

NOTICE OF CLASS ACTION SETTLEMENT

Mirzoyan v. The Hershey Company, Case No. CGC-20-583659
Superior Court of the State of California for the County of San Francisco

IF YOU ARE A CITIZEN OF CALIFORNIA AND MADE A RETAIL PURCHASE OF A BROOKSIDE DARK CHOCOLATE PRODUCT LABELED “NO ARTIFICIAL FLAVORS” IN CALIFORNIA BETWEEN JANUARY 1, 2017 AND MARCH 30, 2022 FOR PERSONAL USE AND NOT FOR RESALE, PLEASE READ THIS NOTICE CAREFULLY, AS IT DESCRIBES A SETTLEMENT THAT MAY AFFECT YOUR RIGHTS.

A court authorized this Notice. It is not a solicitation from a lawyer.

YOU ARE NOT BEING SUED.

Products Include:

- Brookside Dark Chocolate Acai & Blueberry Flavors;
- Brookside Dark Chocolate Goji & Raspberry Flavors;
- Brookside Dark Chocolate Vineyard Inspired Chardonnay Grape & Peach;
- Brookside Dark Chocolate Crunchy Clusters Berry Medley Flavors;
- Brookside Dark Chocolate Pomegranate Flavor;
- Brookside Dark Chocolate Vineyard Inspired Merlot Grape & Black Currant Flavors; and
- Brookside Dark Chocolate Strawberry Passionfruit Flavor.

This Settlement resolves a lawsuit against The Hershey Company (the “Defendant” or “Hershey”) alleging that the statement “No Artificial Flavors” on Defendant’s Brookside Dark Chocolate Products is false and misleading because one of the ingredients in the Brookside Dark Chocolate Products, malic acid, functions as an artificial flavor. The lawsuit also alleges that the Brookside Dark Chocolate Products’ labeling is misleading because the products’ labels (i) do not disclose the presence of artificial flavors; and (ii) do not identify the type of malic acid in the products as “DL-malic acid” on the products’ ingredient lists.

Defendant denies the allegations and any wrongdoing. Defendant contends that malic acid is not in fact an artificial flavor in the Brookside products, because it is used not for flavoring but for another functional purpose. Defendant also denies that its labeling was false or misleading in any other respect. Nonetheless, it has agreed to settle this lawsuit to avoid the cost and uncertainty of litigation. The parties have reached a settlement that would provide injunctive relief as detailed below in exchange for a waiver and release of injunctive relief claims. The Settlement does not provide monetary compensation to class members, and class members do not release any claims for monetary damages. Class Counsel will request that the Court award them reasonable attorneys’ fees and expenses as compensation for their obtaining Defendant’s agreement to make certain changes to the labels of the Brookside Dark Chocolate Products.

You are not required to take any action. This Notice further explains the litigation, the Settlement, and how you may comment or object to the Settlement, if you want.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

Do Nothing	If you do nothing, then you will automatically receive benefits under this Settlement in the form of Defendant's labeling modifications that are further described in this notice. You will also give up your right to sue Defendant and certain related entities and individuals regarding any claims for injunctive relief that are part of or related to the Settlement. You will not give up any claims for monetary damages.
Object or Comment by May 5, 2023	If you are a Class Member, you may write to the Court about why you object to the Settlement. To be timely, written objections must be postmarked no later than May 5, 2023.
Appear in the lawsuit and attend a Hearing on June 6, 2023 at 10:00 a.m.	If you are a Class Member, you may ask to speak in Court about the fairness of the Settlement. You may enter your appearance in Court either pro se or through an attorney at your own expense if you so desire.

There is no need to submit a claim form. This Settlement provides benefits in the form of labeling modifications that are further detailed on page five of this notice. If you do nothing, then you will automatically receive the benefits of this Settlement.

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BASIC INFORMATION

1. Why did I receive this Notice?

If you are a California citizen who made retail purchases of a Brookside Dark Chocolate Products labeled as containing “No Artificial Flavors” between January 1, 2017 and March 30, 2022 in California, for personal use and not for resale (the “Class”), then you have a right to know about a proposed settlement (“Settlement”) in this class action lawsuit and your options in relation thereto, before the Court decides whether to give its final approval of the settlement.

