

FILED
Superior Court of California
County of Los Angeles

SEP 23 2021

Sherri R. Carter, Executive Officer/Clerk
By Stephanie Chung Deputy

IN THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RECEIVED

SEP 16 2021

FILING WINDOW

JADE THOMAS and CAREY HOFFMAN,
individually and on behalf of all others
similarly situated,

Case No. BC649863

[CLASS ACTION]

Plaintiffs,

**AMENDED ~~PROPOSED~~ ORDER
GRANTING PRELIMINARY APPROVAL
OF SETTLEMENT**

vs.

NESTLE USA, INC. and FERRARA CANDY
CO. and DOES 2 through 10, inclusive,

Judge: Daniel J. Buckley
Dept.: 1
Date: September 15, 2021
Time: 8:30 AM

Defendants.

Complaint Filed: February 9, 2017

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

1 WHEREAS, Plaintiffs Jade Thomas, Carey Hoffman, Regan Iglesia, Larry Fertel,
2 Nosson Chaim Rosenberg, Suzanne Tatkow, Jaime Maxwell, Lauren Debeliso, Meredith Barter,
3 and Patrick Ferguson ("Plaintiffs"), Nestle USA, Inc., Ferrara Candy Co., and Ferrero U.S.A.
4 Inc. ("Defendants") (collectively, the "Parties") have reached a proposed settlement and
5 compromise of the disputes between them in the above actions as set forth in the Class Action
6 Settlement Agreement (the "Settlement");

7 WHEREAS, the Parties have applied to the Court for preliminary approval of the
8 Settlement;

9 AND NOW, the Court, having read and considered the Settlement and accompanying
10 documents and the Motion for Preliminary Approval of Class Action Settlement and supporting
11 papers, and all capitalized terms used herein having the meaning defined in the Settlement, IT IS
12 HEREBY ORDERED AS FOLLOWS:

13 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
14 Settlement.

15 2. Subject to further consideration by the Court at the time of the Final Approval
16 Hearing, the Court preliminarily approves the Settlement as fair, reasonable, and adequate to the
17 Settlement Class, as falling within the range of possible final approval, and as meriting
18 submission to the Settlement Class for its consideration.

19 3. For purposes of the Settlement only, the Court certifies the Settlement Class, as
20 described below:

21 All persons in the United States of America who purchased
22 one or more RAISINETS®, BUNCHA CRUNCH®,
23 RUNTS®, BUTTERFINGER BITES®, TOLLHOUSE
24 SEMI-SWEET CHOCOLATE MORSELS®, RAINBOW
25 NERDS®, SWEETARTS®, SPREE®, GOBSTOPPER®,
26 and/or SNO-CAPS® candy products manufactured by
27 Defendants and packaged in an opaque cardboard box and
28 purchased by consumers from February 9, 2013 through the

1 date when the Court enters the Preliminary Approval Order
2 of the Settlement. Excluded from the Settlement Class are:
3 (1) the Honorable Daniel J. Buckley; (2) any member of his
4 immediate family; (3) Defendants; (4) any of Defendants'
5 subsidiaries, parents, affiliates, and officers, directors,
6 employees, legal representatives, heirs, successors, or
7 assigns; (5) counsel for the Parties; and (6) any persons
8 who timely opt-out of the Settlement Class.

9 4. The Court preliminary finds for purposes of considering this Settlement, that the
10 requirements of Cal. Code Civ. Proc. § 382 are satisfied, including requirements for the existence
11 of an ascertainable class, a community interest, and manageability of the Settlement Class, that
12 common issues of law and fact predominate, and that a settlement class is superior to alternative
13 means of resolving the claims and disputes at issue in this action.

