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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

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

Plaintiffs,

vs.

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

Defendants.

Case No. BC649863

**[CLASS ACTION]**

**CLASS ACTION SETTLEMENT  
AGREEMENT**

This Class Action Settlement Agreement (the “Agreement”), dated the date last signed  
below, is made and entered into by and between Class Representatives Jade Thomas, Carey

Hoffman, Regan Iglesia, Larry Fertel, Nosson Chaim Rosenberg, Suzanne Tatkov, Jaime Maxwell, Lauren Debeliso, Meredith Barter, and Patrick Ferguson, on behalf of themselves and the Settlement Class, and Defendants Nestle USA, Inc., Ferrara Candy Co., and Ferrero U.S.A. Inc. Subject to the Court's approval, the Parties hereby stipulate and agree that, in consideration for the promises and covenants set forth in the Agreement and upon the entry by the Court of a Final Approval Order and the occurrence of the Effective Date, the Action shall be settled and compromised upon the terms and conditions contained herein.

## 1. RECITALS

1.1 On February 9, 2017, Plaintiff Jade Thomas filed the above-captioned class action lawsuit against Defendants Nestle USA, Inc. entitled *Thomas, et al. v. Nestle USA, Inc., et al.*, Los Angeles Superior Court of California, Case No. BC649863 ("*Thomas*"). Carey Hoffman was added as a Plaintiff to the litigation on August 17, 2017. Ferrara Candy Co. was added as a Defendant to the litigation on May 15, 2018. Plaintiffs contend, among other things, that Defendants engaged in deceptive and unlawful conduct in packaging the Covered Products in non-transparent, cardboard containers ("theater boxes"), which contain non-functional slack-fill. Plaintiffs contend that Defendants' misrepresentations give rise to claims for violation of consumer protection law, fraud, breach of warranty, and unjust enrichment.

1.2 As of March 2018, Ferrara Candy Co., Ferrero USA, Inc., and certain of their affiliates, acquired the Covered Products from Nestlé USA, Inc. and, as of that date, manufacture and sell the Covered Products.

1.3 In addition to *Thomas*, on May 15, 2020, Regan Iglesia, Larry Fertel, Nosson Chaim Rosenberg, Suzanne Tatkov, Jaime Maxwell, Lauren Debeliso, Meredith Barter, and Patrick Ferguson filed a similar class action lawsuit in the United States District Court for the District of New Jersey against Nestle USA, Inc., Ferrara Candy Co., and Ferrero U.S.A. Inc. entitled *Iglesia, et al. v. Nestle USA, Inc., et al.*, Case No. 3:20-cv-05971-BRM-DEA ("*Iglesia*"). It is the Parties' intention that subsequent to the entry of the Final Approval Order, *Iglesia* will be dismissed with prejudice.

1           1.4    The Parties participated in a mediation on December 1, 2020 in Los Angeles,  
2           California before the Honorable Peter D. Lichtman (Ret.) of Signature Resolution.

3           1.5    Defendants, while continuing to deny all allegations of wrongdoing and disclaiming  
4           any liability with respect to any and all claims, and without admitting the truth of any allegations  
5           made in the either the *Thomas* or *Iglesia* cases, consider it desirable to resolve the Action on the  
6           terms stated herein, in order to avoid the further expense, inconvenience, and interference with  
7           ongoing business operations and to dispose of burdensome litigation. Therefore, Defendants have  
8           determined that the Settlement of the Action on the terms set forth in this Agreement is in their  
9           best interests.

10          1.6    Class Counsel has analyzed and evaluated the merits of all Parties' contentions and  
11          this Agreement as it affects all Parties and the Settlement Class Members. Among the risks of  
12          continued litigation is the possibility that Class Representatives will be unable to prove liability,  
13          damages, or entitlement to injunctive relief at trial on a class wide or individual basis.

14          1.7    Class Representatives and Class Counsel, after taking into account the foregoing,  
15          along with the risks and costs of further litigation, are satisfied that the terms and conditions of  
16          this Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the litigation  
17          and the prompt provision of effective relief to the Settlement Class are in the best interests of the  
18          Settlement Class Members.

19          1.8    Defendants hereby consent, solely for the purposes of the Settlement set forth below  
20          to the certification of the Settlement Class and the appointment of Class Counsel and Class  
21          Representatives; provided, however, that if this Agreement fails to receive Court approval or  
22          otherwise fails to be executed, including but not limited to, the judgment not becoming final as  
23          provided in Section 8 of this Agreement, then Defendants retain all rights they had immediately  
24          preceding the execution of this Agreement to object to the propriety of class certification in all  
25          other contexts and for all other purposes, and *Thomas* and *Iglesia* will continue as if the  
26          Settlement Class had never been certified. The fact that Defendants conditionally consent herein to  
27          certification of the Settlement Class shall not be used against Defendants by any Party or non-  
28

1 party for any purpose in this litigation or any other action, lawsuit, or proceeding of any kind  
2 whatsoever.

3 1.9 This Agreement is contingent upon the issuance by the Court of both preliminary  
4 approval and final approval. Should the Court not issue preliminary approval and final approval,  
5 Defendants do not waive, and instead expressly reserve, all rights to defend *Thomas* and *Iglesia*.

6 1.10 This Agreement reflects a compromise between the Parties and shall in no event be  
7 construed as or be deemed an admission or concession by any Party of the truth, or lack thereof, of  
8 any allegation or the validity, or lack thereof, of any purported claim or defense asserted in any of  
9 the pleadings or filings in *Thomas* or *Iglesia*, or any fault on the part of Defendants, and all such  
10 allegations are expressly denied. Nothing in this Agreement, shall constitute an admission of  
11 liability or be used as evidence of liability by or against any Party hereto.

## 12 **2. DEFINITIONS**

13 As used in this Agreement and the related documents attached hereto as exhibits (which are  
14 an integral part of the Agreement and are incorporated in their entirety by reference), the terms set  
15 forth below shall have the meanings set forth below. Other capitalized terms in this Agreement not  
16 defined in this section shall have the meanings ascribed to them elsewhere in this Agreement.

17 2.1 "Action" means the civil action entitled *Thomas, et al. v. Nestle, et al.*, Case No.  
18 BC649863, currently pending in the Los Angeles County Superior Court.

19 2.2 "Administrative Costs" means reasonable costs and expenses incurred by the Claims  
20 Administrator in administering the Settlement as set forth in this Agreement and providing Notice  
21 in accordance with the Preliminary Approval Order, not to exceed Five Hundred Thousand  
22 Dollars (\$500,000), which will be paid out of the Settlement Fund.

23 2.3 "Agreement," "Class Action Settlement Agreement," "Settlement Agreement," or  
24 "Settlement," means this agreement containing all terms, conditions, and exhibits which constitute  
25 the entire agreement between the Parties.

26 2.4 "Claim" or "Settlement Claim" means a claim for payment submitted by a  
27 Settlement Class Member on a Claim Form to the Claims Administrator as provided in this  
28 Agreement.

1           2.5    “Claim Form” or “Settlement Claim Form” means a claim form, substantially in the  
2 form of Exhibit A attached hereto, to be submitted by Settlement Class Members seeking payment  
3 pursuant to this Agreement to the Claims Administrator, which form is to be approved by the  
4 Court.

