

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

| | |
|---|--|
| <p>SUZANNE MIRZOYAN and RAYMOND LEE, individually, on behalf of all others similarly situated, and the general public,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>THE HERSHEY COMPANY, a Delaware corporation; DOES 1-10, inclusive,</p> <p style="text-align: center;">Defendant.</p> | <p>) Case No. CGC-20-583659</p> <p>) CLASS ACTION</p> <p>) CLASS ACTION SETTLEMENT</p> <p>) AGREEMENT</p> |
|---|--|

1 This Class Action Settlement Agreement (together with its exhibits, the “Settlement” or
2 “Agreement”) is made and entered into by and between Plaintiffs Suzanne Mirzoyan and Raymond
3 Lee, on behalf of themselves and the Class as defined herein, and Defendant The Hershey
4 Company (“Hershey”) to settle and compromise this action, according to the terms and conditions
5 herein.

6 **RECITALS**

7 WHEREAS, on October 4, 2018, a putative class action complaint was filed against The
8 Hershey Company in United States District Court for the Northern District of California titled
9 *Clark v. The Hershey Company*, Case No. 3:18-cv-06113-WHA (the “*Clark* Action”) alleging that
10 Hershey engaged in false advertising by labeling certain Brookside Dark Chocolate Products (the
11 “Products”) as containing “No Artificial Flavors.” The plaintiffs in the *Clark* Action alleged that
12 Hershey’s Brookside Dark Chocolate Products were falsely labeled as containing “No Artificial
13 Flavors” because one of the ingredients in the Products, malic acid, functions as an artificial flavor.
14 Hershey denied those allegations on the ground that the malic acid used in the Products functions
15 as a pH control agent, not as a flavor. The plaintiffs in the *Clark* Action were represented by the
16 Law Offices of Ronald A. Marron, which also represents the Plaintiffs in the present action.

17 WHEREAS, on December 5, 2018, Hershey filed a motion to dismiss the first amended
18 complaint in the *Clark* Action (*Clark*, ECF No. 18) and, on February 25, 2019, the court in the
19 *Clark* Action granted in part and denied in part Hershey’s motion to dismiss. (*Clark*, ECF No. 44).
20 The court in the *Clark* Action also converted Hershey’s motion to dismiss into a motion for
21 summary judgment and allowed “[i]mmediate discovery into the issue regarding purpose of use of
22 malic acid in the gelled candy.” (*id.*).

23 WHEREAS, the parties engaged in substantial discovery in the *Clark* Action. The parties
24 exchanged written discovery requests and Hershey produced over 2,000 responsive documents.
25 The plaintiffs in the *Clark* Action took the Rule 30(b)(6) deposition of Hershey and Hershey took
26 the depositions of the named plaintiffs. Additionally, the parties in the *Clark* Action exchanged

1 expert witness reports.

2 WHEREAS, on May 29, 2019, the court in the *Clark* Action denied Hershey’s motion for
3 summary judgment holding that “[t]here is a genuine dispute as to whether malic acid acts as a
4 flavoring agent in the Brookside products[.]” (*Clark*, ECF No. 84).

5 WHEREAS, on September 5, 2019, the plaintiffs in the *Clark* Action filed a motion for
6 class certification (*Clark*, ECF No. 91) and, on September 19, 2019, Hershey filed a second
7 summary judgment motion on the ground that the *Clark* plaintiffs had not suffered any injury
8 attributable to the “No Artificial Flavors” statement. (*Clark*, ECF No. 95).

9 WHEREAS, on November 15, 2019, the court in the *Clark* Action entered an Order
10 granting Hershey’s second motion for summary judgment and denying the plaintiffs’ motion for
11 class certification as moot. (*Clark*, ECF No. 108). The *Clark* court held that each of the *Clark*
12 plaintiffs failed to establish reliance on the disputed “No Artificial Flavors” labeling claim and
13 therefore had suffered no injury, and entered summary judgment in favor of Hershey. (*Id.*).

14 WHEREAS, on December 5, 2019, Suzanne Mirzoyan and Raymond Lee filed a motion
15 to intervene in the *Clark* Action requesting that the court allow them to intervene as plaintiffs in
16 the *Clark* Action and serve as replacement proposed class representatives. (*Clark*, ECF No. 116).

17 WHEREAS, on February 6, 2020, the court in the *Clark* Action denied Suzanne
18 Mirzoyan’s and Raymond Lee’s motion to intervene (*Clark*, ECF No. 131) and entered judgment
19 in favor of Hershey. (*Clark*, ECF No. 132).

