

SUPERIOR COURT FOR 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 U.S.A., INC. and FERRARA CANDY
COMPANY,

Defendants.

Case No. BC649863

CLASS ACTION

Hon. Judge Daniel J. Buckley

NOTICE OF PENDENCY OF CLASS ACTION

To: All persons who purchased the Products (i.e. opaque “theater boxes” of Raisinets®, Buncha Crunch®, Butterfinger Bites®, Tollhouse Semi-Sweet Chocolate Morsels®, Rainbow Nerds®, SweeTarts®, Spree®, Gobstopper®, and Sno-Caps®) in California for personal use and not for resale during the time period February 9, 2013, through the present.

A court has authorized this notice. It is not junk mail, spam, an advertisement, or a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IF YOU ARE A CLASS MEMBER, YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT. THIS NOTICE ADVISES YOU OF YOUR OPTIONS REGARDING THE CLASS ACTION.

PLEASE DO NOT CALL OR WRITE THE COURT. IF YOU HAVE ANY QUESTIONS AFTER READING THIS NOTICE, YOU SHOULD CONTACT THE ADMINISTRATOR OR CLASS COUNSEL, AS DISCUSSED FURTHER BELOW.

This Notice is being sent pursuant to Rule 3.766 of the California Rules of Court and an Order of the Superior Court for the State of California, County of Los Angeles (the “Court”) to inform you: (i) of a class action lawsuit that is now pending in the Court under the caption *Thomas, et. al., v. Nestle U.S.A., Inc.*, Case No. BC649863 (the “Action”) against Defendants Nestle U.S.A., Inc. and Ferrara Candy Company (collectively, “Defendants”), and (ii) that the Action has been certified by the Court to proceed as a class action on behalf of the Class.

1. The “Class,” as certified by the Court, consists of:

All persons who purchased the Products (i.e. opaque “theater boxes” of Raisinets®, Buncha Crunch®, Butterfinger Bites®, Tollhouse Semi-Sweet Chocolate Morsels®, Rainbow Nerds®, SweeTarts®, Spree®, Gobstopper®, and Sno-Caps®) in California for personal use and not for resale during the time period February 9, 2013, through the present.

Excluded from the Class by definition are:

Defendants' officers, directors, and employees, and any individual who received remuneration from Defendants in connection with that individual's use or endorsement of the Products.

2. This Notice is directed to you because you may be a member of the Class ("Class Member"). If you are a Class Member, your rights will be affected by this Action. If you are uncertain whether you are a Class Member, contact Class Counsel listed in paragraph 16 below, or your own attorney.
3. This Notice is not an admission by Defendants or an expression of any opinion of the Court concerning the merits of the Action, or a finding by the Court that the claims asserted by the Class Representatives (the claims are described in paragraphs 5 through 7 below; "Class Representatives" is defined in paragraph 6 below) are valid. This Notice is intended solely to advise you of the pendency of the Action and of your rights in connection with it.

There is no judgment, settlement, or monetary recovery at this time. Defendants have denied Class Representatives' claims and contend that they are not liable for the alleged harm.
4. The Class definition is subject to change by the Court, pursuant to 3.766 of the California Rules of Court.

OVERVIEW AND STATUS OF THIS ACTION

5. This case arises out of allegations that Defendants violated the California Consumers Legal Remedies Act, False Advertising Law, and Unfair Competition Law. Specifically, the Action alleges that Defendants' Products contain nonfunctional slack-fill in violation of California and federal law.
6. The Action was filed on February 9, 2017. On April 29, 2020, the Court issued an Order appointing Jade Thomas and Carey Hoffman "Class representatives." In the same Order, the Court appointed Ryan J. Clarkson, Shireen M. Clarkson, and Bahar Sodaify of Clarkson Law Firm, P.C., and Ben Heikali of Faruqi & Faruqi LLP as Class counsel.
7. Defendants deny that they violated the California Consumers Legal Remedies Act, False Advertising Law, and Unfair Competition Law. Among other things, Defendants assert that the Product boxes do not contain nonfunctional slack-fill. Defendants also deny that the Class Representatives or members of the Class suffered damages.
8. On August 21, 2017, Defendants answered Plaintiffs' Third Amended Complaint. On May 16, 2018, Class Representatives filed a motion for class certification. Following briefing on the motion and oral argument, on April 29, 2020, the Court issued an Order granting the class certification motion, certifying the Class as defined above, appointing the Class Representatives, and appointing Class Counsel.

YOUR RIGHTS AS A CLASS MEMBER

9. A class action is a type of lawsuit in which one or several individuals or entities prosecute claims on behalf of all members of a group of similarly situated persons (*i.e.*, the class) to obtain injunctive relief, monetary relief, or other relief for the benefit of the entire group. Class actions avoid the necessity of each member of a class having to file their own separate lawsuit to obtain relief. Class actions are used to decide legal and factual issues that are common to all members of a class.