14 5. The Court orders that Jade Thomas, Carey Hoffman, Regan Iglesia, Larry Fertel,
15 Nosson Chaim Rosenberg, Suzanne Tatkow, Jaime Maxwell, Lauren Debeliso, Meredith Barter,
16 and Patrick Ferguson are appointed as the Representative Plaintiffs. The Court also orders that
17 Clarkson Law Firm, P.C. and Faruqi & Faruqi, LLP is appointed Class Counsel. The Court
18 preliminarily finds that the Representative Plaintiffs and Class Counsel fairly and adequately
19 represent and protect the interests of the absent Settlement Class Members in accordance with
20 Cal. Code Civ. Proc. § 382.

21 6. A Final Approval Hearing shall be held before this Court in Department 1 of the
22 Los Angeles Superior Court – Spring Street Courthouse, to address: (a) whether the proposed
23 Settlement should be finally approved as fair, reasonable and adequate, and whether the Final
24 Approval Order and Judgment should be entered; and (b) whether Class Counsel's application
25 for attorneys' fees, costs, expenses and service award should be approved. Consideration of any
26 application for an award of attorneys' fees, costs, expenses and service award shall be separate
27 from consideration of whether or not the proposed Settlement should be approved, and from each
28

1 other, and shall be embodied in separate orders. The Court will not decide the amount of any
2 service award or Class Counsel's attorneys' fees until the Final Approval Hearing.

3 7. With the exception of such proceedings as are necessary to implement, effectuate,
4 and grant final approval to the terms of the Settlement Agreement, all proceedings are stayed in
5 this Action and all Settlement Class Members are enjoined from commencing or continuing any
6 action or proceeding in any court or tribunal asserting any claims encompassed by the Settlement
7 Agreement, unless the Settlement Class Member timely files a valid Request for Exclusion as
8 defined in the Settlement Agreement.

9 8. The Court approves, as to form and content, the notices and claim form
10 substantially in the form attached to the Settlement Agreement.

11 9. The Court finds that the Parties' plan for providing notice to the Settlement Class
12 (the "Notice Plan") described in the Settlement Agreement constitutes the best notice practicable
13 under the circumstances and constitutes due and sufficient notice to the Settlement Class, the
14 terms of the Settlement Agreement, and the Final Approval Hearing, and complies fully with the
15 requirements of the California Rules of Court, the California Code of Civil Procedure, the
16 California Civil Code, the Constitution of the State of California, the United States Constitution,
17 and any other applicable law.

18 10. The Court further finds that the Notice Plan adequately informs members of the
19 Settlement Class of their right to exclude themselves from the Settlement Class so as not to be
20 bound by the terms of the Settlement Agreement. Any member of the Class who desires to be
21 excluded from the Settlement Class, and therefore not bound by the terms of the Settlement
22 Agreement, must submit a timely and valid written Request for Exclusion pursuant to the
23 instructions set forth in the Notice.

24 11. The Court appoints Digital Settlement Group, LLC as the Claims Administrator.

25 12. Any member of the Class who elects to be excluded shall not be entitled to
26 receive any of the benefits of the Settlement Agreement, shall not be bound by the release of any
27 claims pursuant to the Settlement Agreement, and shall not be entitled to object to the Settlement
28

1 Agreement or appear at the Final Approval Hearing. The names of all Persons timely submitting
2 valid Requests for Exclusion shall be provided to the Court.

3 13. Service of all papers on counsel for the Parties shall be made as follows: for Class
4 Counsel, to Ryan J. Clarkson at Clarkson Law Firm, P.C., 22525 Pacific Coast Highway,
5 Malibu, California 90265 and Benjamin Heikali at Faruqi & Faruqi, LLP, 10866 Wilshire Blvd.,
6 Suite 1470, Los Angeles, California 90024. Only Settlement Class Members who have submitted
7 valid and timely written objections to the Settlement, together with supporting papers, shall be
8 entitled to be heard at the Final Approval Hearing.

9 14. Any Settlement Class Member who does not make a valid written objection as set
10 forth by the Settlement shall be deemed to have waived such objection and forever shall be
11 foreclosed from making any objection to the fairness or adequacy of the proposed settlement as
12 incorporated in the Settlement Agreement, the payment of attorneys' fees and costs, service
13 award or the Final Approval Order and Judgment.