5           2.6    “Claimant” means a Settlement Class Member who submits a Claim.

6           2.7    “Claims Administrator” refers to Digital Settlement Group (“DSG”) or other Court  
7 approved administrator of Settlement Class Counsel’s choosing retained to administer the  
8 Settlement as set forth in this Agreement and providing Notice in accordance with the Preliminary  
9 Approval Order.

10          2.8    “Claims Deadline” means the date by which a Claim Form must be received by the  
11 Claims Administrator via mail or electronically by 11:59 p.m. pacific standard time to be  
12 considered timely and shall be a date no later than thirty (30) days after entry of the Final  
13 Approval Order.

14          2.9    “Class Counsel” means Ryan J. Clarkson, Shireen M. Clarkson, Bahar Sodaify, and  
15 Benjamin Heikali, and the law firms of Clarkson Law Firm, P.C. and Faruqi & Faruqi, LLP.

16          2.10   “Class Period” means the time period between February 9, 2013 through the date the  
17 Preliminary Approval Order is entered.

18          2.11   “Class Representatives” means Jade Thomas, Carey Hoffman, Regan Iglesia, Larry  
19 Fertel, Nosson Chaim Rosenberg, Suzanne Tatkov, Jaime Maxwell, Lauren Debeliso, Maeredith  
20 Barter, and Patrick Ferguson.

21          2.12   “Court” means the Superior Court for the County of Los Angeles, California.

22          2.13   “Covered Products,” “Products,” or “Settlement Class Products” means all “theater-  
23 box” candy products identified in the Action that are manufactured by Defendants and packaged  
24 in an opaque cardboard box within the following product lines: Raisinets®, Buncha Crunch®,  
25 Butterfinger Bites®, Rainbow Nerds®, SweeTarts®, Spree®, Runtts®, Gobstopper®, Sno-Caps®,  
26 and Nestlé Toll House® Candy Shop Semi-Sweet Chocolate Morsels. A list providing  
27 corresponding UPC codes is attached as Exhibit G.  
28

1           2.14 “Defendants” mean Nestle USA, Inc., Ferrara Candy Co., and Ferrero U.S.A., Inc.,  
2 as well as their past, present, and future officers, directors, shareholders, employees, predecessors,  
3 affiliates, parents, subsidiaries, partners, distributors, principals, insurers, administrators, agents,  
4 servants, successors, trustees, vendors, subcontractors, coconspirators, buyers, independent  
5 contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of all of  
6 the foregoing persons and entities.

7           2.15 “Defendants’ Counsel” means Defendants’ counsel of record in the Action, Dale J.  
8 Giali, Keri E. Borders, and the law firm of Mayer Brown LLP.

9           2.16 “Effective Date” means the first date by which all of the following events shall have  
10 occurred: the Court has entered the Final Approval Order and Judgment on the docket in the  
11 Action, and (a) the time to appeal from such order has expired and no appeal has been timely filed,  
12 (b) if such an appeal has been filed, it has finally been resolved and has resulted in an affirmation  
13 of the Final Approval Order and Judgment, or (c) the Court, following the resolution of the appeal,  
14 enters a further order or orders approving settlement on the terms set forth therein, and either no  
15 further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s)  
16 on appeal. Without limiting the generality of the foregoing, the Effective Date shall not occur  
17 prior to final resolution of the Fee and Cost Application and any appeals regarding the Fee and  
18 Cost Application.

19           2.17 “Fee and Cost Application” means the written motion or application by which the  
20 Class Representatives and/or Class Counsel request that the Court approve attorneys’ fees, costs,  
21 expenses, and incentive awards to be paid in accordance with the Total Cash Settlement Amount  
22 defined below. Neither the pendency of the Fee and Cost Application, nor any appeal pertaining  
23 solely to a decision on the Fee and Cost Application, shall in any way delay or preclude the Final  
24 Approval Order and Judgment from becoming final.

25           2.18 “Ferrara/Ferrero Defendants” means Ferrara Candy Company, Ferrero USA, Inc., as  
26 well as their past, present, and future officers, directors, shareholders, employees, predecessors,  
27 affiliates, parents, subsidiaries, partners, distributors, principals, insurers, administrators, agents,  
28 servants, successors, trustees, vendors, subcontractors, coconspirators, buyers, independent

1 contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of all of  
2 the foregoing persons and entities.

3 2.19 "Final Approval Hearing" means the hearing scheduled to take place after the date  
4 of entry of the Preliminary Approval Order at which the Court shall: (a) determine whether to  
5 grant final approval to this Class Action Settlement Agreement and to certify the Settlement Class;  
6 (b) consider any timely objections to this Settlement and all responses thereto; and (c) rule on the  
7 Fee and Cost Application.

8 2.20 "Final Approval Order" means the order in which the Court grants final approval of  
9 this Agreement, certifies the Settlement Class, provides for and gives effect to the release of all  
10 claims by the Releasing Parties against the Released Parties, and authorizes the entry of a final  
11 judgment and dismissal of the Action with prejudice.

12 2.21 "Notice" means the long-form notice substantially in the form of Exhibit C hereto,  
13 and "Summary Notice," meaning a document substantially in the form of Exhibit D hereto, to be  
14 disseminated in accordance with the Preliminary Approval Order, informing persons who fall  
15 within the Settlement Class definition of, among other things, the pendency of the Action, the  
16 material terms of the Proposed Settlement, and their options with respect thereto.

17 2.22 "Notice Date" means the date on which the Claims Administrator disseminates the  
18 Settlement Notice and Publication Notice consistent with the Preliminary Approval Order. The  
19 Notice Date shall be not later than thirty (30) days after the Court's entry of the Preliminary  
20 Approval Order.

21 2.23 "Notice Plan" means the notice plan developed by the Claims Administrator to  
22 notify the Settlement Class of the Settlement Notice, as approved by the Court.

23 2.24 "Objection" means an objection properly filed with the Court in conformance with  
24 the terms of the Preliminary Approval Order by a member of the Settlement Class, objecting to  
25 any aspect of the Settlement.

26 2.25 "Objection Deadline" means sixty (60) days after the Notice Date.  
27  
28



1           2.26 “Opt-Out” means a request by a member of the Settlement Class to be excluded  
2 from the Settlement Class by following the procedures set forth in the Preliminary Approval Order  
3 and the Class Notice.

4           2.27 “Opt-Out Deadline” means sixty (60) days after the Notice Date.

5           2.28 “Parties” means Class Representatives Jade Thomas, Carey Hoffman, Regan Iglesia,  
6 Larry Fertel, Nosson Chaim Rosenberg, Suzanne Tatkov, Jaime Maxwell, Lauren Debeliso,  
7 Maeredith Barter, Patrick Ferguson and Defendants Nestle USA, Inc., Ferrara Candy Co., and  
8 Ferrero U.S.A., Inc. “Party” shall refer to each of them individually.

9           2.29 “Plaintiffs” means Jade Thomas, Carey Hoffman, Regan Iglesia, Larry Fertel,  
10 Nosson Chaim Rosenberg, Suzanne Tatkov, Jaime Maxwell, Lauren Debeliso, Maeredith Barter,  
11 and Patrick Ferguson.