10. If you purchased a box of Raisinets®, Buncha Crunch®, Butterfinger Bites®, Tollhouse Semi-Sweet Chocolate Morsels®, Rainbow Nerds®, SweeTarts®, Spree®, Gobstopper®, or Sno-Caps® in California for personal use and not for resale during the time period February 9, 2013, through the present, and you are not excluded from the Class by definition, you are a member of the Class. If you are a member of the Class, you have the right to decide whether to remain a member of the Class.
11. If you wish to be excluded from the Class, you must request exclusion in accordance with the procedure set forth in paragraph 13 below. If you want to remain a member of the Class, you do not need to do anything at this time. If you do nothing, and you are a member of the Class, you will stay in the Class. Your decision is important for the following reasons:
- a. **If you remain a member of the Class**, you will be bound by all past, present and future orders and judgments in the Action, whether favorable or unfavorable. If any money is awarded to the Class, either through a settlement with Defendants or a judgment of the Court after a trial, you may be eligible to receive a share of that award. However, if you remain a member of the Class, you may not pursue a lawsuit on your own behalf with regard to any of the issues in this Action. Please note that if you remain a member of the Class, you will not be personally responsible for Class Counsel’s attorneys’ fees or costs. Class Counsel have agreed to represent the Class on a contingent fee basis, which means that they will be awarded fees and costs to be approved by the Court only if they succeed in obtaining a recovery from one or more Defendants. Any attorneys’ fees for Class Counsel will be awarded by the Court from the settlement or judgment, if any, obtained on behalf of the Class. As a member of the Class, you will be represented by Class Counsel. Alternatively, you may remain a member of the Class and elect to be represented by counsel of your own choosing. If you do retain separate counsel, you will be responsible for attorneys’ fees and expenses and that attorney must enter an appearance on your behalf by filing a Notice of Appearance with the Court and mailing it to representative Class Counsel at the addresses set forth in paragraph 16 below **on or before November 9, 2020**.
- b. **If you choose to be excluded from the Class**, you will not be bound by any judgment in this Action, nor will you be eligible to share in any recovery that might be obtained in this Action. You will retain any right you have to individually pursue any legal rights, if any, that you may have against any Defendants with respect to the claims asserted in the Action. ***Please note, if you decide to exclude yourself from the Class, you may be time-barred from asserting the claims covered by the Action by a statute of limitations and/or repose.*** Please refer to paragraphs 13 through 15 below if you would like to be excluded from the Class.
12. Members of the Class will be eligible to participate in any recovery that might be obtained in the Action. If you have proof of purchase of one or more of the Products, keep these records. Do not mail them to Class Counsel or the Administrator at this time. No money or benefits are available now and there is no guarantee that money or benefits will be obtained. If they are, Class Members will be notified regarding how to obtain a share.

HOW TO BE EXCLUDED FROM THE CLASS

13. If you wish to be excluded from the Class, you must specifically request exclusion in accordance with the following procedures. To exclude yourself from the Class, you must send a letter by first-class mail stating that you request exclusion from the Class in *Thomas, et. al., v. Nestle U.S.A., Inc.*, Case No. BC649863. Your request must: (i) state your name, address, and telephone number; and (ii) be

signed by you. You must mail your exclusion request, *postmarked by no later than November 9, 2020*, to:

Thomas, et al. v. Nestle U.S.A., Inc., et al.
c/o CPT Group, Inc.
50 Corporate Park
Irvine CA 92606

You cannot exclude yourself from the Class by telephone or email, and a request for exclusion shall not be effective unless it contains all the information called for by this paragraph and is postmarked by the date stated above, or is otherwise accepted by the Court.

14. If your request for exclusion complies with the requirements set forth above, the Court will exclude you from the Class, you will not be bound by any orders or judgment in this Action, and you will not be eligible to share in any recovery that might be obtained in this Action.
15. Do not request exclusion from the Class if you wish to participate in this Action as a member of the Class.

CLASS COUNSEL

16. As a member of the Class, you will be represented by Class Counsel, who are:

CLARKSON LAW FIRM, P.C.

Ryan J. Clarkson, Esq.
Shireen M. Clarkson, Esq.
Bahar Sodaify, Esq.
9255 Sunset Blvd., Suite 804
Los Angeles, CA 90069
Tel: (213) 788-4050
Fax: (213) 788-4070

FARUQI & FARUQI, LLP

Benjamin Heikali, Esq.
10866 Wilshire Boulevard, Suite 1470
Los Angeles, CA 90024
Tel: (424) 256-2884
Fax: (424) 256-2885

If you want to be represented by your own lawyer, you may hire one at your own expense. If you do retain your own lawyer, such counsel must enter an appearance on your behalf by filing a notice of appearance with the Clerk of the Court at the Superior Court for the State of California, County of Los Angeles, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, **on or before November 9, 2020**. The Notice of Appearance must also be mailed to Class Counsel: Clarkson Law Firm, P.C., Ryan J. Clarkson, Shireen M. Clarkson, and Bahar Sodaify, 9255 W Sunset Blvd, Suite 804, Los Angeles, CA 90069, **on or before November 9, 2020**.

17. As noted above, unless you elect to retain your own lawyer, if you remain in the Class, you will not have any direct obligations to pay the costs of the litigation. If there is a recovery by the Class, all costs and expenses of the Action, including Class Counsel's attorneys' fees, will be paid from that recovery in an amount approved by the Court.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

18. This Notice only provides a summary of the lawsuit and the claims asserted by Class Representatives. For more detailed information regarding the Action, including a copy of the Third Amended Complaint, you may contact Class Counsel or visit www.FerraraCandyBoxClassAction.com.

PLEASE DO NOT CALL OR WRITE THE COURT.

Dated: October 9, 2020

BY ORDER OF THE COURT:
Superior Court for the State of
California
County of Los Angeles