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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,

Plaintiff,

vs.

FERRARA CANDY CO., and DOES 1
through 10, inclusive,

Defendants.

) Case No. 3:17-cv-00849-VC

) [CLASS ACTION]

) **REVISED [~~PROPOSED~~] ORDER**
) **GRANTING PLAINTIFF'S**
) **MOTION FOR PRELIMINARY**
) **APPROVAL OF CLASS ACTION**
) **SETTLEMENT AND SETTING**
) **DATES FOR FINAL APPROVAL**
) AS MODIFIED

) Hon. Judge Vince Chhabria

) Complaint filed: February 21, 2017

) Hearing Date: June 21, 2018

) Hearing Time: 8:30 AM

) Hearing Location: Courtroom 4

1 On May 10, 2018, Plaintiff filed a motion seeking preliminary approval of a
2 class settlement. Having considered the motion papers and the complete record of this
3 action, and good cause appearing therefore, the Court provisionally certifies the
4 Settlement Class, which consists of all persons who between February 21, 2013 and
5 the date of Preliminary Approval, purchased, in the United States, one or more candy
6 products manufactured by Defendant and packaged for sale or resale to consumers in
7 an opaque cardboard box (including bag-in-a-box products), including Jujufruits®,
8 Jujubes®, Now and Later®, Lemonhead®, Applehead®, Cherryhead®, Grapehead®,
9 RedHots®, Trolli®, Chuckles®, Black Forest®, Jawbuster®, Jawbreaker®,
10 Brach's®, Boston Baked Beans®, Super Bubble®, Rainblo®, Atomic Fireball®, and
11 all flavors and varieties of those candies. "Excluded Persons" from the class are: (1)
12 the Honorable Vince Chhabria (2) Mediator Martin Quinn; (3) the Honorable William
13 Cahill; (4) any member of their immediate family; (5) any government entity, (6)
14 Defendant; (7) any entity in which Defendant has a controlling interest; (8) any of
15 Defendant's subsidiaries, parents, affiliates, and officers, directors, employees, legal
16 representatives, heirs, successors, or assigns; (9) counsel for the Parties; and (10) any
17 persons who timely opt-out of the Settlement Class.

18 As set forth below, the Court preliminarily finds and concludes, solely for
19 purposes of considering this settlement, that the requirements of Rule 23 of the
20 Federal Rules of Civil Procedure are conditionally satisfied for certification of the
21 Settlement Class to pursue claims for unjust enrichment and the consumer protection
22 laws of the fifty states and the District of Columbia (collectively, "states"). Plaintiff
23 has met the requirements of Rule 23 for the reasons set forth in Plaintiff's motion for
24 preliminary approval, including all supporting materials filed concurrently thereto,
25 and the briefing and arguments provided by Plaintiff in support of that motion.
26 Plaintiff, who resides in San Francisco, California, is typical of consumers around the
27 country in that they were all exposed to identical product packaging, which is alleged
28 to have been deceptive for identical reasons, and thus, his claims for unjust

1 enrichment and violations of consumer protection statutes “are reasonably coextensive
2 with those of absent class members.” *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1116
3 (9th Cir. 2017) (internal quotations omitted).

4 The Court further preliminarily finds, solely for purposes of considering this
5 settlement, that the Class Representative and Class Counsel fairly and adequately
6 represent and protect the interests of the absent Settlement Class Members. Thus, the
7 Court conditionally designates Clarkson Law Firm, P.C. as Settlement Class Counsel
8 and Thomas Iglesias as the Class Representative for purposes of this settlement. The
9 Court designates, and approves, Digital Settlement Group, LLC (“DSG”) to serve as
10 Claim Administrator.

11 While this Court must consider differences in state laws as part of the
12 predominance inquiry, this Court need not consider “whether the case, if tried, would
13 present intractable management problems, for the proposal is that there be no trial.” *In*
14 *re Hyundai & Kia Fuel Econ. Litig.*, 881 F.3d 679, 693 (9th Cir. 2018) (“*Hyundai*”)
15 (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 624, 117 S. Ct. 2231, 138 L.
16 Ed. 2d 689 (1997)). Plaintiff has submitted extensive briefing and supplemental
17 materials in support of his motion for preliminary approval identifying the similarities
18 and differences among state laws and setting forth why the common issues
19 predominate and why the differences are immaterial to this litigation. For those
20 reasons, this Court finds that common issues predominate with respect to the
21 Settlement Class.

