agreement and the related documents attached hereto as exhibits, the terms set forth below shall have the meanings set forth below.

1.1. “Action” means the civil action entitled *Iglesias v. Ferrara Candy Company*, Case No. 3:17-cv-00849-VC, currently pending in United States District Court for the Northern District of California.

1.2. “Administrative Costs” means all costs and expenses incurred by the Claims Administrator in administering the Class Action Settlement Agreement and providing Notice in accordance with the Preliminary Approval Order.

1.3. “Claim” or “Settlement Claim” means a claim for payment submitted by a Settlement Class Member to the Claims Administrator as provided in this Class Action Settlement Agreement.

1.4. “Claim Form” or “Settlement Claim Form” means a claim form, substantially in the form of Exhibit C attached hereto, to be submitted by Claimants seeking payment pursuant to this Class Action Settlement Agreement to the Claims Administrator.

1.5. “Claim Fund” means the sum of money that Defendant shall make available for payment of Valid Claims, which shall equal the amount of money remaining from the Total Monetary Settlement Amount after deducting Administrative Costs, any attorneys’ fees, costs, and expenses awarded by the Court, and any incentive award ordered by the Court.

1.6. “Claimant” means a Settlement Class Member who submits a claim for payment.

1.7. “Claims Administrator” refers to Digital Settlement Group LLC.

1.8. “Class Action Settlement Agreement,” “Settlement Agreement,” “Settlement,” or “Agreement” means this Class Action Settlement Agreement, including the attached exhibits.

1.9. “Class Counsel” means Ryan J. Clarkson, Shireen M. Clarkson, Bahar Sodaify, and the law firm of Clarkson Law Firm, P.C.

1.10. “Class Member” means any and all persons who are within the Settlement Class.

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1.11. “Class Period” means the time period between February 21, 2013 through the date the Preliminary Approval Order is entered.

1.12. “Class Representative” means Thomas Iglesias.

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

1.14. “Covered Products” or “Settlement Class Products” means all candy products manufactured by Defendant and packaged for sale or resale to consumers in an opaque cardboard box (including bag-in-a-box products), including Jujyfruits®, Jujubes®, Now and Later®, Lemonhead®, Applehead®, Cherryhead®, Grapehead®, RedHots®, Trolli®, Chuckles®, Black Forest®, Jawbuster®, Jawbreaker®, Brach’s®, Boston Baked Beans®, Super Bubble®, Rainblo®, Atomic Fireball®, and all flavors and varieties of those candies.

1.15. “Defendant” means Ferrara Candy Company, as well as its past, present, and future officers, directors, shareholders, employees, predecessors, affiliates, parents, subsidiaries, partners, distributors, principals, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors, coconspirators, buyers, independent contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of all of the foregoing persons and entities.

1.16. “Defendant’s Counsel” means Defendant’s counsel of record in the Action, Michael J. Shepard, J. Christopher Mitchell and the law firm of Hogan Lovells US LLP.

1.17. “Effective Date” means the first date by which all of the following events shall have occurred: the Court has entered the Final Approval Order and Judgment on the docket in the Action, and (a) the time to appeal from such order has expired and no appeal has been timely filed, (b) if such an appeal has been filed, it has finally been resolved and has resulted in an affirmation of the Final Approval Order and Judgment, or (c) the Court, following the resolution of the appeal, enters a further order or orders approving settlement on the terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s) on appeal. Without limiting the generality of the foregoing, the Effective Date shall not occur prior to final resolution of the Fee and Cost Application and any appeals regarding the Fee and Cost Application.

1.18. “Fee and Cost Application” means the written motion or application by which the Class Representative and/or Class Counsel request that the Court award attorneys’ fees, costs, expenses, and incentive awards. Neither the pendency of the Fee and Cost Application, nor any appeal pertaining solely to a decision on the Fee and Cost Application, shall in any way delay or preclude the Final Approval Order and Judgment from becoming final.

1.19. “Final Approval Hearing” means the hearing scheduled to take place at least ninety (90) days after the date of entry of the Preliminary Approval Order at which the Court shall: (a) determine whether to grant final approval to this Class Action Settlement Agreement and to certify the Settlement Class; (b) consider any timely objections to this Settlement and all responses thereto; and (c) rule on the Fee and Cost Application.

1.20. “Final Approval Order” means the order in which the Court grants final approval of this Class Action Settlement Agreement, certifies the Settlement Class, and authorizes the entry of a final judgment and dismissal of the Action with prejudice.

1.21. “Judgment” means the judgment to be entered by the Court pursuant to the Settlement.