14 15. Any Settlement Class Member who does not submit a valid Opt Out as forth by
15 the Settlement shall not be excluded from the Settlement Class.

16 16. Any Settlement Class Member who is not excluded from the Settlement Class
17 shall be deemed to have released the Settled Claims.

18 17. The Amendment to Section 2.32 "Released Claims" of the Settlement Agreement
19 supersedes and replaces the prior version of Section 2.32.

20 18. The Claims Administrator shall post the Settlement on the Settlement Website.
21 The Settlement shall include the approved class definition set forth in Paragraph 3 above and the
22 final notices and claim form.

23 19. In the event that the proposed Settlement is not approved by the Court, or in the
24 event that the Settlement becomes null and void pursuant to its terms, this Order and all orders
25 entered in connection therewith shall become null and void, shall be of no further force and
26 effect, and shall not be used or referred to for any purposes whatsoever in this civil action or in
27 any other case or controversy; in such event the Settlement and all negotiations and proceedings
28 directly related thereto shall be deemed to be without prejudice to the rights of any and all of the

Parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement.

20. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Settlement Class Members. The Final Approval Hearing may, from time to time and without further notice to the Settlement Class, be continued by order of the Court.

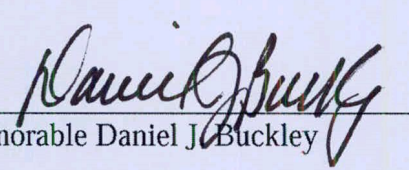
21. The following events shall take place on the below timeline chart:

Event	Date
Deadline for Settlement Website to go live	20 calendar days following notice of this Court's preliminary approval of class action settlement
Deadline to commence Notice Plan	30 calendar days following notice of this Court's preliminary approval of class action settlement
Deadline for Claim Forms to be postmarked or submitted online	60 calendar days following commencement of the Notice Program
Deadline for Objections to be postmarked	60 calendar days following commencement of the Notice Program
Deadline for Opt-Out Requests to be postmarked	60 calendar days following commencement of the Notice Program
Deadline for Plaintiffs' application for attorneys' fees and costs and Plaintiffs' incentive awards	16 court days prior to Final Approval Hearing
Deadline for Plaintiffs to file motion for final approval of class action settlement	16 court days prior to Final Approval Hearing

22. The Final Approval Hearing may be adjourned or continued without further notice to the Class.

IT IS SO ORDERED.

Dated: Sep 23, 2021


Honorable Daniel J. Buckley

PROOF OF SERVICE

SUPERIOR COURT FOR THE STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I am employed in the County of LOS ANGELES, State of CALIFORNIA. I am over the age of 18 and not a party to within action; my business address is **22525 Pacific Coast Highway, Malibu, CA 90265**.

On September 16, 2021, I served the foregoing document described as

• **AMENDED [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT**

on interested parties in this action by sending a true copy of the document to the following parties as follows:

MAYER BROWN

Dale J. Giali
dgiali@mayerbrown.com
Keri E. Borders
kborders@mayerbrown.com
Rebecca B. Johns
rjohns@mayerbrown.com
350 South Grand Ave, 25th Floor
Los Angeles, CA 90071
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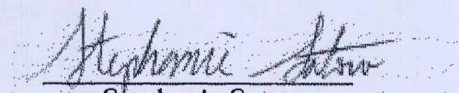
FARUQI & FARUQI, LLP

Benjamin Heikali
bheikali@faruqilaw.com
10866 Wilshire Boulevard, Suite 1470
Los Angeles, CA 90024
Telephone: (424) 256-2884
Facsimile: (424) 256-2885

☒ (BY ELECTRONIC SERVICE) I caused the document(s) to be sent to the offices of the addressees via Case Anywhere.

Executed on September 16, 2021, at Los Angeles, California

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Stephanie Satow

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

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