12           2.30 “Preliminary Approval Order” means the order in which the Court grants its  
13 preliminary approval to this Agreement, preliminarily certifies the Settlement Class, authorizes  
14 dissemination of Notice to the Settlement Class, and appoints the Claims Administrator.

15           2.31 “Proposed Preliminary Approval Order” means the proposed order attached hereto  
16 as Exhibit H.

17           2.32 “Released Claims” means any and all actual, potential, filed, known or unknown,  
18 fixed or contingent, claimed or unclaimed, suspected or unsuspected, asserted or unasserted,  
19 claims, demands, liabilities, rights, debts, obligations, liens, contracts, judgments, actions, or  
20 causes, whether in law or equity, whether seeking restitution, damages or any other relief  
21 (including attorneys’ fees), of any kind or character, known or unknown, that are now recognized  
22 by law or that may be created or recognized in the future by statute, regulation, judicial decision,  
23 or in any other manner, based upon any federal or state statutory or common law, including,  
24 without limitation, claims sounding in tort, contract, and the consumer protection laws of the  
25 United States or of any other state, territory or jurisdiction within the United States, as well as  
26 under the unfair or deceptive trade practices, trade regulation, consumer fraud, misrepresentation,  
27 and false advertising law of the United States or any state, territory or other jurisdiction within the  
28 United States that relate to any conduct prior to the date of the Settlement and arise out of the facts



1 alleged in the Action, including the marketing, advertising, labeling, packaging, ~~of~~ and filling of  
2 the Covered Products. Excluded from the Released Claims are any and all claims for personal  
3 injury, wrongful death, and/or emotional distress arising from personal injury. With respect to the  
4 claims released pursuant to this paragraph, Releasing Parties shall be deemed to have waived and  
5 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of  
6 California Civil Code section 1542 (and equivalent, comparable, or analogous provisions of the  
7 laws of the United States of America or any state or territory thereof, or of the common law or  
8 civil law). Section 1542 provides that:

9 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
10 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
11 **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.**

12 The Releasing Parties understand and acknowledge the significant of these waivers of California  
13 Civil Code Section 1542 and any other applicable federal or state statute, case law, rule, or  
14 regulation relating to limitations on releases. In connection with such waivers and relinquishment,  
15 the Releasing Parties acknowledge that they are aware that they may hereafter discover facts in  
16 addition to, or different from, those facts that they now know or believe to be true with respect to  
17 the subject matter of the Settlement, but that it is their intention to release fully, finally, and  
18 forever all Released Claims with respect to the Released Parties, and in furtherance of such  
19 intention, the release of the Released Claims will be and remain in effect notwithstanding the  
20 discovery or existence of any such additional or different facts. Each and every term of this  
21 paragraph shall inure to the benefit of each and all of the Released Parties and Released Persons,  
22 and each and all of their respective successors and personal representatives, which persons and  
23 entities are intended to be beneficiaries of this paragraph.

24 2.33 "Released Parties" means Defendants, its past, present, and future parent companies,  
25 subsidiary companies, affiliated companies, officers, directors, shareholders, employees,  
26 predecessors, affiliates, parents, subsidiaries, joint partners, distributors, principals, insurers,  
27 administrators, agents, servants, successors, trustees, vendors, subcontractors, coconspirators,  
28 buyers, independent contractors, attorneys, representatives, heirs, executors, experts, consultants,

1 and assigns of all of the foregoing persons and entities, and all suppliers, wholesalers, distributors,  
2 and retailers of any Covered Products.

3 2.34 "Releasing Parties" means Plaintiffs and all Settlement Class Members.

4 2.35 "Settlement Class" or "Settlement Class Member" means all persons in the United  
5 States of America who purchased one or more of the Covered Products at any time during the  
6 Class Period. Excluded from the Settlement Class are any officers, directors, or employees of  
7 Defendants, and the immediate family members of any such person. Also excluded is any judge  
8 who may preside over the Actions.

9 2.36 "Settlement Fund" means an amount not to exceed Three Million Seven Hundred  
10 Thousand Dollars (\$3,700,000) that Ferrara/Ferrero Defendants will pay pursuant to the timelines  
11 set forth herein, and that will be used for the payment of (a) Valid Claims; (b) Administrative  
12 Costs, not to exceed Five Hundred Thousand Dollars (\$500,000); (c) any incentive awards to the  
13 Class Representatives approved by the Court, not to exceed Twenty Thousand Dollars (\$20,000);  
14 (d) attorneys' fees approved by the Court, not to exceed One Million One Hundred Sixty-Six  
15 Thousand Six Hundred Sixty-Seven Dollars (\$1,166,667); and (e) litigation costs and expenses  
16 approved by the Court. The Settlement Fund represents Defendants' total financial commitment to  
17 the Settlement and they have no other additional financial obligations.

18 2.37 "Settlement Website" means the website to be created for this Settlement that will  
19 include information about the Action, the Settlement, and relevant documents and electronic and  
20 printable forms relating to the Settlement, including the Claim Form which can be submitted  
21 online or printed and mailed, and which Settlement Class Members can visit to read or request  
22 additional information regarding the Settlement. The Settlement website URL will be  
23 FerraraCandyBoxClassAction.com

24 2.38 "Undertaking" means an undertaking signed by (a) Clarkson Law Firm, P.C.; (b)  
25 Ryan J. Clarkson, Esq.; (c) Shireen Clarkson, Esq.; and (d) any attorneys of Clarkson Law Firm,  
26 P.C. in their individual capacity who receive a share of such payments, substantially in the form of  
27 Exhibit F.  
28

2.39 "Valid Claim" means a claim submitted by a Settlement Class Member that is (a) submitted in accordance with the directions accompanying the Claim Form and the provisions of the Settlement; (b) on the initial submission, accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and post-marked by the Claims Deadline or, if submitted online, is received by 11:59 p.m., Pacific Standard Time, on the Claims Deadline; and (e) determined to be valid by the Claims Administrator.

### **3. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS AND FILING OF FOURTH AMENDED COMPLAINT**

3.1 Defendants have denied and continue to deny the material factual allegations and legal claims asserted by Plaintiffs, 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. Defendants also deny that Plaintiffs or any Settlement Class Members were harmed or damaged in any way by the conduct alleged in the Actions. This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement, or any action taken hereunder, shall constitute or be construed as an admission of: (a) the validity of any claim or allegation by Plaintiffs or any defense asserted by Defendants in the Action; or (b) any wrongdoing, fault, violation of law, or liability on the part of any Party, Released Party, Settlement Class Member, or their respective counsel.

3.2 Solely for the purpose of effectuating the Settlement set forth in this Class Action Settlement Agreement and subject to Court approval, the Parties stipulate that a Settlement Class shall be certified in accordance with the definition set forth in this Agreement, that the Class Representatives shall represent the Settlement Class for settlement purposes and that Class Counsel shall be appointed as counsel for the Settlement Class. In conjunction with the execution of this Agreement by the Parties, the Parties shall stipulate to file a fourth amended complaint in *Thomas* in the form attached as Exhibit E.

1           3.3 In the event that the Court declines to enter the Preliminary Approval Order or to  
2 grant Final Approval (or enters any order that increases the cost or burden of the Settlement to  
3 Defendants beyond what is set forth in this Agreement), the Parties may, but are not required to,  
4 modify this Agreement. Such modification shall be binding only if it is in writing and executed by  
5 Plaintiffs' Counsel and Defendants' Counsel.