1.22. “Notice” shall mean a document substantially in the form of Exhibit D hereto, and “Summary Notice,” meaning a document substantially in the form of Exhibit E hereto, to be disseminated in accordance with the Preliminary Approval Order, informing persons who fall within the Settlement Class definition of, among other things, the pendency of the Action, the material terms of the Proposed Settlement, and their options with respect thereto.

1.23. “Notice Date” means the date thirty (30) days after the Court provides Preliminary Approval to the Settlement Agreement, by which the Claims Administrator shall commence dissemination of Notice to the Settlement Class.

1.24. “Notice Plan” means the method of providing the Settlement Class with notice of the Class Action Settlement Agreement, as approved by the Court.

1.25. “Notice Response Deadline” means the deadline for all members of the Settlement Class to respond to the Notice, which shall be at least sixty (60) days after the Notice Date.

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1.26. “Opt-Out Date” means the date that is the end of the period to request exclusion from the Settlement Class established by the Court and set forth in the Notice.

1.27. “Participating Claimant” means a Claimant who submits a Qualifying Settlement Claim Form in response to the Notice.

1.28. “Parties” means Class Representative Thomas Iglesias and Defendant Ferrara Candy Company. “Party” shall refer to each of them individually.

1.29. “Person” means any natural person, individual, and such individual’s spouse, heirs, predecessors, successors, representatives, and assignees.

1.30. “Plaintiff” means Thomas Iglesias.

1.31. “Preliminary Approval Order” means the order in which the Court grants its preliminary approval to this Class Action Settlement Agreement, preliminarily certifies the Settlement Class, authorizes dissemination of Notice to the Settlement Class, and appoints the Claims Administrator.

1.32. “Publication Notice” means the long-form and short-form notices, substantially in the form of Exhibits D and E attached hereto. The long-form Publication Notice and the short-form Publication Notice will be published as set forth in the Preliminary Approval Order.

1.33. “Qualifying Settlement Claim Form” shall mean a Claim Form that is fully completed, properly executed, and timely returned to the Claims Administrator on or before the Notice Response Deadline by a Settlement Class Member. A “Qualifying Settlement Claim Form” must be either returned with a postmark via U.S. mail or submitted online through the Class Settlement Website to be created and maintained by the Claims Administrator, at the Participating Claimant’s discretion. The Claims Administrator reserves the right to seek additional information beyond the Qualifying Settlement Claim Form, as necessary.

1.34. “Receipt” shall mean documentary evidence establishing the purchase of one or more Covered Products, the date of purchase, and the purchase price.

1.35. “Released Claims” means all of the claims alleged in the Second Amended Class Action Complaint filed in the Action and any and all claims or causes of action based on the identical factual predicate, whether in law or equity, whether seeking damages or any other relief

(including attorneys' fees), of any kind or character, known or unknown, that are now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, based upon any federal or state statutory or common law, including, without limitation, claims sounding in tort, contract, and the consumer protection laws of the United States or of any other state or jurisdiction within the United States, as well as under the unfair or deceptive trade practices, trade regulation, consumer fraud, misrepresentation, and false advertising law of the United States or any state or other jurisdiction within the United States. Excluded from the Released Claims are any and all claims for personal injury, wrongful death, and/or emotional distress arising from personal injury. With respect to the claims released pursuant to this paragraph, each Settlement Class Member shall be deemed to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of California Civil Code section 1542 (and equivalent, comparable, or analogous provisions of the laws of the United States of America or any state or territory thereof, or of the common law or civil law). Section 1542 provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each and every term of this paragraph shall inure to the benefit of each and all of the Released Parties and Released Persons, and each and all of their respective successors and personal representatives, which persons and entities are intended to be beneficiaries of this paragraph.

1.36. "Released Parties" and "Released Persons" means Defendant, its parent companies, subsidiary companies, affiliated companies, past, present, and future officers (as of the Effective Date), directors, shareholders, employees, predecessors, affiliates, parents, subsidiaries, joint partners, distributors, principals, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors, coconspirators, buyers, independent contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of all of the foregoing persons and entities, and all suppliers, wholesalers, distributors, and retailers of any Covered Products.

1.37. "Releasing Parties" means all Settlement Class Members.

1.38. “Request for Exclusion” means a valid request for exclusion from a member of the Settlement Class. To be valid, a request for exclusion must: (a) be submitted by the member of the Settlement Class to the Claims Administrator and postmarked by a date no later than the Notice Response Deadline; (b) contain the submitter’s name, address, and telephone number; and (c) otherwise comply with the instructions set forth in the Notice.

