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IN THE 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]

**DECLARATION OF MARK
SCHEY IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL**

DECLARATION OF MARK SCHEY

I, MARK SCHEY, hereby declare under penalty of perjury as follows:

1. I am a founding partner of Digital Settlement Group, LLC (“DSG”), a company that provides class action notice and claims administration. The following statements are based on my personal knowledge and information provided by other DSG principals and employees working under my supervision, and if called upon to do so, I could and would testify competently about these issues.

2. DSG was retained to provide notice and claims administration services for the proposed settlement in this action.

3. Digital Settlement Group has served as a court-approved notice provider in over a dozen state and federal court class actions and has worked in the class action category for over eight years and provided expertise in Internet notice to some of the largest class action administration companies in the industry, including the following class actions: *Keller v. Gaspari Nutrition*, No. CV11-06158 (U.S. Dist. Ct., Central Dist.); *Taromina, v. Gaspari Nutrition*, No. CV12-05424 (U.S. Dist. Ct., Central Dist.); *Wike v. HCG Platinum, LLC*, No. BC451080 (Los Angeles County Superior Court). Most recently, DSG managed notice and administration for *Garcia v. Iovate Health Sciences USA Inc.* (Santa Barbara Superior Court) (National indirect purchaser class of a consumer product at retail).

4. In approving *In Re: Wellnx Marketing & Sales Practices* (a national, 18 state multidistrict class action litigation with a substantial indirect purchaser class), the Court noted: “the effort to provide notice to the class went well beyond what due process would require at its minimum. In fact, it was both an intelligent and effusive, if I can use that word, notification process, which has given me some new ideas for similar cases in the future for the proper way of giving notice in a case like this where it is hard to otherwise ascertain the identity of the class members.”

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1 5. Additionally, Digital Settlement Group has over twenty years of marketing
2 experience with a specialty in television and Internet advertising, including
3 managing the official online sites for 20th Century Fox on behalf of News
4 Corporation from 1993 to 1996. Our founders have served as a marketing consultant
5 to a variety of consumer product companies, where responsibilities included creative
6 directing national marketing campaigns and producing and directing national
7 television commercials (which have been featured in trade magazines, like
8 Advertising Age, and generated hundreds of millions of dollars in retail revenue).
9 Digital Settlement Group personally managed tens of millions of dollars in Internet
10 advertising for consumer products. Due to the extensive Internet marketing
11 experience, our area of specialty is providing class notice in cases where the
12 identities of individual Class Members are not known, including classes comprised
13 of purchasers of consumer products. See *Arreguin v. Telebrands*, No.
14 CIVRS1307798 (Superior Court of California, San Bernardino County) (Indirect
15 purchaser class of nationwide Pocket Hose consumer product.); and *Eggnatz et al v.*
16 *The Kellogg Company et al*, S.D. Fla., Case No. 1:12-cv-21678 (Indirect purchaser
17 class of nationwide Kashi products with no direct mail component).

18 6. DSG has provided class action settlement services in cases of varying sizes
19 and complexity. DSG is comprised of Internet marketing and class action noticing
20 experts, each with between ten to twenty years of experience. The principals have
21 provided Internet marketing for clients including Fortune 500 companies. The
22 principals of DSG have successfully executed hundreds of television and Internet
23 campaigns. This experience is leveraged to execute the most efficient notice
24 strategies and administration. For example, DSG is currently serving as the court-
25 appointed notice provider and administrator in a matter similar to the Litigation here.
26 See *Stephen Inocencio, et al. v. Telebrands Corporation*, Docket No. L-4378-16
27 (Superior Court of New Jersey, Law Division, Bergen County) (consumer product
28 sold predominantly at retail that utilized a similar notice plan methodology).

1 7. This declaration will describe the notice program that my colleagues and I
2 suggest using in this matter, including the considerations that informed the
3 development of the plan and why it will provide Due Process of Law to the Class
4 Members.

5 8. Attached hereto as Exhibit A is a true and correct copy of DSG's Class Notice
6 Program and Plan for Claims Administration.

7 **SUMMARY OF NOTICE PROGRAM**

8 9. This Litigation involves Products sold predominantly at retail outlets and
9 movie theaters and, so the identity of purchasing Class Members is not readily
10 known. In such cases, Internet and publication notice is the best way to inform Class
11 Members about the Settlement. Digital Settlement Group relies heavily on
12 recommendations from the Federal Judicial Center's Judges' Class Action Notice and
13 Claims Process Checklist and Plain Language Guide ("Claims Guide") in designing
14 its notice plans.

15 10. DSG developed a comprehensive notice program consisting of efficient media
16 vehicles with the objective of reaching a substantial portion of Class Members. A
17 detailed breakout of the notice plan is outlined in the Service Agreement. DSG
18 believes this provides the best practicable methods to reach potential class members
19 and has seen successful results in similar plans with similar class members.