This Notice explains the lawsuit, the Settlement, your legal rights, and what benefits are available. The Court overseeing the case is the Superior Court of the State of California for the County of San Francisco, and the case is known as *Mirzoyan v. The Hershey Company*, Case No. CGC-20-583659. Suzanne Mirzoyan and Raymond Lee, the people who sued, are called the Plaintiffs, and the company they sued, The Hershey Company, is called the Defendant.

2. What is this lawsuit About?

The Plaintiffs who filed the lawsuit allege that the statement “No Artificial Flavors” on Defendant’s Brookside Dark Chocolate Products is false and misleading because one of the ingredients in the Brookside Dark Chocolate Products, malic acid, functions as an artificial flavor. The lawsuit also alleges that the Brookside Dark Chocolate Products’ labeling is misleading because the products’ labels (i) do not disclose the presence of artificial flavors; and (ii) do not identify the type of malic acid in the products as “DL-malic acid” on the products’ ingredient lists.

Defendant denies the allegations and any wrongdoing. Defendant contends that malic acid is not in fact an artificial flavor in the Brookside products, because it is used not for flavoring but for another functional purpose. Defendant also denies that its labeling was false or misleading in any other respect.

Defendant denies the allegations in the lawsuit, and the Court has not made any ruling on the merits of the lawsuit. To avoid the expense of further litigation, the parties have reached a settlement that is further described in this Notice.

3. What Is a Class Action and Who Is Involved?

In a class action lawsuit, one or more people, called Class Representatives (in this case Suzanne Mirzoyan and Raymond Lee) represent the interests of similarly situated people who may have the same claims in common, but have not filed a lawsuit. All of these people are collectively referred to as a class. The persons who filed the lawsuit are called the Plaintiffs. The company or persons they sue is called the Defendant. One court resolves the issues for everyone in the class.

4. Why Is There a Proposed Settlement?

The Court has not decided in favor of either side. Defendant denies all allegations in the lawsuit, and by settling this lawsuit, Defendant has not admitted to any wrongdoing or liability. The Parties have entered into this settlement solely to eliminate the expense, inconvenience, and inherent risk of litigation. The Plaintiffs and their attorneys assert that the proposed Settlement is in the best

interests of the Class because it provides an appropriate recovery now while avoiding the risk, expense, and delay of pursuing a lawsuit through trial and any appeals. There would be no guarantee of success for either side if the lawsuit were pursued through trial and any appeals.

WHO IS INCLUDED IN THE PROPOSED SETTLEMENT

5. How Do I Know If I Am Part of the Proposed Settlement?

You are a part of the Settlement Class if you are a California citizen who made retail purchases of any Brookside-branded Dark Chocolate Product labeled as containing “No Artificial Flavors” in California on or after January 1, 2017 and until March 30, 2022, for personal use and not for resale, excluding Defendant and Defendant’s officers, directors, employees, agents and affiliates, and the Court and its staff. The Brookside Dark Chocolate Products include:

- Brookside Dark Chocolate Acai & Blueberry Flavors;
- Brookside Dark Chocolate Goji & Raspberry Flavors;
- Brookside Dark Chocolate Vineyard Inspired Chardonnay Grape & Peach;
- Brookside Dark Chocolate Crunchy Clusters Berry Medley Flavors;
- Brookside Dark Chocolate Pomegranate Flavor;
- Brookside Dark Chocolate Vineyard Inspired Merlot Grape & Black Currant Flavors, and;
- Brookside Dark Chocolate Strawberry Passionfruit Flavor.

If you are still not sure whether you are included in the Settlement Class, you can go to www.DarkChocolateClassAction.com to consult additional information.

THE PROPOSED SETTLEMENT BENEFITS

6. What Are The Benefits of the Proposed Settlement?

Defendant will provide the Class with injunctive relief by way of modification of the label and packaging for the Brookside Dark Chocolate Products identified on page 1 of this notice. Specifically, Defendant will remove the “No Artificial Flavors” labeling statement from all packaging manufactured for the Products, on or before (i) six months after the Effective Date of the Settlement or (ii) December 31, 2023, whichever is later. However, because Defendant will not recall existing inventory of Product packaging bearing the statement, some Product units that include the statement may remain available at retail for six months or more after the Effective Date of the settlement.