1.39. “Settlement” means the settlement set forth in this Class Action Settlement Agreement.

1.40. “Settlement Class” means, collectively, all persons in the United States of America who purchased one or more of Defendant’s Covered Products at any time during the Class Period. Excluded from the Settlement Class are any officers, directors, or employees of Defendant, and the immediate family members of any such person. Also excluded is any judge who may preside over this case.

1.41. “Settling Parties” means, collectively, Defendant, the Class Representative, and all Settlement Class Members.

1.42. “Settlement Class Member” means any Class Member who does not submit a timely and valid Request for Exclusion.

1.43. “Total Monetary Settlement Amount” means Two Million Five Hundred Thousand dollars (\$2,500,000.00).

1.44. “Valid Claim” means a claim for reimbursement submitted by a Settlement Class Member that satisfies all the criteria for submission of a Qualifying Settlement Claim Form and any additional information reasonably requested by the Settlement Administrator, if any.

1.45. The singular of any defined term includes the plural, and the plural of any defined term includes the singular.

2. DENIAL OF WRONGDOING AND LIABILITY

2.1. Defendant has denied and continues to deny the material factual allegations and legal claims asserted by Plaintiff, including any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Defendant also denies that Plaintiff or any Class Members were harmed or damaged in

any way by the conduct alleged in the Action. In addition, Defendant maintains that it has meritorious defenses to all claims alleged in the Action. Nonetheless, as set forth below and in consideration of the expense, burden and uncertainties involved in continued litigation, Defendant has agreed to settle the Action on the terms set forth herein.

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3. THE BENEFITS OF SETTLEMENT

3.1. The Parties and their counsel recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Action through trial and appeals. The Parties and their counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Action, as well as the difficulties and delays inherent in such litigation. The Class Representative and Class Counsel are mindful of the inherent issues of proof and possible defenses to the claims asserted in the Action. The Class Representative and Class Counsel believe that the proposed settlement set forth in this Class Action Settlement Agreement confers substantial benefits upon the Settlement Class. Based on their evaluation of all of these factors, the Class Representative and Class Counsel have determined that the Class Action Settlement Agreement is in the best interests of the Class Representative and the Settlement Class.

4. SETTLEMENT CONSIDERATION

4.1 Injunctive Relief

4.1.1. Within ninety (90) days after the Effective Date, Defendant will provide the Settlement Class injunctive relief by way of modifying its fill level quality control procedures and target fill levels to at least 75% for theater box Covered Products, excluding bag-in-a-box, and 50% for all other Covered Products, including bag-in-a-box. Fill levels will be measured from the top of the candy, with carton sides held rigid. Excluded from the injunctive relief provision are Ferrara candy products packaged in multiple individual serving pouches and sold to consumers in opaque cardboard boxes that list the total number of pouches and the net weight of each pouch. Nothing in this provision shall prevent Defendant from making changes to its quality control procedures not

1 inconsistent with the foregoing, or as necessary to comply with governmental or regulatory
2 requirements.

3 4.1.2. To the extent that any state and/or federal statute, regulation, policies, and/or code
4 may at any time impose other, further, different and/or conflicting obligations or duties on
5 Defendant at any time with respect to the Covered Products, this Class Action Settlement
6 Agreement and any Judgment which may be entered pursuant thereto, as well as the Court's
7 continuing jurisdiction with respect to implementation and enforcement of the terms of this Class
8 Action Settlement Agreement, shall cease as to the Settlement Class's and Defendant's conduct
9 covered by that statute, regulation and/or code as of the effective date of such statute, regulation,
10 and/or code.

11 4.2 Monetary Relief

12 4.2.1. Defendant shall make available the Total Monetary Settlement Amount for payment
13 of Valid Claims, Administrative Costs, any attorneys' fees, costs, and expenses awarded by the
14 Court, and any incentive award approved by the Court, as set forth below. Defendant's total
15 financial commitment and obligation under this Settlement Agreement shall not exceed the Total
16 Monetary Settlement Amount (\$2,500,000.00).

17 4.2.1.1. Valid Claims shall be paid from the Claim Fund as soon as practicable but in
18 no event later than ninety (90) days after the Effective Date.

19 4.2.1.2. Defendant shall not be required to make any part of the Claim Fund available
20 to the Claims Administrator for payment of Valid Claims until forty-five (45) days after the
21 Effective Date.

22 4.2.2. The amount of the payment for any claim shall be determined as follows:

23 4.2.2.1. For any Participating Claimant who provides a Receipt, the Participating
24 Claimant shall be entitled to a refund of fifty cents (\$0.50) per box of Covered Product purchased,
25 subject to Paragraph 4.2.6.