6           3.4 In the event that this Agreement (including the Settlement provided for herein) is not  
7 finally approved, or is terminated or cancelled or fails to become effective for any reason  
8 whatsoever, the conditional class certification and fourth amended complaint, to which the Parties  
9 have stipulated solely for the purpose of the Settlement of the Action, shall be null and void, and  
10 the Action shall revert to its status as it existed prior to the date of this Agreement. In such event,  
11 neither this Agreement nor any document filed or created in connection with this Settlement may  
12 be used as an admission or as evidence for any purpose.

#### 13       **4. SETTLEMENT CONSIDERATION**

##### 14           4.1 Injunctive Relief

15           4.1.1 While Defendants maintain that the Covered Products comply with all  
16 Federal and State packaging regulations, the Ferrara/Ferrero Defendants will provide injunctive  
17 relief designed to provide consumers with objective information regarding the amount of candy  
18 contained in the package or with a larger percentage of the package filled with candy. Each of the  
19 Ferrara and Ferrero Defendants may choose, in their sole discretion, the specific measures to take  
20 to achieve these aims, which may include, for example: (i) including an actual size depiction of an  
21 individual piece of the Covered Product's candy accompanied by the term "actual size" on the  
22 product label, (ii) providing a fill line on the product label, (iii) targeting a fill level for the  
23 packaging that, measured from the top of the candy, with carton sides held rigid, would be higher  
24 than the current fill level, provided that such fill level does not interfere with the functioning of  
25 any container reseal mechanism; or (iv) including any other label statement or image, in addition  
26 to the net quantity of contents statement, that provides a piece count, volume or amount. For  
27 purposes of clarity, each of the Ferrara/Ferrero Defendants may, in their sole discretion,  
28 implement different measures to conform with the above. Ferrara/Ferrero Defendants shall

1 commence manufacture of Covered Products conforming with the above within twelve (12)  
2 months after the Effective Date. No later than eighteen (18) months after the Effective Date,  
3 Ferrara/Ferrero Defendants will cease manufacturing Covered Products not conforming with the  
4 above. In no event shall Ferrara/Ferrero Defendants be required to remove or destroy any non-  
5 conforming Covered Products either from their inventory or from the stream of commerce and  
6 Ferrara/Ferrero Defendants are expressly entitled to sell-through any existing non-conforming  
7 Covered Products and packaging for Covered Products (whether in market or in inventory) during  
8 and after this time period. Nothing in this provision shall prevent Ferrara/Ferrero Defendants  
9 from taking necessary action to comply with current or future governmental or regulatory  
10 requirements.

11 4.1.2 The Parties acknowledge that because (i) Nestlé USA, Inc. no longer  
12 manufactures or distributes any of the Covered Products and (ii) Nestlé Toll House® Candy Shop  
13 Semi-Sweet Chocolate Morsels have been discontinued and are no longer manufactured or sold,  
14 the injunctive relief provided for in Section 4.1.1 is not applicable to Nestlé USA, Inc. and Nestlé  
15 USA, Inc. has no future obligations with respect to the packaging of any of the Covered Products.

16 4.1.3 The terms of the injunctive relief set forth herein shall not operate to  
17 preclude and/or deprive Defendants of the benefit of changes in applicable statutes, regulations,  
18 and binding standards. To the extent that any state and/or federal statute, regulation, policy, and/or  
19 code may at any future time impose other, further, different and/or conflicting obligations or  
20 duties on Defendants with respect to the Covered Products, this Agreement and any Judgment  
21 which may be entered pursuant thereto, as well as the Court's continuing jurisdiction with respect  
22 to implementation and enforcement of the terms of this Agreement, shall be subject to such  
23 statute, regulation and/or code as of the effective date of such statute, regulation, and/or code.

24 4.2 Monetary Relief To Settlement Class Members

25 4.2.1 Subject to the rights, terms, and conditions of this Agreement,  
26 Ferrara/Ferrero Defendants shall make available the Settlement Fund for payment of: (i) all costs  
27 and payments associated with the Notice Plan and administration of the Settlement, including all  
28 payments to the Claims Administrator, not to exceed \$500,000; (ii) any award of attorneys' fees

made by the Court to Class Counsel under this Agreement, not to exceed \$1,166,667; (iii) any class representative incentive award to the Plaintiffs approved by the Court, not to exceed \$20,000; (iv) litigation costs and expenses approved by the Court, and (v) Valid Claims. Under no circumstance shall Defendants total combined financial commitment and obligation under this Agreement exceed Three Million Seven Hundred Thousand Dollars (\$3,700,000.00). Settlement Class Members, the Class Representatives, 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 Agreement, if any.

4.2.2 Every Settlement Class Member shall have the right to submit a Claim. A claim shall be a Valid Claim only if submitted on the Claim Form pursuant to, and in compliance with, the procedures set forth herein.

4.2.3 At the election of the Settlement Class Member, Claim Forms may be submitted in paper via first class mail or online at the Settlement Website. Claim Forms must be submitted no later than thirty (30) days after Final Approval, and Claim Forms submitted after that date will not be Valid Claims. On the Claim Form and Settlement Website, the Settlement Class Member must certify the truth and accuracy of the following under penalty of perjury:

- (a) The Settlement Class Member's name and physical address;
- (b) The Settlement Class Member's email address, if the Settlement Class Member elects to provide that information;
- (c) For each Covered Product purchase on which a claim is submitted:
  - 1. The name of the Covered Product purchased;
  - 2. The quantity purchased;
  - 3. The price paid;
  - 4. The place of purchase;
  - 5. The approximate month and year of purchase; and
  - 6. That the claimed purchases were not made for the purposes of resale.

A Claim not complying with all of the elements listed in (c)(1)-(6) above is not a Valid Claim.

Only Valid Claims will be paid.

4.2.4 Settlement Class Members who submit a Valid Claim shall receive Fifty Cents (\$0.50) per unit of Covered Product purchased up to a maximum of sixteen units or Eight Dollars (\$8.00). If the amount in the Settlement Fund is either less or more than the aggregate amount of the total Valid Claims submitted by Settlement Class Members, the amount of the claims of each Settlement Class Member will be increased or decreased, respectively, pro rata in the event of under-subscription or over-subscription, respectively, of the Settlement Fund. Pro rata upward adjustment of cash claims shall be capped at a multiple of five (5) times a given Settlement Class Member's claimed amount or \$40.00, whichever is lower. A maximum of \$40.00 shall be paid to any Household for claimed purchases. Checks for Valid Claims will have a 180-day expiration from the time of issuance. Funds for uncashed checks for Valid Claims will remain in an interest-bearing account within the custody of the Claims Administrator. Any unused amounts from the Settlement Fund after checks for Valid Claims are issued and cashed shall be disbursed *cy pres* to St. Jude, Make-A-Wish Foundation, No Kid Hungry, and America's Grow A Row. Any residuary remaining within the settlement fund due to uncashed checks shall be allocated with all accumulated interest to the *cy pres* designees in compliance with Cal. Code of Civ. Proc. Section 384. All signatories to this Agreement declare under penalty of perjury that they do not have and/or are unaware of any financial interest in, or involvement in the governance of, the *cy pres* recipients, St. Jude, Make-A-Wish Foundation, No Kid Hungry, and America's Grow A Row, by Class Counsel and Class Representatives.