20 WHEREAS, on March 12, 2020, Plaintiffs Suzanne Mirzoyan and Raymond Lee
21 (“Plaintiffs”) commenced the present action by filing a putative class action complaint in the
22 California Superior Court for the County of San Francisco. Similar to the *Clark* Action, Plaintiffs
23 alleged that the “No Artificial Flavors” claim on the packages of the Hershey Brookside Dark
24 Chocolate products is false and misleading because one of the ingredients in the Products, malic
25 acid, functions as an artificial flavor. Defendant denied those allegations on the ground that the
26

1 malic acid used in the Products functions as a pH control agent, not as a flavor. Plaintiffs also
2 alleged that the ingredient list on the Products is misleading because it does not identify malic acid
3 as “DL-malic acid” or disclose the presence of artificial flavors. Defendant denied those
4 allegations as well, arguing that malic acid was properly identified under applicable federal
5 regulations and that the Products did not in fact contain artificial flavors. The complaint sought to
6 certify a class of California consumers and alleged violations of California’s Consumers Legal
7 Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”), California’s Unfair Competition Law,
8 Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”), and California’s False Advertising Law, Cal.
9 Bus. & Prof. Code §§ 17500, *et seq.* (“FAL”). The complaint sought only injunctive relief and did
10 not seek monetary damages.

11 WHEREAS, the Parties in the present action stipulated that all discovery materials from
12 the *Clark* Action could be used in the present action. The Parties also conducted additional
13 discovery, including the depositions of the Plaintiffs and the depositions of the Parties’ respective
14 expert witnesses.

15 WHEREAS, on August 17, 2021, Plaintiffs filed a motion for class certification, and on
16 October 12, 2021, Hershey filed a motion for summary judgment based on the Plaintiffs’ asserted
17 lack of reliance on the disputed labeling claims.

18 WHEREAS, on March 30, 2022, the Court granted Plaintiffs’ motion for class certification
19 and denied Hershey’s motion for summary judgment.

20 WHEREAS, on August 10, 2022, the Parties attended a mediation session before the
21 Honorable Judge George C. Hernandez (Ret.) of ADR Services. The case did not settle during that
22 mediation session, but following additional discussions with the mediator during the ensuing
23 weeks, the Parties agreed in principle to certain terms of an injunctive relief class action settlement
24 that is memorialized by this Class Action Settlement Agreement.

25 WHEREAS, this Agreement was the product of arms-length negotiations.

26 WHEREAS, this Agreement reflects a compromise between the Parties, and shall in no

1 event be construed as or be deemed an admission or concession by any Party of the truth of any
2 allegation or the validity of any purported claim or defense asserted in any of the pleadings in the
3 Litigation, or of any fault on the part of Defendant, and all such allegations are expressly denied.

4 WHEREAS, based upon the discovery taken to date, investigation, and evaluation of the
5 facts and law relating to the matters alleged in the pleadings, plus the risks and uncertainties of
6 continued litigation and all factors bearing on the benefits of settlement, the Parties have agreed to
7 settle the claims asserted in the Action, and all other claims for injunctive relief that could have
8 been asserted in the Action pursuant to the provisions of this Agreement.

9 NOW THEREFORE, subject to the final approval of the Court as required herein and by
10 applicable law and rules, the Settling Parties hereby agree, in consideration of the mutual promises
11 and covenants contained herein, and for other good and valuable consideration, the sufficiency of
12 which is hereby acknowledged, that any released claims as set forth herein against any Released
13 Persons shall be settled, compromised and forever released upon the following terms and
14 conditions.

15 **TERMS AND CONDITIONS OF SETTLEMENT**

16 **I. DEFINITIONS**

17 As used herein, the following terms have the meanings set forth below.

18 1.1 “Class” means all California citizens who made retail purchases of any Brookside-
19 branded Dark Chocolate Product labeled as containing ‘No Artificial Flavors’ in California on or
20 after January 1, 2017 until March 30, 2022, for personal and household use and not for resale,
21 excluding Defendant and Defendant’s officers, directors, employees, agents and affiliates, and the
22 Court and its staff.

23 1.2 “Class Counsel” means Plaintiffs’ counsel of record in the Litigation, the Law
24 Offices of Ronald A. Marron, APLC.

25 1.3 “Class Member” means a Person who falls within the definition of the Class set
26 forth in Section 1.1.

1 1.4 "Court" means the California Superior Court for the County of San Francisco.

2 1.5 "Defendant" means The Hershey Company.

3 1.6 "Defense Counsel" means Defendant's counsel of record in the Litigation,
4 Patterson Belknap Webb & Tyler LLP and Lafayette & Kumagai LLP.

5 1.7 "Effective Date" means the first date by which any Judgment entered pursuant to
6 the Agreement becomes Final, as provided in Sections 1.8 of this Agreement.

7 1.8 "Final" means (a) if no appeal or any other judicial relief (i.e., petitions, writs,
8 and/or motions for reconsideration) from the Judgment is filed, the date of expiration of the time
9 for the filing or noticing of any such appeal and/or motion; or (b) if any appeals or any other
10 judicial relief from the Judgment are filed, the date such motions and/or appeal(s) and any
11 proceedings on remand from a decision of an appeals court are complete, such that the Judgment
12 is no longer subject to any further appeals or judicial review. However, an appeal directed only at
13 the amount of the Fee Award, which expressly does not seek modification or reversal of any other
14 aspect of the Settlement, shall not prevent this Settlement from becoming final and effective; and
15 a modification or reversal on appeal of any Fee Award shall not prevent this Settlement from
16 becoming final and effective if all other aspects of the Final Approval Order have been affirmed.