20 11. Before any of the notices begin, DSG will review all materials and work with
21 Counsel to help comply with Claims Guide recommendations and timelines. All the
22 advertisements will direct potential Class Members to the Settlement Website, where
23 they will be able to download all important documents, review frequently asked
24 questions, and file a claim either online and/or postal as stated in the agreement.
25 Administration will notify claimants of any missing or invalid claim information
26 after the Approval Hearing. The print advertisements will also have address, email
27 and phone in case individuals cannot access a computer. A toll-free number with an
28

1 Interactive Voice Response (“IVR”) system will also be available to answer potential
2 questions.

3 12. One of the concerns noted in the Claims Guide is that claims administrators
4 are “often accountants by training and may lack personal knowledge or the training
5 to conduct reach analyses.” Digital Settlement Group, however, has extensive
6 expertise in marketing and media-planning that is essential to conducting reach
7 analysis that has been approved by Courts in similar cases with a large indirect
8 purchaser class.

9 13. The notice plan is supported by “unbiased evidence supporting the plan's
10 adequacy” as recommended by the Claims Guide. DSG uses industry-standard
11 reporting tools from GfK MRI and comScore. GfK MRI is part of the GfK Group,
12 the fourth largest market research organization worldwide. They’re a leader in
13 supplying the audience data for almost all national print campaigns in the country
14 and their Survey of the American Consumer produces one of the country's largest
15 and most current database of consumer behavior, media usage and consumer
16 motivations. comScore is the leading cross-platform measurement company that
17 provides independent data, metrics, products and services to clients in the media,
18 advertising and marketing industries. They provide digital media analytics that help
19 advertisers understand the composition, reach, and frequency of consumer media
20 audiences. The accuracy of reporting from both GfK MRI and comScore has been
21 approved by Courts in previous notice plans we’ve developed.

22 14. Our notice programs create the best practicable plan because they are
23 designed in the same way a company would design an advertising campaign to sell
24 that very same product. Specifically, we used industry standard advertising tools to
25 identify media properties where purchasers of candy were most likely to be located.
26 In addition, the methods used have been approved in multiple cases with a
27 substantial indirect purchaser class (See *Arreguin v. Telebrands and Eggatz et al v.*
28 *The Kellogg Company*).

1 **CLASS DEFINITION**

2 15. The “Settlement Class” is defined as: “All persons who between February 21,
3 2013 and the date of Preliminary Approval, purchased, in the United States, one or
4 more candy products manufactured by Defendant and packaged for sale or resale to
5 consumers in an opaque cardboard box (including bag-in-a-box products), including
6 Jujufruits®, Jujubes®, Now and Later®, Lemonhead®, Applehead®, Cherryhead®,
7 Grapehead®, RedHots®, Trolli®, Chuckles®, Black Forest®, Jawbuster®,
8 Jawbreaker®, Brach’s®, Boston Baked Beans®, Super Bubble®, Rainblo®, Atomic
9 Fireball®, and all flavors and varieties of those candies.”

10 **SETTLEMENT WEBSITE**

11 16. Digital Settlement Group will create and maintain a dedicated web site for the
12 Class Members to learn about the Settlement. It will feature the ability to download
13 all relevant documents (in industry standard PDF format), including Claim Forms,
14 Important Dates, Frequently Asked Questions, Long Form Notice, and the Short
15 Form notice. The site will be designed for broad compatibility with browsers and
16 platforms using best practices.

17 17. All traffic to the site will be monitored with proprietary fraud detection
18 systems, similar to those used on e-commerce platforms, to help ensure legitimate
19 Class Members receive the maximum benefit. A third party monitoring service will
20 check the site at regular intervals to ensure the site is functioning properly and, if
21 required, provide an independent report on the total up-time of the site. The
22 Settlement Web Site will be updated in a timely manner, based upon the Court-
23 approved schedule. For example, when the deadline for filing a claim has passed,
24 that option will be removed from the site.

25 **CONSUMER PUBLICATION**

26 18. Print publications were selected for their efficiency and reach with the
27 targeted class. While the Internet has a high saturation of consumer product
28 customers (and continues to grow), a targeted print publication element has been

1 proposed to ensure potential class members with limited Internet access or usage
2 aren't neglected. To develop the print notice, both proprietary data from previous
3 notice plans and GfK MRI was used to evaluate the reach to the class. As noted
4 earlier, the goal of the campaign is to reach the defined class. In addition to raw data,
5 an extensive marketing analysis was performed to ensure publications targeted this
6 class. By targeting widely read publications with a high index the print publication
7 portion is designed to effectively supplement the Internet notice portion of the plan
8 and help provide additional reach especially to consumers that are less likely to be
9 online.