26 4.2.2.2. For any Participating Claimant who does not provide a Receipt, but who
27 submits a claim form, either online or via mail, attesting, swearing, or affirming under penalty of
28 perjury that he or she purchased a Covered Product during the Class Period, the actual amount paid

to each Participating Claimant will be fifty cents (\$0.50) per box of Covered Product, with a cap of fifteen (15) boxes per Participating Claimant for a maximum total payment of up to seven dollars and fifty cents (\$7.50), subject to Paragraph 4.2.6.

4.2.3. Participating Claimants cannot combine claims with Receipts with claims without Receipts.

4.2.4. Payment will be made directly to the Participating Claimant within ninety (90) days after the Effective Date.

4.2.5. Adequate and customary procedures and standards will be used by the Claims Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims including requesting additional information from Claimants (beyond the online claim form), if necessary.

4.2.6. If the amount in the Claim Fund is either more or less than the amount of the total cash claims submitted by Participating Claimants, the claims of each Participating Claimant will be increased or decreased, respectively, pro rata to ensure the Claim Fund is exhausted.

4.2.7. There will be no reversion of money from the Claim Fund to Defendant.

5. ADMINISTRATION AND NOTICE

5.1.1. All Administrative Costs shall be paid out of the Total Monetary Settlement Amount, and shall not exceed five hundred twenty-two thousand dollars (\$522,000), plus postage.

5.1.1.1. Defendant shall pay the Administrative Costs, or cause the Administrative Costs to be paid, as follows: Two Hundred Sixty-One Thousand Dollars (\$261,000) within seven (7) days after entry of the order granting preliminary approval, and Two Hundred Sixty-One Thousand Dollars (\$261,000) within thirty-seven (37) days after the preliminary approval order. The payments shall be subject to the Claims Administrator providing applicable tax I.D. number(s), payment routing information, and invoices for the charges no later than thirty (30) days in advance of the required payments. Under no circumstances shall Defendant be required to pay more than \$522,000 in Administrative Costs prior to the Effective Date. Any Administrative Costs in excess of \$522,000 shall be paid from the remainder of the Total Monetary Settlement Amount after the Effective Date.

1 5.1.2. Appointment and Retention of Claims Administrator

2 5.1.2.1. The Parties retained Digital Settlement Group LLC as a Notice
3 Administrator and Claims Administrator to implement the terms of the Class Action Settlement
4 Agreement.

5 5.1.2.2. The Claims Administrator will facilitate the notice process by assisting the
6 Parties in the implementation of the Notice Plan and administering all aspects of the Settlement.

7 5.1.3. Class Settlement Website

8 5.1.3.1. The Claims Administrator will create and maintain the Class Settlement
9 Website, to be activated within twenty (20) days of the entry of the Preliminary Approval Order by
10 the Court. The Claims Administrator's responsibilities will also include securing an appropriate
11 URL. The Class Settlement Website will post the settlement documents and case-related documents
12 such as the Class Action Settlement Agreement, the Long-Form Notice, the Claim Form (in English
13 and Spanish versions), and the Preliminary Approval Order. In addition, the Class Settlement
14 Website will include procedural information regarding the status of the Court-approval process,
15 such as an announcement of the Final Approval Hearing Date, when the Final Approval Order and
16 Judgment have been entered, and when the Effective Date has been reached. Claimants will be able
17 to submit their claims electronically via the Class Settlement Website.

18 5.1.3.2. The Class Settlement Website will terminate (be removed from the internet)
19 and no longer be maintained by the Claims Administrator thirty (30) days after either (a) the
20 Effective Date or (b) the date on which the Class Action Settlement Agreement is terminated or
21 otherwise not approved by a court, whichever is later. The Claims Administrator will then transfer
22 ownership of the URL to Defendant.

23 5.1.3.3. All costs and expenses related to the Class Settlement Website shall be paid
24 by Defendant as part of the Administrative Costs as set forth in 5.1.1 and 5.1.1.1 of this Agreement.

25 5.1.4. Notice Plan

26 5.1.4.1. The class notice shall conform to all applicable requirements of the Federal
27 Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and
28 any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties

and approved by the Court. The class notice shall constitute the best notice that is practicable under the circumstances.

5.1.4.2. Within thirty (30) days after preliminary approval by the Court of this Class Action Settlement Agreement, the Claims Administrator shall provide notice to the Settlement Class according to the Notice Plan.