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

4.2.6 Ferrara/Ferrero Defendants shall not be required to make any part of the Settlement Fund available to the Claims Administrator for payment of Valid Claims until forty-five (45) days after the Effective Date.

4.2.7 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 Settlement Class Members (beyond the online claim form), if necessary. The Claims Administrator will follow its ordinary course of



1 practice regarding approval of claims, subject to all Parties' right to audit claims and challenge the  
2 Claims Administrator's decision. If the Parties and the Claims Administrator cannot collectively  
3 agree how to resolve disputed claims, then such disputes shall be resolved by the Court. Within  
4 thirty (30) days after the Effective Date, the Claims Administrator shall email all Settlement Class  
5 Members whose claims are denied to state the reasons for denial, at the email address (if any)  
6 provided by the Settlement Class Member on the Claim Form. If no email address is provided by  
7 the Settlement Class Member on the Claim Form, the Claims Administrator shall not have an  
8 obligation to provide the class member any notification of the reasons for denial of the claim. The  
9 Claims Administrator's determination of whether a claim is a Valid Claim, if not disputed by the  
10 Parties, shall be final and not subject to further review. No person shall have any claim against  
11 Plaintiffs, Defendants, Class Counsel, Defendants' Counsel or the Claims Administrator based on  
12 any determination of a Valid Claim, distributions or awards made in accordance with this  
13 Agreement and the Exhibits hereto.

14 4.2.8 There will be no reversion from the Settlement Fund to Defendants.

## 15 **5. ADMINISTRATION OF THE SETTLEMENT**

16 5.1 The Parties shall jointly ask the Court to approve Digital Settlement Group ("DSG")  
17 as a Claims Administrator. The Claims Administrator shall, subject to the supervision of the  
18 Court, administer the relief provided by this Agreement by processing Claim Forms in a rational,  
19 responsive, cost effective, and timely manner. The Claims Administrator shall maintain  
20 reasonably detailed records of its activities under the Agreement. The Claims Administrator shall  
21 maintain all such records as are required by applicable law in accordance with its normal business  
22 practices and such records will be made available to Class Counsel, Defendants' Counsel, the  
23 Parties, and their representatives promptly upon request.

24 5.2 At the election of the Settlement Class Member, the Claims Administrator shall  
25 accept Claim Forms submitted in paper via first class mail or online at the Class Settlement  
26 Website. Claim Forms must be received by the Claims Administrator or submitted online no later  
27 than the Claims Deadline. Claim Forms received or submitted online after that date will not be  
28 Valid Claims. The Claims Administrator will track Claim Forms with unique security identifiers

1 or control numbers issued to persons who seek to file a Claim. For Claim Forms that are submitted  
2 online, the Settlement Class Member shall have the opportunity to preview and confirm  
3 information entered into the Claim Form prior to submitting the Claim, and to access a page  
4 immediately after the Claim Form has been submitted showing the information entered, and the  
5 date and time the Claim Form was received.

6 5.3 On the Claim Form, the Claims Administrator shall validate that the Settlement  
7 Class Member provided and certified the truth and accuracy of the following information under  
8 the penalty of perjury, including by signing the Claim Form physically or by e-signature, or the  
9 Claim will not be considered a Valid Claim by the Claims Administrator: (a) the Settlement Class  
10 Member's name and mailing address; (b) complete all section of the Claim Form completely,  
11 truthfully, and accurately; (c) the Settlement Class Member's email address (unless the Settlement  
12 Class Member requests a claim form by mail, in which case an email address is optional); (d) the  
13 name of the Covered Product purchased, the number of units purchased during the Class Period;  
14 and the approximate date(s) of purchases; and (e) the claimed purchases were not made for  
15 purposes of resale.

16 5.4 The Claims Administrator shall be responsible for, among other things, providing  
17 notice as set forth in the Notice Plan (including purchasing print notice and other forms of notice),  
18 processing Claim Forms, and administering the Settlement Website, Opt-Out process, and the  
19 Settlement claims process described herein (including receiving and maintaining on behalf of the  
20 Court and the Parties any Settlement Class Member correspondence regarding requests for Opt-  
21 Out from the Settlement Class).

22 5.5 The Claims Administrator will create and maintain the Settlement Website. The  
23 Settlement Website will contain the complaint in the Action, the Motion for Preliminary  
24 Approval, the Preliminary Approval Order, the Agreement, Settlement Notice, Publication Notice,  
25 and Claim Forms. In addition, the Settlement Website will include procedural information  
26 regarding the status of the Court-approval process, such as an announcement of the Final  
27 Approval Hearing Date, when the Final Approval Order and Judgment have been entered, and  
28

1 when the Effective Date has been reached. Settlement Class Members will be able to submit their  
2 claims electronically via the Class Settlement Website.

3 5.6 The Claims Administrator shall also provide reports and other information to the  
4 Court as the Court may require. The Claims Administrator shall promptly provide Class Counsel  
5 and Defendants' Counsel with information concerning notice, administration, and implementation  
6 of the Agreement. Should the Court request, or should it be reasonably advisable to do so, the  
7 Parties, in conjunction with the Claims Administrator, shall submit a timely report to the Court  
8 summarizing the work performed by the Claims Administrator.

9 All Administrative Costs, including the costs of Notice and postage, shall be paid out of  
10 the Settlement Fund, and shall not exceed \$500,000. Administrative Costs shall be inclusive of the  
11 costs of the Notice Plan, the Settlement Website, and administering Claim Forms and issuing and  
12 delivering cash payments the Settlement Class. Ferrara/Ferrero Defendants shall pay, or cause to  
13 be paid, the Administrative Costs to the Claims Administrator as follows: Two Hundred Fifty  
14 Thousand Dollars (\$250,000) within fourteen (14) days after entry of the Preliminary Approval  
15 Order and Two Hundred Fifty Thousand Dollars (\$250,000) not later than fourteen (14) days after  
16 the Effective Date. The payments shall be subject to the Claims Administrator providing  
17 applicable tax I.D. number(s), payment routing information, and invoices for the charges no later  
18 than thirty (30) days in advance of the required payments. If the settlement does not receive final  
19 approval or does not become effective for any reason, Defendants shall have no obligation to pay  
20 the second installment of the Administrative Costs which are due after the Effective Date.

21 **6. NOTICE TO THE SETTLEMENT CLASS**

22 6.1 The Parties agree that the Notice shall otherwise be in the manner and form agreed  
23 upon by the Parties and approved by the Court. The Notice shall conform to all applicable  
24 requirements of the California Code of Civil Procedure and the Constitution of the State of  
25 California, and any other applicable Federal and State laws, and shall otherwise be in the manner  
26 and form agreed upon by the Parties and approved by the Court. The Notice shall constitute the  
27 best notice that is practicable under the circumstances and satisfies due process. The Parties will  
28 request the Court to approve the Notice and Notice Plan in the Preliminary Approval Order.