10 19. The print publications selected include: *Soap Opera Digest*, *Life & Style*, and
11 the *National Enquirer*. All of these publications are likely to have candy consumers
12 as readers. They will be presented in 1/3-page vertical format.

13 20. DSG will release a press release, with language to be agreed upon by
14 Counsel, through PR Newswire. PR Newswire is the industry's largest content
15 distribution network reaching nearly 4,500 US websites, more than 33,000-member
16 journalists and 48 industry-specific Twitter feeds.

17 INTERNET ADVERTISEMENTS

18 21. The Internet is an extremely powerful tool for reaching potential class
19 members and driving them to the settlement website. According to Pew Research
20 (2016)¹, 87% of all adults in the United States use the Internet, up from 79% in 2010.
21 Over a decade of Internet marketing experience has been leveraged to design the
22 most effective plan.

23 22. DSG will target Class Members with impressions on the ComScore Ranked
24 Tier 1 websites over the course of 30 days defined in the agreement. An impression
25 is defined as when the internet ad is shown or loaded on a Website. The sites selected
26 for the Internet notice reach at least 75% or higher of the Internet population and are
27 the most popular on the United States Internet, based upon comScore data. This

28 ¹ Data Source: <http://www.pewresearch.org/fact-tank/2016/09/07/some-americans-dont-use-the-internet-who-are-they/>

1 notice plan will deliver impressions using interest and/or behavioral targeting.
2 Whenever possible and cost effective, behavioral and “transactional targeting” from
3 the site, networks or 3rd party data sources will be used to deliver banner
4 advertisements to users who have purchased the product or shown interest in a
5 specific product or category. Digital Settlement Group will also use targeted native
6 ads to help provide information to those individuals that may not fall into the other
7 behaviorally targeted segments. Unlike traditional media (like print publications),
8 this allows a notice plan to target potential class members more accurately with
9 significantly less “wasted” impressions.

10 23. In addition, targeted “search terms” advertisements on popular search engines
11 and networks will be incorporated into the plan. Per the Claims Guide, this is to help
12 satisfy “extra effort” where the class is “highly concentrated.” Whenever possible
13 and cost effective, settlement notice advertisements will be targeted based on past
14 user behavior. In addition, contextual, in-market, topic and affinity targeting are used
15 to ensure the most relevant audience is reached. This type of advertising targets the
16 right potential class members at the right time.

17 24. The notice program will consist of over 52 million targeted Internet
18 impressions on Tier 1 properties (e.g. Yahoo, Google, Facebook), using 3rd party
19 tools to verify reach and frequency. Behaviors, interests, and topics will be used to
20 target the notice in the most efficient manner. For example, targeting will include
21 adults in the United States who are known to have purchased “gum or candy,” while
22 excluding “health and fitness” consumers.

23 25. The notice advertisements are designed to “command class members’
24 attention” and “are written in a clear, concise and easily understood language.”
25 Clicking on the links will direct the Class Member to the Settlement Website where
26 they will have quick access to a printable and online Claim Form. Digital Settlement
27 Group will regularly report detailed statistics to Counsel and adjust the notice plan
28 on an as needed basis.

CONCLUSION

26. The notice plan has been designed to reach the largest target audience in a cost-efficient and timely manner. Furthermore, the notice plan provides the best notice practicable, with similar reach to other Court-approved notice plans in the same product category. It has been designed to reach at least 70% of the class, allowing for duplication across medium and utilizing third party-reporting tools that have been accepted in similar cases.

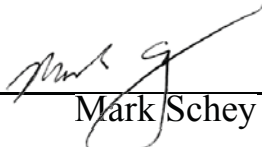
27. Based on Digital Settlement Group’s class action notice planning experience, described above in Paragraphs above the methods utilized in this Notice Program will be consistent with other effective class action settlement notice plans that our team has developed. And it is my professional opinion that the Class Action Notice Plan will provide the best notice practicable and meets the desire to actually inform. Furthermore, it provides the same reach and frequency evidence that Courts have approved in previous settlements.

28. It is my opinion that the Notice Program provides Class Members Due Process of Law and is the best notice that is practicable under the circumstances and is fully compliant with Rule 23 of the Federal Rules of Civil Procedure.

29. DSG’s cost to manage and effect Class Notice, Claims Administration and distribution is \$522,000, plus any unanticipated postage overage. Unanticipated overages will be correlated to the number of overall claims filed. Additionally, postage and distribution of check-based payments to Class Members will be provided at DSG’s cost.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on May 10th 2018 at Denville, NJ.
(date) (city, state)



Mark Schey