This injunctive relief shall be implemented for a period of no less than five years. Following the initial five-year period, Defendant will be free to reintroduce the ‘No Artificial Flavors’ labeling claim on the referenced products if, either during the five-year period or subsequent thereto, the Federal Food and Drug Administration (“FDA”) makes an unambiguous pronouncement that an acid (such as malic acid) whose primary function in a food product is to regulate pH is not a “flavor” or “artificial flavor,” even though the acid may have some impact on the taste of the finished product. Defendant will also be free to reintroduce the “No Artificial Flavors” claim after the initial five-year period if malic acid is removed as an ingredient from the Brookside products.

Attorneys' Fees and Incentive Awards

Defendant has also agreed to pay for Plaintiffs' and the Class's attorneys' fees and costs and Class Representative incentive awards to the named Plaintiffs in an amount to be determined by the Court. Class Counsel may request attorneys' fees and costs of no more than \$700,000, and incentive awards to the named Plaintiffs of no more than \$7,500 each. The final amount of attorneys' fees and costs and Class Representative incentive awards will be determined by the Court.

No Opt-Outs

Because this Settlement provides for injunctive relief only and does not provide for any monetary compensation, class members cannot opt out of the Settlement. This means that all members of the Settlement Class will be bound by the Settlement if the Court approves it. You will not be able to bring any claim for injunctive relief relating to the claims in this case.

YOUR RIGHTS AND CHOICES - OBJECTING TO THE PROPOSED SETTLEMENT

You can tell the Court that you object to the Settlement or any particular part of it. The Court will then consider your objection when deciding whether to grant final approval of the Settlement.

7. How Do I Tell the Court That I Object to the Proposed Settlement?

You can ask the Court to deny approval by submitting an objection. If you are a Class Member, you or an attorney on your behalf may object to the Settlement. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval of a Settlement, none of the agreed-upon labeling changes in the Settlement will be required to be implemented, and the lawsuit will continue. If that is what you want to happen, you may object.

Written objections to the Settlement, including any of its terms or provisions, must be submitted to the Notice Administrator. The written objection must be postmarked by no later than May 5, 2023 at the following address:

Dark Chocolate Class Action Settlement
c/o RG/2 Claims Administration, LLC
P.O. Box 59479
Philadelphia, PA 19102-9479

The Notice Administrator shall promptly transmit the written objection to counsel for the Plaintiffs who shall then promptly file it with the Court.

Written objections should contain information sufficient to identify and contact you (or your attorney, if any), as well as a clear and concise statement of your objection, documents sufficient to establish the basis for your standing as a Class Member, i.e., verification under oath as to the approximate date(s) and location(s) of their purchase(s) of the Products, the facts supporting the objection, and the legal grounds on which the objection is based.

If you submit a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. **If you appear through your own attorney, you are responsible for hiring and paying that attorney.**

YOUR RIGHTS AND CHOICES - APPEARING IN THIS LAWSUIT

8. Can I Appear or Speak in the lawsuit About the Proposed Settlement?

You may participate and speak for yourself about the proposed Settlement at the Final Approval Hearing. This is called making an appearance. You can also have your own lawyer appear in court at the Final Approval Hearing and speak for you, but you must pay for the lawyer yourself. If you do not wish to participate or speak, but would like to watch or listen, the Final Approval Hearing will be open to the public. Check the Court's website or contact Class Counsel for the most current information on the date, time, and location of the Final Approval Hearing and for virtual appearance options (if available).

IF YOU DO NOTHING

9. What Happens If I Do Nothing at All?

You do not have to take any action to receive the benefits of the Settlement. If the Settlement is approved by the Court, you will not be able to seek injunctive relief against Defendant about the subject matter of this lawsuit ever again. The Settlement will not affect your right to seek monetary relief from Defendant.

THE LAWYERS REPRESENTING YOU

10. Do I Have a Lawyer in this Case?

The Court has appointed the Law Offices of Ronald A. Marron, APLC as legal counsel for the Settlement Class. The law firm is called Class Counsel. You will not be charged for these lawyers.