17 1.9 "Final Approval Order" means an order, substantially in the form of **Exhibit E**
18 hereto, granting final approval of this Agreement, which shall constitute a Judgment respecting the
19 Litigation.

20 1.10 "Judgment" means the judgment to be entered by the Court fully resolving the
21 Litigation.

22 1.11 "Litigation" means *Mirzoyan v. The Hershey Company*, Case No. CGC-20-583659,
23 pending in the California Superior Court for the County of Alameda.

24 1.12 "Notice" means a document, substantially in the form of **Exhibit A** hereto (the
25 "Long Form Notice"), and "Summary Notice" means a document substantially in the form of
26 **Exhibit B** hereto, to be disseminated in accordance with the Preliminary Approval Order,

1 informing Class Members of, among other things, the pendency of the Litigation, the material
2 terms of the proposed Settlement and their options with respect thereto.

3 1.13 “Notice Plan” means the method of providing the Class with notice of the
4 Settlement, substantially in the form of **Exhibit C** hereto, as approved by the Court.

5 1.14 “Notice Administrator” means the company or individual selected by the Parties
6 and approved by the Court to provide notice to the Class.

7 1.15 “Objection Deadline” means the date that is the end of the period to object to the
8 Settlement, as established by the Court in the Preliminary Approval Order and set forth in the
9 Notice and Section 7.4 of this Agreement.

10 1.16 “Parties” means the Representative Plaintiffs and Defendant.

11 1.17 “Person” means an individual, corporation, partnership, limited partnership,
12 association, joint stock company, estate, legal representative, trust, unincorporated association,
13 government or any political subdivision or agency thereof, any business or legal entity, and such
14 individual’s or entity’s parents, subsidiaries, spouse, heirs, predecessors, successors,
15 representatives, and assignees.

16 1.18 “Preliminary Approval Order” means an order, substantially in the form of **Exhibit**
17 **D** hereto, providing for, among other things, preliminary approval of the Settlement and
18 dissemination of the Notice to the Class according to the Notice Plan.

19 1.20 “Products” means all Brookside-branded Dark Chocolate Products (including, but
20 not limited to the Brookside Dark Chocolate products listed below) manufactured and/or
21 distributed by or on behalf of Defendant and sold in any variation, format, weight, or packaging:

- 22 • Brookside Dark Chocolate Acai & Blueberry Flavors;
- 23 • Brookside Dark Chocolate Goji & Raspberry Flavors;
- 24 • Brookside Dark Chocolate Vineyard Inspired Chardonnay Grape & Peach;
- 25 • Brookside Dark Chocolate Crunchy Clusters Berry Medley Flavors;
- 26 • Brookside Dark Chocolate Pomegranate Flavor,

- 1 • Brookside Dark Chocolate Vineyard Inspired Merlot Grape and Black Currant
- 2 Flavors; and
- 3 • Brookside Strawberry Passionfruit Flavor.

4 1.20 “Released Persons” means Defendant The Hershey Company, each, any and all of
5 its respective past, present, and future heirs, executors, estates, administrators, predecessors,
6 successors, assigns, parent companies, subsidiaries, affiliates, divisions, joint ventures, entities in
7 which the Defendant has a controlling interest, holding companies, employees, agents, consultants,
8 marketing partners, resellers, lead generators, telemarketers, independent contractors, insurers,
9 reinsurers, directors, officers, partners, principals, attorneys, accountants, financial advisors,
10 investors, investment bankers, underwriters, shareholders, members, receivers, auditors, legal
11 representatives; and each and all of the past, present, and future parents, subsidiaries, affiliates,
12 officers, directors, principals, representatives, employees, agents, shareholders, attorneys,
13 successors, executors, and assigns of any of the foregoing entities.

14 1.21 “Representative Plaintiffs” means Suzanne Mirzoyan and Raymond Lee.

15 1.22 “Settling Parties” means, collectively, Defendant, the Representative Plaintiffs, and
16 all Class Members.

17 1.23 The plural of any defined term includes the singular, and the singular of any defined
18 term includes the plural, as the case may be.

19 **II. DENIAL OF WRONGDOING**

20 Defendant expressly denies the factual allegations and legal claims asserted by the
21 Representative Plaintiffs in the Litigation, including any and all charges of wrongdoing or liability
22 arising out of any of the conduct, statements, acts or omissions alleged, or that could have been
23 alleged, in the Litigation. Defendant denies that the evidence is sufficient to support a finding of
24 liability on any of Plaintiffs’ claims in the Litigation, and specifically denies that the Products
25 contain any artificial flavors. Defendant maintains that the labels of the Products are truthful and
26 accurate, and that malic acid does not function as a flavor in the Products, and that malic acid is

1 properly identified and disclosed on the Products' ingredient lists. Defendant also denies that
2 Plaintiffs or any other Class Member suffered any damage or harm by reason of any alleged
3 conduct, statement, act, or omission of Defendant. Similarly, this Agreement does not provide for,
4 and may not be deemed or construed to be, an admission or concession of wrongdoing or liability
5 by Defendant, its past, present and future officers, directors, employees, shareholders, subsidiaries,
6 parents, affiliates, accountants, advisers, agents, contractors, legal counsel, successors, heirs, and
7 assigns, and nothing in this Agreement, the Preliminary Approval Order, the Final Approval Order,
8 or any other aspect of the settlement proceedings or negotiations shall constitute an admission of
9 wrongdoing or liability by Defendant or be used as evidence of wrongdoing or liability against
10 Defendant. This Settlement is entered solely to eliminate the uncertainties, burdens, and expenses
11 of protracted litigation.