6.2 The Notice Plan will include internet and print notice. The Notice Plan will have a calculated reach of seventy percent (70%) or greater. A true and correct copy of the initial proposal for the Notice Plan is attached hereto as Exhibit B. The Claims Administrator shall prepare a declaration attesting to compliance with the Notice Plan requirements and a statement of the number of persons the Notice Plan reached. Such declaration shall be provided to Defendants' Counsel and Class Counsel and filed with the Court no later than seven (7) days prior to the Final Approval Hearing.

6.3 No later than thirty (30) days after the Court's entry of the Preliminary Approval Order, the Claims Administrator shall provide Notice to the Settlement Class according to the Notice Plan.

6.4 The Settlement Website will terminate (be removed from the internet) and no longer be maintained by the Claims Administrator thirty (30) days after the later of (a) the Effective Date or (b) the date on which the Agreement is terminated or otherwise rejected by a court. The Claims Administrator will then transfer ownership of the URL to Defendants.

## **7. RELEASES**

7.1 By executing this Agreement, the Parties acknowledge that, upon the entry of the Final Approval Order by the Court, the passing of the Effective Date, and the Settlement Amount being fully funded, the Action shall be dismissed with prejudice, an order of dismissal with prejudice shall be entered, and all Released Claims shall there-by be conclusively settled, compromised, satisfied, and released as to the Released Parties. Upon the Settlement Amount being fully funded, the Final Approval Order shall provide for and effect the full and final release, by the Releasing Parties of all Released Claims, consistent with the terms of this Agreement.

## **8. PROCEDURES FOR SETTLEMENT APPROVAL**

8.1 Promptly after execution of this Agreement, Plaintiffs shall move the Court for entry of the Preliminary Approval Order, subject to changes agreed to by the Parties for accuracy, formatting, or clarity.

1           8.2   No fewer than seven (7) days prior to the date set by the Court for the Final  
2 Approval Hearing, Plaintiffs shall apply to the Court for entry of the Final Approval Order,  
3 subject to changes agreed to by the Parties for accuracy, formatting, or clarity.

4           8.3   At the Final Approval Hearing, the Parties will jointly request the Court to enter the  
5 Final Approval Order, which: (a) grants final approval of the certification of the Settlement Class;  
6 (b) designates the Class Representatives; (c) designates Class Counsel conditionally approved in  
7 the Preliminary Approval Order; (d) grants final approval to the Settlement and establishes this  
8 Agreement as fair, reasonable, and adequate to the Settlement Class; (e) provides for the release of  
9 all Released Claims and enjoins the Settlement Class Members from asserting, filing, maintaining  
10 or prosecuting any of the Released Claims, (f) orders the entry of judgment for Defendants on all  
11 claims, causes of action, and counts alleged in the Action, and incorporates the Releases stated in  
12 this Agreement, with each of the Parties to bear its or his own costs and attorneys' fees, except as  
13 provided in Section 10 below; (g) authorizes the payment by Ferrara/Ferrero Defendants of Class  
14 Counsel's Fee Award and Class Representative Award in accordance with Section 10 below and  
15 the terms of the Agreement; and (h) preserves the Court's continuing jurisdiction over the  
16 administration of the Settlement and the enforcement of the Agreement.

17           8.4   Objections To The Settlement Agreement

18           8.4.1 Settlement Class Members shall have the right to appear and show cause, if  
19 they have any reason why the terms of this Agreement should not be given Final Approval. Any  
20 objection to this Agreement, including any of its terms or provisions, must be in writing, with a  
21 copy sent to the Claims Administrator at the addresses set forth in the Class Notice, and  
22 postmarked no later than the Objection Deadline. Settlement Class Members may object either on  
23 their own or through an attorney hired at their own expense. The Court will hear from any Class  
24 Member who attends the Final Approval Hearing and asks to speak regarding his or her objection,  
25 which shall be stated in the Class Notice.

26           8.4.2 If a Settlement Class Member hires an attorney to represent him or her at the  
27 Final Approval Hearing, he or she must do so at his or her own expense.  
28

1                   8.4.3 Any objection regarding or related to the Agreement shall contain a caption  
2 or title that identifies it as “Objection to Class Settlement in *Thomas, et al. v. Nestle USA, Inc., et*  
3 *al.*” and also shall contain the following information: (i) the objector’s name, address, and  
4 telephone number, (ii) the name, address, and telephone number of any attorney for the objector  
5 with respect to the objection; (iii) the factual basis and legal grounds for the objection, including  
6 any documents sufficient to establish the basis for their standing as a Settlement Class Member,  
7 e.g., verification under oath as to the approximate date(s) and location(s) of their purchase(s) of  
8 the Covered Products; and (iv) identification of the case name, case number, and court for any  
9 prior class action lawsuit in which the objector and the objector’s attorney (if applicable) has  
10 objected to a proposed class action Settlement, the general nature of such prior objection(s), and  
11 the outcome of said prior objection(s). If an objecting party chooses to appear at the hearing, no  
12 later than the Objection Deadline, a notice of intention to appear, either in person or through an  
13 attorney, must be filed with the Court and list the name, address, telephone number, facsimile  
14 number, and email address of the attorney, if any, who will appear.

15                   8.4.4 If a Settlement Class Member wishes to present witnesses or evidence at the  
16 Final Approval Hearing in support of a timely and validly submitted objection, all witnesses must  
17 be identified in the objection, and true and correct copies of all supporting evidence must be  
18 appended to, or filed and served with, the objection. Failure to identify witnesses or provide  
19 copies of supporting evidence in this manner waives any right to introduce such testimony or  
20 evidence at the Final Approval Hearing. While the declaration described above is prima facie  
21 evidence that the objector is a member of the Settlement Class, Class Representative or Defendant  
22 or both may take discovery regarding the matter, subject to Court approval.

23                   8.4.5 Class Counsel and Defendants shall have the right, but not the obligation, to  
24 respond to any timely-filed objection no later than seven (7) days prior to the Final Approval  
25 Hearing. The Settling Party so responding shall file a copy of the response with the Court, and  
26 shall serve a copy, by regular mail, hand or overnight delivery, to the objector (or counsel for the  
27 objector) and to counsel for Class Representative and Defendants.  
28

1           8.5   Opt-Outs

2           8.5.1 Any Settlement Class Member who does not wish to participate in this  
3 Agreement must make a Request for Exclusion in writing to the Claims Administrator stating an  
4 intention to be “excluded” from this Class Action Settlement Agreement by the Opt-Out Deadline.  
5 This written Request for Exclusion must be sent via first class United States mail to the Claims  
6 Administrator at the address set forth in the Class Notice and postmarked no later than the Opt-  
7 Out Deadline. The Request for Exclusion must be personally signed by the Settlement Class  
8 Member. So-called “mass” or “class” opt-outs shall not be allowed. A Settlement Class Member  
9 who timely submits a valid Request for Exclusion pursuant to this paragraph shall not be a  
10 Settlement Class Member and shall not be considered a party to this Action for any purpose.

11           8.5.2 Any Settlement Class Member, including a Settlement Class Member who  
12 has objected to the Settlement as set forth in Paragraphs 8.4.1 to 8.4.5.5 above, who has not timely  
13 requested exclusion from the Settlement will be bound by the terms of the Agreement and by all  
14 proceedings, orders and judgments in the Action.