22 Pursuant to the stipulation filed on May 10, 2018, the Court further notes that
23 Defendant did not oppose Plaintiff’s request to amend the first amended complaint,
24 which sets forth a fourth cause of action of unjust enrichment for a nationwide class
25 and clarifies the proposed class definition; and that in the event that Preliminary
26 Approval is denied, Final Approval is denied, or a remitter is issued reversing an
27 award of Final Approval, or the Settlement Agreement otherwise is terminated, the
28 second amended complaint will be deemed withdrawn, and the newly added unjust

1 enrichment claim will be considered as dismissed without prejudice, and the first
2 amended complaint (Dkt. 18) will be the operative complaint in this matter.

3 Since the Settlement Agreement is within the range of reasonableness and
4 possible final approval, notice shall be provided to the Settlement Class pursuant to
5 the Settlement Agreement as set forth in the Notice Plan. The Claim Administrator
6 shall provide notice in compliance with 28 U.S.C. § 1715.

7 Plaintiff's proposed Long Form Notice and Short Form Notice shall specify that
8 the requirement to submit a written objection may be waived upon a showing of good
9 cause.

10 A Final Approval Hearing shall be held before this Court at 10:00 a.m. on
11 October 18, 2018, at the United States District Court for the Northern District of
12 California, Courtroom 4, 17th Floor, 450 Golden Gate Avenue, San Francisco, CA
13 94102, to address: (a) whether the proposed settlement should be finally approved as
14 fair, reasonable and adequate, and whether the Final Approval Order should be
15 entered, and (b) whether Class Counsel's application for attorneys' fees, costs, and a
16 payment to the Class Representative should be approved. In addition, this Court sets
17 the following dates:

18	Deadline for Claim Administrator to cause notice to 19 be published in <i>Soap Opera Digest</i> per the Notice Plan	August 8, 2018 issue
20	Deadline for Claim Administrator to cause notice to 21 be published in <i>Life & Style</i> per the Notice Plan	August 8, 2018 issue
22	Deadline for Claim Administrator to cause notice to be published in <i>National Enquirer</i> per the Notice Plan	August 13, 2018 issue
23	Deadline for Claim Administrator to cause online 24 notice to be published on internet sites per the Notice Plan	July 21, 2018 issue
25	Deadline to file motion for attorneys' fees, costs and 26 incentive awards	September 6, 2018
27	Deadline to file motion for final approval; response to objections	September 20, 2018

1	Deadline for Claim Administrator to submit a declaration to the Court attesting to the number of impressions delivered and the number of click-throughs to the Settlement Website	September 20, 2018
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3	Claim deadline	September 20, 2018
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5	Opt-outs (date of online submission, or if mailed, date of receipt, not postmarking)	September 20, 2018
6	Objections, Requests to Appear (filing date, not postmarking)	September 20, 2018
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8	Replies in support of final approval and motion for attorneys' fees, costs and incentive awards; response to objections	October 4, 2018
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10	Deadline for Plaintiffs/Claims Administrator to file list of optouts, objections, and supporting documentation with the Court	October 4, 2018
11		
12	Deadline for the Claim Administrator to provide a declaration to the Court regarding the number and dollar amount of claims received to date	October 4, 2018
13		25
14	Final approval hearing	October 18 , 2018

If the settlement is not approved by the Court or the settlement is terminated or fails to become effective in accordance with the terms of the Settlement Agreement, then 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 the Settlement Agreement 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 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 of the Settlement Agreement, which shall survive non-approval of the Settlement

1 Agreement, termination of the Settlement, and/or failure of the Settlement to become
2 effective in accordance with the terms of the Settlement Agreement.


3 The Court has considered Exhibits A through E to the Settlement Agreement
4 and approves and incorporates them into this Order.

5 This Order shall not be construed as an admission or concession by Defendant
6 of the truth of any allegations made by the Plaintiff or of liability or fault of any kind.

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

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12 **IT IS SO ORDERED.**

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15 Date: June 26, 2018

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17 _____
18 Honorable Vince Chhabria
19 United States District Court Judge
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