12 **III. THE BENEFITS OF SETTLEMENT**

13 Class Counsel and the Representative Plaintiffs recognize and acknowledge the length of
14 continued proceedings that would be necessary to prosecute the Litigation through trial and
15 appeals. Class Counsel also has taken into account the uncertain outcome and the risk of any
16 litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays
17 inherent in such litigation. Class Counsel is mindful of the inherent problems of proof of the
18 claims and possible defenses to the claims asserted in the Litigation. In particular, Defendant's
19 first motion for summary judgment in the *Clark* Action demonstrated that Defendant was likely to
20 adduce significant evidence at trial, including documentary evidence and expert testimony, that
21 malic acid does not function as a flavor in the Products, and instead functions as a pH control
22 agent. Although Class Counsel and the Representative Plaintiffs would offer significant
23 countervailing evidence, they recognize the appreciable risk that they would not ultimately prevail
24 on the Claims. Class Counsel believes that the proposed Settlement confers immediate and
25 substantial benefits upon the Class. Based on their evaluation of all of these factors, the
26 Representative Plaintiffs and Class Counsel have determined that the Settlement is in the best

1 interests of the Representative Plaintiffs and the Class.

2 **IV. SETTLEMENT CONSIDERATION**

3 **4.1 Injunctive Relief**

4 Defendant will provide the Class with injunctive relief by way of modification of the label
5 and packaging for the Products as set forth in this Section 4. Specifically, Defendant will
6 implement the following modifications:

7 4.1.1 Defendant shall remove the “No Artificial Flavors” statement (the “Labeling
8 Statement”) from the packaging of the Products, on or before (i) six months after the Effective
9 Date of the Settlement or (ii) December 31, 2023, whichever is later (the “Removal Date”);
10 provided, however, that nothing in this Agreement shall require Defendant to make any
11 modifications whatsoever to any aspect of the Product ingredient list as it currently appears on the
12 Product labeling or website. Other than the removal of the Labeling Statement from Product
13 labeling as described herein, and the agreement not to replace it with any substantially similar
14 statement (e.g. “All Natural Flavors”), Defendant shall not be required under this Agreement to
15 make any other changes whatsoever to its labeling, marketing, or advertising of the Product.

16 4.1.2 The removal of the Labeling Statement described in Section 4.1.1 shall be deemed
17 complete once all Product labeling designs or templates that Defendant transmits to its packaging
18 vendors do not include the Labeling Statement. On or before the Removal Date, Defendant shall
19 clearly notify its packaging vendors that such revised labels are to be used, and that Product labels
20 bearing the Labeling Statement are to be discontinued. Provided that Defendant does so,
21 Defendant shall not be liable for any vendor’s erroneous use of the discontinued Product labeling
22 bearing the Labeling Statement after the Removal Date. Within thirty (30) days after Defendant’s
23 notification of its packaging vendors of the revised labels to be used, Defendant shall provide Class
24 Counsel with written confirmation that such notification is complete.

25 4.1.3 Defendant shall be permitted to sell its remaining stock that has already been
26 packaged using the current Product label, and nothing in this Agreement shall require Defendant

1 to withdraw, destroy, or recall any Product bearing the current label. Defendant shall not be liable
2 as a result of any wholesaler or retailer's sale of old stock bearing the current Product label,
3 provided that Defendant complies with its obligations under this section.

4 4.1.4. All injunctive relief modifications as set forth in this section shall be implemented
5 for a period of no less than five years. Following the initial five-year period, Hershey will be free
6 to reintroduce the 'No Artificial Flavors' labeling claim or substantially similar statement on the
7 referenced products if, either during the five-year period or subsequent thereto, the U.S. Food and
8 Drug Administration ("FDA") makes an unambiguous pronouncement that an acid (such as malic
9 acid) whose primary function in a food product is to regulate pH is not a "flavor" or "artificial
10 flavor," even though the acid may have some impact on the taste of the finished product. Hershey
11 will also be free to re-introduce the statement if, at any point, Hershey reformulates the Products
12 such that malic acid is no longer an ingredient.

13 4.2 Nothing herein shall limit the ability of Defendant to comply with regulations and
14 other directives of FDA. Further, except as otherwise provided in Section 4.1, it shall not be a
15 breach of this Agreement for Defendant to make any statement or representation on the Products
16 that is mandated or expressly approved by FDA regulations or by any other applicable federal,
17 state, or local law.