5.1.4.3. The Notice Plan will include internet and print notice. The Notice Plan will have a calculated reach of seventy percent (70%) or greater, to be attested to by affidavit or declaration of the Settlement Administrator. A true and correct copy of the initial proposal for the Notice Plan is attached hereto as Exhibit A.

5.1.4.4. The Settlement Claims Administrator shall purchase the print notice and other forms of notice associated with the Notice Plan, which shall be included in the amount paid to Digital Settlement Group LLC and paid as set forth in 5.1.1 and 5.1.1.1.

5.1.4.5. The Parties agree to the content of these notices substantially in the forms attached to this Agreement as Exhibits D and E.

5.1.5. Notice to Attorneys General. Not later than ten (10) days after the Motion for Preliminary Approval of the Settlement is filed in court, the Settlement Administrator shall in consultation with Counsel for the Parties provide notice of the proposed class action settlement to the appropriate state officials (i.e. each state attorney general) pursuant to 28 U.S.C. § 1715, and the costs of such notice will be deducted from the Total Monetary Settlement Amount.

5.1.6. Taxes

Settlement Class Members, the Class Representative, and Class Counsel shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Class Action Settlement Agreement, if any.

6. RELEASES

6.1. Upon the Effective Date, the Class Representative and each of the Settlement Class Members will be deemed to have, and by operation of the Judgment will have fully, finally, and forever released, relinquished, and discharged the Released Parties from all Released Claims during the Class Period.

1 **7. CLASS CERTIFICATION**

2 7.1.1. The Parties agree that, for settlement purposes only, this Action shall be certified as a
3 class action pursuant to Federal Rule of Civil Procedure, Rules 23(b)(2) and 23(b)(3), with Class
4 Representative serving as class representative and Class Counsel as counsel for the Settlement
5 Class.

6 7.1.2. In the event the Class Action Settlement Agreement is terminated or for any reason
7 the Class Action Settlement Agreement is not effectuated, the certification of the Settlement Class
8 and the appointment of Class Counsel shall be vacated and the Action shall proceed as if the
9 Settlement Class had not been certified and Class Counsel had not been appointed.

10 **8. SETTLEMENT HEARING**

11 8.1. Promptly after execution of this Class Action Settlement Agreement, Plaintiff will
12 submit the Class Action Settlement Agreement together with its Exhibits to the Court and will
13 request that the Court grant preliminary approval of the Class Action Settlement Agreement, issue
14 the Preliminary Approval Order, and schedule a hearing on whether the Class Action Settlement
15 Agreement should be granted final approval and whether the Fee and Cost Application should be
16 granted (“Settlement Hearing”).

17 8.2. Procedures for Objecting to the Class Action Settlement Agreement

18 8.2.1. Settlement Class Members shall have the right to appear and show cause, if they
19 have any reason why the terms of this Class Action Settlement Agreement should not be given
20 Final Approval, subject to each of the subprovisions in Paragraph 8.2. Any objection to this Class
21 Action Settlement Agreement, including any of its terms or provisions, must be in writing, filed
22 with the Court, with a copy sent the Court and Class Counsel, Counsel for Defendant, and the
23 Claims Administrator at the addresses set forth in the Class Notice, and postmarked no later than
24 the Notice Response Deadline. Settlement Class Members may object either on their own or
25 through an attorney hired at their own expense. Pursuant to the Court’s standing order, the Court
26 will only require substantial compliance with these requirements from Class Members who wish to
27 object, which shall be stated in the Class Notice.

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1 8.2.2. If a Settlement Class Member hires an attorney to represent him or her at the Final
2 Approval Hearing, he or she must do so at his or her own expense.

3 8.2.3. Any objection regarding or related to the Class Action Settlement Agreement shall
4 contain a caption or title that identifies it as "Objection to Class Settlement in Iglesias v. Ferrara,
5 No. 3:17-cv-00849-VC" and also shall contain the following information: (i) the objector's name,
6 address, and telephone number, (ii) the name, address, and telephone number of any attorney for
7 the objector with respect to the objection; (iii) the factual basis and legal grounds for the objection,
8 including any documents sufficient to establish the basis for their standing as a Settlement Class
9 Member, e.g., Receipt, or verification under oath as to the approximate date(s) and location(s) of
10 their purchase(s) of the Covered Products; and (iv) identification of the case name, case number,
11 and court for any prior class action lawsuit in which the objector and the objector's attorney (if
12 applicable) has objected to a proposed class action settlement, the general nature of such prior
13 objection(s), and the outcome of said prior objection(s). If an objecting party chooses to appear at
14 the hearing, no later than the Notice Response Deadline, a notice of intention to appear, either in
15 person or through an attorney, must be filed with the Court and list the name, address, telephone
16 number, facsimile number, and email address of the attorney, if any, who will appear.