15           8.5.3 At least seven (7) calendar days prior to the Final Approval Hearing, Class  
16 Counsel shall prepare or cause the Claims Administrator to prepare a list of the persons who have  
17 excluded themselves in a valid and timely manner from the Settlement Class (the “Opt-Outs”),  
18 and Class Counsel shall file that list with the Court.

19           8.5.4 Defendants shall have the right to withdraw from this Settlement if the total  
20 number of Opt-Outs exceeds One Thousand (1,000) Settlement Class Members. Defendants agree  
21 not to make or cause to be made any statements or pronouncements to discourage Settlement  
22 Class Member participation in the Settlement.

23   **9.   ATTORNEYS’ FEES, COSTS, AND EXPENSES, AND SERVICE AWARDS**

24           9.1 No later than fourteen (14) days before the deadline for objection to the Settlement,  
25 Class Counsel may apply to the Court for award of attorneys’ fees not to exceed One Million One  
26 Hundred Sixty-Six Thousand Six Hundred Sixty-Seven Dollars (\$1,166,667), plus litigation costs  
27 and expenses. This amount will be paid out of the Settlement Fund and Defendants shall have no  
28 obligation otherwise to pay any portion of Plaintiffs’ or Class Counsel’s fees, costs, or expenses.



Such attorneys' fees, costs, and expenses, if approved by the Court, shall be payable within thirty (30) days following the Court's entry of the Final Approval Order and fee award, notwithstanding any appeal, subject to Class Counsel providing applicable tax I.D. number(s), W-9 forms, and providing payment routing information.

9.2 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 forty-five (45) days of such event, Class Counsel shall return to Ferrara/Ferrero Defendants all attorneys' fees, costs, and other payments received by Class Counsel under this paragraph and this Agreement, in amounts proportionate to payments received from Ferrara/Ferrero Defendants, respectively. The following persons and/or entities shall be jointly and severally liable for the return of such payments to Ferrara/Ferrero Defendants : (a) Clarkson Law Firm, P.C.; (b) Ryan J. Clarkson, Esq.; (c) Shireen Clarkson, Esq.; and (d) any attorneys of Clarkson Law Firm, P.C. in their individual capacity who receive a share of such payments. To effectuate this provision, Clarkson Law Firm, P.C. and each individual attorney or other law firm who receives a share of payments made under this paragraph shall execute an Undertaking in the form attached as Exhibit F hereto prior to receiving such funds. The Undertaking described under this paragraph shall expire upon the Effective Date.

9.3 Class Counsel and Plaintiffs agree that the denial of, reduction or downward modification of, or failure to grant any application for attorneys' fees, costs, and expenses or incentive awards shall not constitute grounds for modification or termination of this Agreement, including the Settlement and releases provided for herein.

9.4 Plaintiffs may apply to the Court for a total incentive award of Twenty Thousand Dollars (\$20,000) for their service as named Plaintiffs and putative class representatives, as follows: \$5,000 each for Plaintiffs Thomas and Hoffman; \$2,000 for Plaintiff Iglesia; and \$1,000 each for the remaining Plaintiffs. The amount of the incentive award ordered by the Court shall be paid by the Claims Administrator out of the Settlement Fund within forty-five (45) days after the

Effective Date, subject to the prior delivery to Defendants of tax I.D. number(s), W-9 forms, 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 1.18.

10.2 If this Agreement is not approved by the Court or the Settlement is terminated or fails to become effective in accordance with the terms of this Agreement, the Parties will be restored to their respective positions in the Actions as of the date the Motion for Preliminary Approval of this Agreement is filed. In such event, the terms and provisions of this Agreement will have no further force and effect with respect to the Parties and will not be used in either 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 Agreement will be treated as vacated. Court Approval of Class Counsel's Fee Award will not be a condition of the Settlement. If the Court denies, in whole or part, Class Counsel's Application for a Fee Award, the remainder of the terms of this Agreement shall remain in effect.

## **11. MISCELLANEOUS PROVISIONS**

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

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

11.3 Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement, or any fees or costs

1 approved or awarded by the Court is or may be deemed to be or may be used as an admission of,  
2 or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of  
3 Defendants; or is or may be deemed to be or may be used as an admission of, or evidence of, any  
4 fault or omission of Defendants in any civil, criminal, or administrative proceeding in any court,  
5 administrative agency or other tribunal. Any party to this Action may file this Agreement and/or  
6 the Final Approval Order and Judgment in any action that may be brought against it in order to  
7 support any defense or counterclaim, including without limitation those based on principles of res  
8 judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other  
9 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10 11.4 All orders, agreements and designations regarding the confidentiality of documents  
11 and information ("Protective Orders") remain in effect, and all Parties and counsel remain bound  
12 to comply with the Protective Orders, including the provisions to certify the destruction of  
13 "Confidential" documents.

14 11.5 Any and all Exhibits to this Agreement are material and integral parts hereof and are  
15 fully incorporated herein by this reference.

16 11.6 This Agreement may be amended or modified only by a written instrument signed  
17 by or on behalf of all Parties or their respective successors-in-interest. The Agreement and any  
18 Exhibits attached hereto constitute the entire agreement among the Parties, and no representations,  
19 warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits  
20 other than the representations, warranties, and covenants covered and memorialized in such  
21 documents. Except as otherwise provided herein, the Parties will bear their own respective costs.

22 11.7 Class Counsel, on behalf of the Settlement Class, are expressly authorized by the  
23 Class Representative to take all appropriate actions required or permitted to be taken by the  
24 Settlement Class pursuant to this Agreement to effectuate its terms, and are expressly authorized  
25 to enter into any modifications or amendments to this Agreement on behalf of the Settlement  
26 Class that Class Counsel deem appropriate.

27 11.8 Each counsel or other Person executing this Agreement or any of its Exhibits on  
28 behalf of any Party hereby warrants that such Person has the full authority to do so.

1           11.9 This Agreement may be executed in one or more counterparts and may be executed  
2 using electronic signatures. All executed counterparts will be deemed to be one and the same  
3 instrument. The parties further agree that electronic signatures and signatures provided by portable  
4 document format (PDF) or other electronic transmission shall have the same force and effect as  
5 original signatures.

6           11.10 This Agreement will be binding upon, and inure to the benefit of, the Parties and  
7 their respective direct and indirect parent companies, predecessor entities, successor entities,  
8 related companies, direct and indirect subsidiaries, holding entities, past and present affiliates,  
9 franchisees, distributors, wholesalers, retailers, advertising and production agencies, licensors and  
10 agents, including all current and former officers, directors, managers, members, partners, owners,  
11 employees, shareholders, consultants, attorneys' legal representative, insurers, agents, assigns, or  
12 other equity interest holders of any of the foregoing, and their heirs, executors, administrators and  
13 assigns. All Released Parties other than Defendants, which are a Party, are intended to be third-  
14 party beneficiaries of this Agreement.

15           11.11 Except as provided herein, the Court will retain jurisdiction with respect to  
16 implementation and enforcement of the terms of this Agreement, and all parties hereto submit to  
17 the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

18           11.12 None of the Parties, or their respective counsel, will be deemed the drafter of this  
19 Agreement or its Exhibits for purposes of construing the provisions thereof. The language in all  
20 parts of this Agreement and its Exhibits will be interpreted according to its plain meaning, and  
21 will not be interpreted for or against any of the Parties as the drafter thereof.