18 **V. NOTICE**

19 5.1 All costs and expenses of providing Notice in accordance with the Preliminary
20 Approval Order ("Notice Costs") shall be paid by Class Counsel to the Notice Administrator as
21 approved by the Court through its approval of the Notice Plan.

22 5.2 Notice Costs incurred by the Notice Administrator shall not be chargeable to the
23 Defendant and shall be borne solely by Class Counsel.

24 5.2 Class Counsel shall retain the Notice Administrator (including subcontractors) to
25 help implement the terms of the Settlement Agreement.

26 5.3 The Notice Administrator will facilitate the notice process by assisting the Parties

1 in the implementation of the Notice Plan.

2 5.4 The Notice Administrator shall be responsible for providing the Parties with
3 assistance, as necessary, such as by preparing affidavits of work it has performed with respect to
4 implementing the Class Notice, and providing regular updates to the Parties' counsel about the
5 status of the Notice process.

6 5.5 **Class Settlement Website**

7 5.5.1 Notice will be disseminated via a class settlement website (the "Class Settlement
8 Website"), to be activated within fifteen (15) calendar days of the Court's entry of the Preliminary
9 Approval Order. The Class Settlement Website will contain Settlement information and case-
10 related documents such as the Agreement, the Long-Form Notice, Preliminary Approval Order,
11 the Complaint, the Order Granting Plaintiffs' Motion for Class Certification, and notices from the
12 Court. In addition, the Class Settlement Website will include procedural information regarding
13 the status of the Court-approval process, such as an announcement of the Final Approval Hearing
14 date, as described in Section 7.1, when the Final Approval Order and Judgment have been entered,
15 and when the Effective Date has been reached. The Class Settlement website will be located at
16 the URL www.darkchocolateclassaction.com.

17 5.5.2 The Class Settlement Website will terminate (be removed from the internet) thirty
18 (30) days after either (a) the Effective Date or (b) the date on which the Agreement is terminated
19 or otherwise not approved by a court, whichever is later.

20 5.6 **Notice Plan**

21 5.6.1 The Class Notice shall conform to all applicable requirements of the California
22 Rules of Court, the United States Constitution (including the Due Process Clauses), and any other
23 applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and
24 approved by the Court.

25 5.6.2 No later than thirty (30) days after the Preliminary Approval Order, the Notice
26 Administrator shall commence providing Notice to the Class according to the Notice Plan as

1 attached in **Exhibit C**, except that the Class Settlement Website shall require earlier publication,
2 as discussed in Section 5.6.

3 5.6.3 The Parties agree to the content of the Notice, substantially in the forms attached to
4 this Agreement as **Exhibit A** (Long Form Notice) and **Exhibit B** (Summary Notice), and as
5 approved by the Court.

6 5.6.4 The Notice Administrator shall also publish the Summary Notice in a newspaper
7 in a manner sufficient to meet California Government Code § 6064 and Civil Code § 1781.

8 **VI. RELEASES**

9 6.1 Upon the Effective Date, each Representative Plaintiff and Class Member and their
10 respective past and present directors, officers, employees, agents, trustees, fiduciaries, guardians,
11 servants, consultants, underwriters, attorneys, advisors, representatives, estate trustees, heirs,
12 executors, administrators, predecessors, successors and assigns, and any other Person claiming by,
13 through, or on behalf of them (“Releasing Persons”) hereby fully, unconditionally, completely,
14 and irrevocably releases, waives, relieves, acquits, and forever discharges the Released Persons
15 from any and all actions, causes of action, grievances, complaints, suits, demands, claims, or any
16 other legal proceeding of any kind seeking injunctive relief or other similar equitable relief (which
17 does not include any potential claims for monetary damages of any kind), whether known or
18 unknown, whether presently existing or arising in the future, whether suspected or unsuspected,
19 whether disclosed or undisclosed, whether matured or unmatured, whether fixed or contingent,
20 including those arising under any theory of law, whether common, constitutional, statutory or other
21 of any jurisdiction, foreign or domestic, whether in law or in equity, whether individual, class,
22 direct, derivative, representative, or in any other capacity, that were or reasonably could have been
23 asserted in this Litigation or are reasonably related to the factual allegations in this Litigation (the
24 “Released Claims”). In addition, Each Representative Plaintiff, but not the Class Members, hereby
25 fully, unconditionally, completely, and irrevocably releases, waives, relieves, acquits, and forever
26 discharges the Released Persons from any and all actions, causes of action, grievances, complaints,

1 suits, demands, claims, or any other legal proceeding of any kind relating to the marketing,
2 labeling, advertising or formulation of the Products.

3 6.2 The Representative Plaintiffs, but not Class Members, are deemed to have waived
4 the provisions, rights and benefits of California Civil Code § 1542, and any similar law of any
5 state or territory of the United States or principle of common law. Section 1542 provides: “A
6 **general release does not extend to claims which the creditor does not know or suspect to exist**
7 **in his or her favor at the time of executing the release, which if known by him or her must**
8 **have materially affected his or her settlement with the debtor.”** Notwithstanding the terms of
9 this Paragraph 6.2, the scope of each Class Member’s release shall be governed by Paragraph 6.1.