17 8.2.4. If a Settlement Class Member wishes to present witnesses or evidence at the Final
18 Approval Hearing in support of a timely and validly submitted objection, all witnesses must be
19 identified in the objection, and true and correct copies of all supporting evidence must be appended
20 to, or filed and served with, the objection. Failure to identify witnesses or provide copies of
21 supporting evidence in this manner waives any right to introduce such testimony or evidence at the
22 Final Approval Hearing. While the declaration described above is prima facie evidence that the
23 objector is a member of the Settlement Class, Class Representative or Defendant or both may take
24 discovery regarding the matter, subject to Court approval.

25 8.2.5. Any Class Member who does not timely object to the Class Action Settlement
26 Agreement or timely submit a Request for Exclusion is deemed to be a Settlement Class Member
27 and bound by the Class Action Settlement Agreement or any further orders of the Court in this
28 Action.

1 8.3. Right to Respond to Objections

2 8.3.1. Class Counsel and Defendant shall have the right, but not the obligation, to respond to
3 any timely-filed objection no later than seven (7) days prior to the Final Approval Hearing. The
4 Settling Party so responding shall file a copy of the response with the Court, and shall serve a copy,
5 by regular mail, hand or overnight delivery, to the objector (or counsel for the objector) and to
6 counsel for Class Representative and Defendant.

7 8.4. Opt Outs

8 8.4.1. Any Class Member who does not wish to participate in this Class Action Settlement
9 Agreement must make a Request for Exclusion in writing to the Claims Administrator stating an
10 intention to be “excluded” from this Class Action Settlement Agreement by the Opt-Out Date. This
11 written Request for Exclusion must be sent via first class United States mail to the Claims
12 Administrator at the address set forth in the Class Notice and postmarked no later than the Notice
13 Response Deadline. The Request for Exclusion must be personally signed by the Class Member.
14 So-called “mass” or “class” opt-outs shall not be allowed. A Class Member who timely submits a
15 valid Request for Exclusion pursuant to this paragraph shall not be a Settlement Class Member and
16 shall not be considered a party to this Action for any purpose.

17 8.4.2. Any Class Member who does not request exclusion from the Settlement has the right
18 to object to the Settlement as set forth in Paragraphs 8.2.1 to 8.2.5 above. If a Class Member
19 submits a written Request for Exclusion, he or she shall be deemed to have complied with the terms
20 of the opt-out procedure and shall not be bound by the Class Action Settlement Agreement if
21 approved by the Court. However, any objector who has not timely requested exclusion from the
22 Settlement will be bound by the terms of the Class Action Settlement Agreement and by all
23 proceedings, orders and judgments in the Action.

24 8.4.3. At least seven (7) calendar days prior to the Final Approval Hearing, Class Counsel
25 shall prepare or cause the Settlement Administrator to prepare a list of the persons who have
26 excluded themselves in a valid and timely manner from the Settlement Class (the “Opt-Outs”), and
27 Class Counsel shall file that list with the Court.

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9. ATTORNEYS' FEES, COSTS, AND EXPENSES

9.1. Class Counsel may apply to the Court for an award of attorneys' fees not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000), plus costs and expenses. This amount will be paid out of the Total Monetary Settlement Fund. Defendant shall pay or cause to be paid any attorney's fees, costs and expenses awarded to Class Counsel and approved by the Court pursuant to the schedule set forth below.

9.1.1. Defendant will pay or cause to be paid up to \$500,000 in Court-approved attorney fees, costs and expenses within forty-five (45) days after the District Court's final order approving the settlement and fee award, notwithstanding any appeal, subject to Class Counsel providing applicable tax I.D. number(s), providing payment routing information, and executing an undertaking in the form attached hereto as Exhibit B. If the Final Approval Order and Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, or the Court's award of attorney fees, costs or expenses is reduced on appeal or otherwise prior to the Effective Date, then within fifteen (15) business days of such event, Class Counsel shall return to Defendant and Defendant's insurance carrier the attorneys' fees, costs, and other payments received by Class Counsel under this paragraph, in the amounts and according to the procedures set forth in Exhibit B. The terms set forth in Exhibit B are expressly incorporated into this Class Action Settlement Agreement and shall be binding as if fully set forth herein.