22           11.13 This Agreement and any Exhibits hereto will be construed and enforced in  
23 accordance with, and governed by, the internal, substantive laws of the State of California without  
24 giving effect to that State's choice-of-law principles.

25           11.14 The time periods and/or dates described in this Agreement with respect to the giving  
26 of notices and hearings are subject to approval and change by the Court or by the written  
27 agreement of Class Counsel and Defendants' Counsel, without notice to Settlement Class  
28 Members. The Parties reserve the right, by agreement and subject to the Court's approval, to

1 grant any reasonable extension of time that might be needed to carry out any of the provisions of  
2 this Agreement. If the date for performance of any act required by or under this Agreement falls  
3 on a Saturday, Sunday, or court holiday, that act may be performed on the next business day with  
4 the same effect as if it had been performed on the day or time specified by this Agreement.

5 11.15 Neither Party will release any public statements regarding this Agreement or its  
6 terms, nor contact any member of the Settlement Class in an effort to induce them to file claims  
7 or not to file claims. None of Plaintiffs, Class Counsel, or the Claims Administrator shall make  
8 any public statements or disclose to anyone the total number of claims made or the total payout of  
9 Claims in dollars or any other measure.

10 11.16 Class Counsel and Defendants' Counsel agree to stay all proceedings, other than  
11 those proceedings necessary to carry out or enforce the Settlement, until the Effective Date. If,  
12 despite the Parties' best efforts, this Agreement should fail to become effective, the Parties will  
13 return to their prior positions in the Action. The Parties also agree to seek the delay and dismissal  
14 with prejudice of, and to oppose entry of any interim or final relief in favor of any Settlement  
15 Class Member in, any other proceedings against the Released Parties, which challenges the  
16 Settlement or otherwise asserts or involves, directly or indirectly, a Released Claim.

17 11.17 Neither party shall be held liable or responsible to the other party or to the Class, nor  
18 be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or  
19 performing any obligation under this Agreement if it is altogether prevented or delayed in  
20 performing those obligations by an event of force majeure. An event of force majeure, as used in  
21 this paragraph, is an event or circumstance which is beyond the control and without the fault or  
22 negligence of the party affected and which by the exercise of reasonable diligence the party  
23 affected was unable to foresee and prevent provided that event or circumstance is limited to the  
24 following: war (whether declared or not), armed conflict or the serious threat of the same  
25 (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act  
26 of a foreign enemy, extensive military mobilization; civil war, riot, rebellion, revolution, military  
27 or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil  
28 disobedience; act of terrorism, sabotage or piracy; plague, epidemic, pandemic, outbreaks of

infectious disease or any other public health crisis, including quarantine or other restrictions; compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or natural disaster such as but not limited to cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; general labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises; shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject Party ("Force Majeure Event"). This provision shall become effective only if the Party failing to perform notifies the other party within a reasonable time of the extent and nature of the Force Majeure Event, limits delay in performance to that required by the Force Majeure Event, and takes all reasonable steps to minimize damages and resume performance. Performance delayed or impossible to perform due to the Force Majeure Event shall resume as soon as that aspect of the Force Majeure Event as subsided. The Parties agree that the circumstances of the COVID19 pandemic as presently known to exist will not delay or make impossible performance under this Agreement.

8/7/2021

DATED: August \_\_, 2021



Jade Thomas

8/6/2021

DATED: August \_\_, 2021



Carey Hoffman

8/6/2021

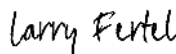
DATED: August \_\_, 2021



Regan Iglesia

8/6/2021

DATED: August \_\_, 2021



Larry Fertel

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

8/6/2021

DATED: August \_\_, 2021

Nosson Chaim Rosenberg

Nosson Chaim Rosenberg

8/7/2021

DATED: August \_\_, 2021

Suzanne Tatkow

Suzanne Tatkow

8/7/2021

DATED: August \_\_, 2021

Jaime Maxwell

Jaime Maxwell

8/6/2021

DATED: August \_\_, 2021

Lauren Debeliso

Lauren Debeliso

8/6/2021

DATED: August \_\_, 2021

Meredith Barter

Meredith Barter

8/6/2021

DATED: August \_\_, 2021

Patrick Ferguson

Patrick Ferguson

DATED: August \_\_, 2021

Nestle USA, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: August \_\_, 2021

Ferrara Candy Company

By: \_\_\_\_\_

Its: \_\_\_\_\_



1 DATED: August \_\_, 2021

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Nossou Chaim Rosenberg

3 DATED: August \_\_, 2021

\_\_\_\_\_  
Suzanne Tatkov

5 DATED: August \_\_, 2021

\_\_\_\_\_  
Jaime Maxwell

7 DATED: August \_\_, 2021

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Lauren Debeliso

9 DATED: August \_\_, 2021

\_\_\_\_\_  
Meredith Barter

11 DATED: August \_\_, 2021

\_\_\_\_\_  
Patrick Ferguson

14 DATED: August 6, 2021

DocuSigned by:  
Douglas Besman  
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Nestle USA, Inc.

16 By: Douglas Besman

17 Its: Assistant General Counsel

20 DATED: August \_\_, 2021

\_\_\_\_\_  
Ferrara Candy Company

22 By: \_\_\_\_\_

24 Its: \_\_\_\_\_

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

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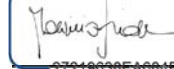
Nestle USA, Inc.

16 By: \_\_\_\_\_

18 Its: \_\_\_\_\_

20 DATED: August \_\_, 2021

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24 Its: \_\_\_\_\_

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Malibu, CA 90265

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Ferrara Candy Company

2  
3 By: \_\_\_\_\_

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7 DATED: August \_\_, 2021

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Ferrero U.S.A., Inc.

8  
9 By: \_\_\_\_\_

10 Its: \_\_\_\_\_

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14 **APPROVED AS TO FORM:**

15  
16 DATED: August \_\_, 2021

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19 \_\_\_\_\_  
Ryan J. Clarkson, Esq.  
Shireen M. Clarkson, Esq.  
Bahar Sodaify, Esq.  
Zach Chrzan, Esq.

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22 DATED: August \_\_, 2021

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26  
27 *Attorneys for Plaintiffs and the Proposed*  
28 *Settlement Class*


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\_\_\_\_\_  
Ferrara Candy Company

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Its: \_\_\_\_\_

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Ferrero U.S.A., Inc.

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Ferrero USA

By: Paul Chibe  
\_\_\_\_\_  
CEO-NA

Vladimiro Sinatti

Its: \_\_\_\_\_

CFO

**APPROVED AS TO FORM:**

DATED: August \_\_, 2021

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Ryan J. Clarkson, Esq.  
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Settlement Class*

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15 8/6/2021

16 DATED: August \_\_, 2021

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18 *Ryan Clarkson*

\_\_\_\_\_  
19 Ryan J. Clarkson, Esq.  
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**MAYER BROWN LLP**

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Dale J. Giali, Esq.  
Keri E. Borders, Esq.

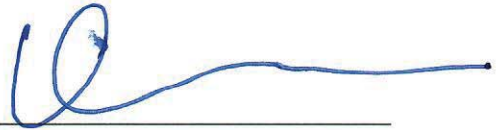
*Attorneys for Defendants*

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