10 6.3 The releases set forth in Section 6.1 do not include releases of claims to enforce the
11 terms of this Agreement.

12 6.4 The Parties, Defense Counsel, and Class Counsel remain bound by, and do not
13 release in this Agreement, their respective rights and obligations under the March 13, 2019
14 protective order entered into in the Clark Action and the August 13, 2020 Stipulation Regarding
15 Discovery entered into in this Litigation, which was so-ordered by the Court on August 17, 2020.

16 **VII. SETTLEMENT HEARING**

17 7.1 Promptly after execution of this Agreement, the Representative Plaintiffs will
18 submit the Agreement together with its exhibits to the Court and will request that the Court grant
19 preliminary approval of the Settlement; issue the Preliminary Approval Order; issue an immediate
20 stay of all proceedings in this Litigation other than those necessary for obtaining a Final Approval
21 Order; and schedule a hearing on whether the Settlement should be granted final approval and
22 whether Class Counsel’s application for fee award and expenses, and for incentive awards to the
23 Representative Plaintiffs (“Fee Application”) should be granted (“Final Approval Hearing”). The
24 Parties shall request the Court schedule the Fee Application to be filed no later than fourteen (14)
25 calendar days prior to the Objection Deadline, or earlier, if the Court deems it necessary.

26 7.2 The Parties shall cooperate in good faith in Plaintiffs’ preparation of an unopposed

1 motion for preliminary approval of the Settlement. Class Counsel shall provide Defendant the
2 opportunity to review the motion for preliminary approval in advance of its filing.

3 7.3 The Parties agree to the form and substance of the proposed Preliminary Approval
4 Order, attached hereto as **Exhibit D**, to be lodged with the Court with the unopposed motion for
5 preliminary approval of the Settlement Agreement.

6 7.4 **Procedures for Objecting to the Settlement**

7 7.4.1. Class Members shall have the right to appear and show cause, if they have any
8 reason why the terms of this Agreement should not be given final approval, subject to each of the
9 sub-provisions contained in this Section 7.4. Any objection to this Agreement, including any of
10 its terms or provisions, must be in writing, be submitted to the Notice Administrator or be filed
11 with the Court. Any written objection sent via mail must be postmarked no later than thirty (30)
12 calendar days prior to the Final Approval Hearing date. If a written objection is submitted to the
13 Notice Administrator, then the Notice Administrator shall promptly transmit the written objection
14 to the Parties, whereupon Class Counsel shall then promptly file it with the Court. Class Members
15 may object either on their own or through an attorney hired at their own expense.

16 7.4.2 If a Class Member hires an attorney to represent him or her at the Final Approval
17 Hearing, he or she must do so at his or her own expense.

18 7.4.3 Any objection regarding or related to the Agreement shall contain a caption or title
19 that identifies it as "Objection to Class Settlement in *Mirzoyan v. The Hershey Company*, Case
20 No. CGC-20-583659" and also shall contain information sufficient to identify and contact the
21 objecting Class Member (or his or her attorney, if any), as well as a clear and concise statement of
22 the Class Member's objection, documents sufficient to establish the basis for their standing as a
23 Class Member, i.e., verification under oath as to the approximate date(s) and location(s) of their
24 purchase(s) of the Products, the facts supporting the objection, and the legal grounds on which the
25 objection is based. Any objections not submitted to the Court at least thirty (30) days prior to the
26 Final Approval Hearing are deemed waived (unless the Court sets a different deadline for any such

1 objection). If an objecting party chooses to appear at the hearing, that party must file with the
2 Court, at least fourteen (14) days before the Final Approval Hearing, a notice of intent to appear
3 and that notice must list the name, address and telephone number of the attorney, if any, who will
4 appear on behalf of that party (unless the Court sets a different deadline for any such notice of
5 intent to appear).

6 7.4.4 Any Class Member who does not object to the Agreement in compliance with the
7 provisions set forth herein, is deemed to be bound by the Agreement upon final approval of the
8 Settlement.

9 **7.5 Right to Respond to Objections**

10 Class Counsel and Defendant shall have the right, but not the obligation, to respond to any
11 objection, by filing opposition papers no later than seven (7) calendar days prior to the Final
12 Approval Hearing, or on such other date as set forth in the Preliminary Approval Order, or any
13 subsequent Court order(s) modifying the briefing schedule for the Final Approval Hearing. The
14 Party responding shall file a copy of the response with the Court, and shall serve a copy, by regular
15 mail, hand or overnight delivery, in the Party's discretion, to the objector (or counsel for the
16 objector), Class Counsel and Defense Counsel, to the extent the objector or their counsel do not
17 receive notice of electronic filing.