9.1.2. If the Court approves attorneys' fees, costs, and expenses in excess of \$500,000, Defendant will cause the remaining balance to be paid within forty-five (45) days after the Effective Date. For the avoidance of doubt, the remaining balance shall equal the difference between a) the total amount of attorneys' fees, costs and expenses awarded by the Court and b) the amounts paid to Class Counsel under 9.1.1.

9.2. Plaintiff may apply to the Court for an incentive award of \$5,000 for his service as named plaintiff and putative class representative. The amount of the incentive award ordered by the Court shall be paid out of the Total Monetary Settlement Fund and sent to Class Counsel within

forty-five (45) days after the Effective Date, subject to the prior delivery to Defendant of tax I.D. number(s) and address for delivery for each individual receiving such award.

10. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION

10.1. The Effective Date of this Class Action Settlement Agreement shall be the date as defined in Paragraph 1.15.

10.2. If this Class Action Settlement Agreement is not approved by the Court or the Settlement is terminated or fails to become effective in accordance with the terms of this Class Action Settlement Agreement, the Settling Parties will be restored to their respective positions in the Action as of the date the Motion for Preliminary Approval is filed. In such event, the terms and provisions of this Class Action Settlement Agreement and the Term Sheet Agreement executed in March of 2018 will have no further force and effect with respect to the Settling Parties and will not be used in this Action or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Class Action Settlement Agreement will be treated as vacated. The Parties will meet and confer regarding a proposed class certification schedule, and will submit to the Court a proposed schedule, or competing alternative schedules if they cannot reach agreement. For the avoidance of doubt, nothing in this Paragraph shall affect the obligations in Paragraph 9.1.1 and Exhibit B, which shall survive non-approval of the Class Action Settlement Agreement, termination of the Settlement, and/or failure of the Settlement to become effective in accordance with the terms of this Class Action Settlement Agreement.

10.3. No order of the Court or modification or reversal on appeal of any order of the Court concerning any award of attorneys' fees, expenses, or costs to Class Counsel will constitute grounds for cancellation or termination of this Class Action Settlement Agreement.

11. MISCELLANEOUS PROVISIONS

11.1. The Parties acknowledge that it is their intent to consummate this Class Action Settlement Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Class Action Settlement Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Class Action Settlement Agreement.

1 11.2. The Parties intend the Settlement to be a final and complete resolution of all disputes
2 between them with respect to the Action. The Settlement compromises claims that are contested
3 and will not be deemed an admission by any Settling Party as to the merits of any claim or defense.
4 The Parties agree that the consideration provided to the Settlement Class and the other terms of the
5 Settlement were negotiated in good faith by the Parties, and reflect a settlement that was reached
6 voluntarily after consultation with competent legal counsel.

7 11.3. Neither this Class Action Settlement Agreement nor the Settlement, nor any act
8 performed or document executed pursuant to or in furtherance of this Class Action Agreement or
9 the Settlement is or may be deemed to be or may be used as an admission of, or evidence of, the
10 validity of any Released Claims, or of any wrongdoing or liability of Defendant; or is or may be
11 deemed to be or may be used as an admission of, or evidence of, any fault or omission of
12 Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency
13 or other tribunal. Any party to this Action may file this Class Action Settlement Agreement and/or
14 the Judgment in any action that may be brought against it in order to support any defense or
15 counterclaim, including without limitation those based on principles of res judicata, collateral
16 estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim
17 preclusion or issue preclusion or similar defense or counterclaim.

18 11.4. All agreements made and orders entered during the course of the Action relating to the
19 confidentiality of information will survive this Class Action Settlement Agreement.

20 11.5. Any and all Exhibits to this Class Action Settlement Agreement are material and
21 integral parts hereof and are fully incorporated herein by this reference.

22 11.6. This Class Action Settlement Agreement may be amended or modified only by a
23 written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

24 11.7. This Class Action Settlement Agreement and any Exhibits attached hereto constitute
25 the entire agreement among the Parties, and no representations, warranties, or inducements have
26 been made to any Party concerning this Class Action Settlement Agreement or its Exhibits other
27 than the representations, warranties, and covenants covered and memorialized in such documents.
28 Except as otherwise provided herein, the Parties will bear their own respective costs.

1 11.8. Class Counsel, on behalf of the Settlement Class, are expressly authorized by the
2 Class Representative to take all appropriate actions required or permitted to be taken by the
3 Settlement Class pursuant to this Class Action Settlement Agreement to effectuate its terms, and
4 are expressly authorized to enter into any modifications or amendments to this Class Action
5 Settlement Agreement on behalf of the Settlement Class that Class Counsel deem appropriate.