11. Contacting Class Counsel

Class Counsel may be contacted as follows:

LAW OFFICES OF RONALD A. MARRON

Ronald A. Marron

ron@consumersadvocates.com

Michael T. Houchin

mike@consumersadvocates.com

Lilach Halperin

lilach@consumersadvocates.com

651 Arroyo Drive

San Diego, California 92103

Telephone: (619) 696-9006

12. How Will the Lawyers Be Paid?

Class Counsel has not yet received any payment for prosecuting this lawsuit, nor have they been reimbursed for any out-of-pocket expenses they have incurred. When they ask the Court to approve the Settlement, Class Counsel will also make a motion to the Court to approve and award attorneys' fees and a reimbursement of expenses to Class Counsel, in a total amount of up to \$700,000. No matter what the Court decides with regard to the requested attorneys' fees, members of the Settlement Class will never have to pay anything toward the fees or expenses of Class Counsel. Class Counsel will seek final approval of the Settlement on behalf of all members of the Settlement Class. You may hire your own lawyer to represent you with respect to the proposed Settlement in this lawsuit if you wish, but it will be at your own expense.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You have the right to attend or speak at the hearing, but do not have to do so.

13. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court overseeing this case will hold a Final Approval Hearing at the courthouse located at the Superior Court of the State of California for the County of San Francisco, 400 McAllister St., San Francisco, CA 94102 on June 6, 2023 at 10:00 a.m. to decide whether the Settlement is fair, reasonable, and adequate, as well as to determine the amount of attorneys' fees and costs and incentive fees to award.

The date of the Final Approval Hearing may change without further notice to the Class. Class Members are advised to check the settlement website to confirm that the date has not been changed.

If there are objections, the Court will consider them at the Final Approval Hearing. After the Final Approval Hearing, the Court will decide whether to approve the Settlement and whether to grant Class Counsel's request for attorneys' fees and expenses. We do not know how long it will take the Court to make these decisions.

14. Do I Have to Come to the Hearing?

You are not required to attend the hearing, but you are welcome to attend at your own expense. If you send an Objection, you do not have to appear in Court to present it. As long as you mailed your written Objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

FINAL SETTLEMENT APPROVAL

15. What Is The Effect of Final Settlement Approval?

If the Court grants final approval of the Settlement and any appeals have been exhausted, then every Class Member will be deemed to have released and discharged Defendant from any from any and all actions, causes of action, grievances, complaints, suits, demands, claims, or any other legal proceeding of any kind seeking injunctive relief or other similar equitable relief (which does not include any potential claims for monetary damages of any kind), whether known or unknown,

whether presently existing or arising in the future, whether suspected or unsuspected, whether disclosed or undisclosed, whether matured or unmatured, whether fixed or contingent, including those arising under any theory of law, whether common, constitutional, statutory or other of any jurisdiction, foreign or domestic, whether in law or in equity, whether individual, class, direct, derivative, representative, or in any other capacity, that were or reasonably could have been asserted in this Litigation or are reasonably related to the factual allegations in this Litigation (the “Released Claims”). The Released Claims do not include any personal injury claims regarding the Products, and they do not include any claims for money damages. Please refer to the Settlement Agreement for a more detailed description of the terms of the release.

If the Court does not approve the Settlement, this lawsuit will proceed as if no settlement had been attempted.

GETTING MORE INFORMATION

16. Are There More Details About the Settlement?

This Notice is only intended to provide a summary of the proposed settlement. You may obtain the complete text of the Settlement Agreement at www.DarkChocolateClassAction.com, by contacting the Settlement Administrator (at the address listed below), by contacting Class Counsel (see section above, “Contacting Class Counsel”), or by accessing the Court docket in this case.

By visiting the website located at www.DarkChocolateClassAction.com, you will find the Plaintiffs’ operative Complaint, the Settlement Agreement, Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, and other important documents in the case.

You may also contact the Settlement Administrator by email at:
DarkChocolateClassAction.@rg2claims.com.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO
INQUIRE ABOUT THIS SETTLEMENT.**

This Notice is given with the approval and at the direction of the Court.