18 **VIII. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARD**

19 8.1 Plaintiffs will petition the Court for attorneys' fees and costs in a total amount not
20 to exceed \$700,000.00. Plaintiffs will also petition the Court for an incentive award to Plaintiff
21 Suzanne Mirzoyan not to exceed \$7,500.00, and an incentive award to Plaintiff Raymond Lee not
22 to exceed \$7,500.00. In no event shall the total amount of attorneys' fees, costs, and incentive
23 awards sought by Plaintiffs exceed \$715,000. Defendant will not oppose Plaintiff's petition for
24 attorneys' fees, costs, and incentive awards, provided such petition conforms to the limits set forth
25 herein.

26 8.2 All attorneys' fees and costs awarded to Class Counsel shall be paid by Defendant

1 to Class Counsel within thirty (30) days of the Effective Date.

2 8.3 Upon appropriate Court Order so providing, the incentive awards to the Class
3 Representatives, as set forth in Section 8.1 above, shall be paid by Defendant to Class Counsel
4 within thirty (30) days of the Effective Date. Other than the attorneys' fees, costs (if any), and
5 incentive awards described herein, which shall not in combination exceed \$715,000, Defendant
6 shall have no financial liability in connection with this Agreement or Litigation, including but not
7 limited to costs associated with Notice to the Class Members.

8 8.4 For the avoidance of doubt, Defendant shall have no obligation to pay any
9 attorneys' fees or costs to Class Counsel, nor any obligation to pay any incentive awards to Class
10 Counsel, until thirty (30) days after the Effective Date; at that time, Defendant shall be obligated
11 to pay only those attorneys' fees, costs, and incentive awards actually sought by Class Counsel
12 and awarded by the Court, subject to the limits set forth in paragraph 8.1. If no Effective Date
13 occurs, this Agreement will no longer be operative, and Defendants shall have no obligation to
14 make the payments referenced herein or to honor any other obligation under the Agreement.

15 8.5 This Agreement is not in any way contingent upon whether the Court grants Class
16 Counsel's petition for attorneys' fees and costs in a total amount not to exceed \$700,000.00 or
17 Class Counsel's petition for incentive awards not to exceed \$15,000.00 in total. If this Agreement
18 is otherwise approved by the Court and results in a Final Approval Order and Judgment, this
19 Agreement shall be binding on the Parties even if the Court does not award Class Counsel
20 attorneys' fees and costs, or awards Class Counsel attorneys' fees and costs in an amount less than
21 \$700,000.00, or awards either Representative Plaintiff an incentive award less than \$7,500.00. The
22 Court's denial of, reduction or downward modification of, or failure to grant any application for
23 attorneys' fees, costs, or incentive awards shall not constitute grounds for modification or
24 termination of this Agreement.

25 8.6 Except as set forth in this Agreement, each Party shall bear its own attorneys' fees,
26 costs, and expenses.

1 (including if the Court does not issue the Preliminary Approval Order, or approves the Agreement
2 subject to any modification whatsoever of its terms), or the Settlement is terminated or fails to
3 become effective in accordance with the terms of this Agreement, the Settling Parties will be
4 restored to their respective positions in the Litigation as of the date the Motion for Preliminary
5 Approval was filed. In such event, the terms and provisions of this Agreement will have no further
6 force and effect with respect to the Settling Parties and will not be used in this Litigation or in any
7 other proceeding for any purpose, any Judgment or order entered by the Court in accordance with
8 the terms of this Agreement will be treated as vacated, and Defendants will have no obligation to
9 pay Class Counsel any attorneys' fees, costs, or incentive awards.

10 **XI. MISCELLANEOUS PROVISIONS**

11 11.1 The Parties acknowledge that it is their intent to consummate this Agreement, and
12 they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms
13 and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing
14 terms and conditions of this Agreement.

15 11.2 The Parties intend the Settlement to be a final and complete resolution of all
16 disputes between them with respect to the Litigation. The Settlement compromises claims that are
17 contested and will not be deemed an admission by any Settling Party as to the merits of any claim
18 or defense.

19 11.3 The Parties agree that the consideration provided to the Class and the other terms
20 of the Settlement were negotiated at arm's length, in good faith by the Parties, and reflect a
21 settlement that was reached voluntarily, after consultation with competent legal counsel, and with
22 the extensive assistance of an independent, neutral mediator, Judge George C. Hernandez (Ret.)
23 of ADR Services. The Litigation was filed in good faith, was not frivolous and was in compliance
24 with California Code of Civil Procedure Section 128.5. This Agreement is entered solely to
25 eliminate the uncertainties, burdens and expenses of protracted litigation.

26 11.4 Neither this Agreement nor the Settlement, nor any act performed or document

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

11 11.5 Any and all Exhibits to this Agreement are material and integral parts hereof and
12 are fully incorporated herein by this reference.

13 11.6 This Agreement may be amended or modified only by a written instrument signed
14 by all Parties or their respective successors-in-interest.

15 11.7 This Agreement and any exhibits attached hereto constitute the complete,
16 exclusive, and entire agreement among the Parties, and no representations, warranties, or
17 inducements have been made to any Party concerning this Agreement or its exhibits other than the
18 representations, warranties, and covenants covered and memorialized in this Agreement or its
19 exhibits. This Agreement supersedes any and all prior written or oral agreements among the
20 Parties concerning the subject matter of the Litigation and/or this Agreement, and no extrinsic
21 evidence may be introduced in any proceeding, if any, concerning the interpretation of this
22 Agreement.