6 11.9. Each counsel or other Person executing this Class Action Settlement Agreement or
7 any of its Exhibits on behalf of any Party hereby warrants that such Person has the full authority to
8 do so.

9 11.10. This Class Action Settlement Agreement may be executed in one or more
10 counterparts. All executed counterparts and each of them will be deemed to be one and the same
11 instrument. The parties further agree that signatures provided by portable document format (PDF)
12 or other electronic transmission shall have the same force and effect as original signatures.

13 11.11. This Class Action Settlement Agreement will be binding upon, and inure to the
14 benefit of, the successors and assigns of the Settling Parties.

15 11.12. Except as provided herein, the Court will retain jurisdiction with respect to
16 implementation and enforcement of the terms of this Class Action Settlement Agreement, and all
17 parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing
18 the Settlement.

19 11.13. None of the Settling Parties, or their respective counsel, will be deemed the drafter of
20 this Class Action Settlement Agreement or its Exhibits for purposes of construing the provisions
21 thereof. The language in all parts of this Class Action Settlement Agreement and its Exhibits will
22 be interpreted according to its plain meaning, and will not be interpreted for or against any of the
23 Settling Parties as the drafter thereof.

24 11.14. This Class Action Settlement Agreement and any Exhibits hereto will be construed
25 and enforced in accordance with, and governed by, the internal, substantive laws of the State of
26 California without giving effect to that State's choice-of-law principles.

27 11.15. Except for the notice provisions set forth in the Order of Preliminary Approval and
28 except as required of Defendant in accordance with applicable law, rule, or regulation (e.g.

1 securities laws, rules, or regulations), each of the Class Representative, Class Counsel, Defendant,
2 and Defendant's Counsel agrees that there will be no campaigning (including on the Internet)
3 regarding the Settlement. There will be no press release regarding the Settlement, and neither side
4 will initiate contacts with the media regarding the Settlement or litigation against Defendant. Any
5 party can respond to inquiries initiated by the media regarding the Settlement, and in doing so may
6 decline to comment, but otherwise shall only refer to the Class Notice and/or defer to the court file
7 in this Action, but shall not provide any further comment.

8 11.16. The time periods and/or dates described in this Settlement Agreement with respect
9 to the giving of notices and hearings are subject to approval and change by the Court or by the
10 written agreement of Class Counsel and Defendant's Counsel, without notice to Class Members.
11 The Parties reserve the right, by agreement and subject to the Court's approval, to grant any
12 reasonable extension of time that might be needed to carry out any of the provisions of this
13 Settlement Agreement.

14 11.17. If the date for performance of any act required by or under this Settlement
15 Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next
16 business day with the same effect as if it had been performed on the day or within the period of
17 time specified by or under this Settlement Agreement.

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1 DATED: May __, 2018

Thomas Iglesias

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5 DATED: May __, 2018

Michael Murray, Chief Operating Officer
Ferrara Candy Company

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9 APPROVED AS TO FORM:

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13 DATED: May 10, 2018

CLARKSON LAW FIRM, P.C.

Ryan J. Clarkson, Esq.
Shireen M. Clarkson, Esq.
Bahar Sodaify, Esq.

Attorneys for Plaintiff Thomas Iglesias

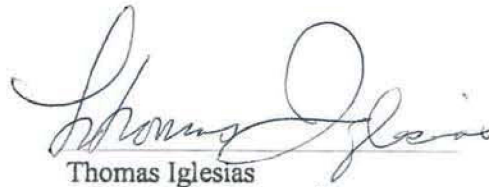
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19 DATED: May __, 2018

HOGAN LOVELLS US LLP

Michael J. Shepard, Esq.
J. Christopher Mitchell, Esq.
*Attorneys for Defendant Ferrara Candy
Company*

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Los Angeles, CA 90069

1 DATED: May 10, 2018


Thomas Iglesias

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4
5 DATED: May 10, 2018


Michael Murray, Chief Operating Officer
Ferrara Candy Company

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9 **APPROVED AS TO FORM:**

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13 DATED: May __, 2018

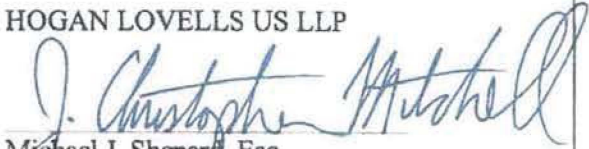
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16 Ryan J. Clarkson, Esq.
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18 *Attorneys for Plaintiff Thomas Iglesias*

19 DATED: May 10, 2018

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21 
Michael J. Shepard, Esq.
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