23 11.8 Class Counsel, on behalf of the Class, is expressly authorized by the Representative
24 Plaintiffs to take all appropriate action required or permitted to be taken by the Class pursuant to
25 this Agreement to effectuate its terms, and is expressly authorized to enter into any modifications
26 or amendments to this Agreement on behalf of the Class that Class Counsel deems appropriate.

1 reaching a formal settlement agreement that will be accepted by the Court and thereafter to
2 immediately submit a revised settlement agreement to the Court for approval, and all other terms
3 and conditions herein shall continue in full force and effect until approval by the Court of the
4 revised settlement agreement. The fees and expenses of any mediator incurred for the purposes of
5 this provision shall be shared equally between Defendant and the Class. Each Party shall bear its
6 own attorneys' fees and costs of such renegotiation.

7 11.16 If the date for performance of any act required by or under this Agreement falls on
8 a Saturday, Sunday or court holiday, that act may be performed on the next business day with the
9 same effect as if it had been performed on the day or within the period of time specified by or
10 under this Agreement.

11 11.17 The failure of any Party to insist upon compliance with any of the provisions of this
12 Agreement or the waiver of any such provision shall not be construed as a general waiver or
13 relinquishment by such Party of any other provision of this Agreement.

14 11.18 Other than as specifically permitted or required by this Agreement, the Parties and
15 their counsel agree that they shall not cause any aspect of this Litigation or the terms of this
16 Settlement not already available in the public record to be reported to the public, the media, or
17 news reporting services, or otherwise discussed in any public forum. In the event of an inquiry
18 by any media entity or news reporting service regarding the Litigation, this Agreement, or the
19 subject matter thereof, neither Party shall provide any comment or information (whether on the
20 record, on background, or off the record). The Parties agree that they shall not disparage each
21 other. Nothing in this section shall restrict a Party from disclosing the terms of this Agreement
22 pursuant to a valid court order. The Parties agree that breach of this paragraph 11.18 by either
23 Party will cause irreparable harm to the other Party, and may be grounds for injunctive relief,
24 which is not to the exclusion of monetary relief for any damages incurred as a result of such breach.

25 11.19 All notices to the Parties or counsel required by this Agreement shall be made in
26 writing and communicated by email to the following addresses:

1 If to Plaintiffs or Plaintiffs' Counsel:

2 Ronald A. Marron

3 Email: ron@consumersadvocates.com

4 Michael T. Houchin

5 mike@consumersadvocates.com

7 If to Defendant or Defendant's Counsel:

9 Steven A. Zalesin

10 Email: sazalesin@pbwt.com

11 Jane Metcalf

12 jmetcalf@pbwt.com

14 IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be
15 executed by themselves, approved as to form and content by their respective attorneys.

17 Dated: 2/7/2023

DocuSigned by:
Kathleen Purcell
60855A4CEA3C4E3

19 Name: Kathleen S. Purcell
20 Title: Assistant Corporate Secretary
On Behalf of Defendant The Hershey Company

23 Dated: _____

Suzanne Mirzoyan
Plaintiff

25 Dated: _____

Raymond Lee

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

If to Plaintiffs or Plaintiffs' Counsel:

Ronald A. Marron
Email: ron@consumersadvocates.com
Michael T. Houchin
mike@consumersadvocates.com

If to Defendant or Defendant's Counsel:

Steven A. Zalesin
Email: sazalesin@pbwt.com
Jane Metcalf
jmetcalf@pbwt.com

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by themselves, approved as to form and content by their respective attorneys.

Dated: _____

Name:
Title:
On Behalf of Defendant The Hershey Company

Dated: Feb. 9, 2023

Suzanne Mirzoyan
Suzanne Mirzoyan
Plaintiff

Dated: _____

Raymond Lee

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

If to Plaintiffs or Plaintiffs' Counsel:

Ronald A. Marron

Email: ron@consumersadvocates.com

Michael T. Houchin

mike@consumersadvocates.com

If to Defendant or Defendant's Counsel:

Steven A. Zalesin

Email: sazalesin@pbwt.com

Jane Metcalf

jmetcalf@pbwt.com

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by themselves, approved as to form and content by their respective attorneys.

Dated: _____

Name:

Title:

On Behalf of Defendant The Hershey Company

Dated: _____

Suzanne Mirzoyan
Plaintiff

Dated: Feb. 9, 2023


[Raymond Lee](#)

Raymond Lee

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff

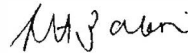
APPROVED AS TO FORM AND CONTENT:

Dated: 2/10/2023



Ronald Marron
LAW OFFICES OF RONALD MARRON
Counsel for Plaintiffs and the Class

Dated: 2/9/23



PATTERSON BELKNAP WEBB & TYLER LLP
Counsel for Defendant The Hershey Company