



United States District Court for the
Northern District of California

Swartz v. Dave's Killer Bread, Inc.,
Case No. 21-cv-10053-YGR

Class Action Notice Re: Dave's Killer Bread Class Action Lawsuit

Authorized by the U.S. District Court

This class action lawsuit may affect your rights. Please read this notice carefully.

- In this Lawsuit, Plaintiff David Swartz alleges that Defendants Dave's Killer Bread, Inc. and Flowers Foods, Inc. (collectively, "Defendants") violated California's Unfair Competition Law by including unlawful labels on certain Products sold between December 29, 2017, and September 5, 2023 (the "Class Period").
- The "Products" include the following Dave's Killer Bread products:
 - **Breads:** 21 Whole Grains and Seeds; Good Seed; Powerseed; 100% Whole Wheat; and Righteous Rye;
 - **Thin Sliced Breads:** 21 Whole Grains and Seeds Thin-Sliced; Good Seed Thin-Sliced; Powerseed Thin-Sliced; and Sprouted Whole Grains Thin-Sliced;
 - **Bagels:** Epic Everything Bagels; Plain Awesome Bagels; Cinnamon Raisin Remix Bagels; and Boomin' Berry Bagels; and
 - **Buns:** 21 Whole Grains and Seeds Burger Buns; and Burger Buns Done Right.
- Defendants dispute that the labels on the Products violate California law or that consumers were harmed by Defendants' conduct.
- If you are a member of the Class and the Plaintiff proves his case, you may be entitled to money.
- If you take no action, you will be bound by the Lawsuit, and your rights will be affected.

Did you buy a Dave's Killer Bread Product between December 29, 2017, and September 5, 2023 in the state of California?

This notice explains the Lawsuit, the Class, and your legal rights and options.

Please read the entire notice carefully.

For more information, visit:

www.DavesKillerBreadProteinClassAction.com

If you do not want to remain in the Class, you must submit an exclusion request by May 7, 2025.

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About This Notice

What Is This Notice About?

You can choose whether to remain in this class action or preserve your right to sue Defendants separately.

The question of whether Defendants acted unlawfully, as Plaintiff contends, will be decided in this Lawsuit for all Class Members who do not timely exclude themselves by opting out. Class Members must take action only if they do not want to be part of the Class. If you are a Class Member and do not exclude yourself from the Class, you will be bound by rulings in the Lawsuit and, if there is a monetary judgment or settlement that benefits the Class, you may receive a share of that recovery.

This notice explains the Lawsuit, your options and rights, how to exclude yourself from the Class, and where to get more information.

What Do I Do Next?

<u>YOUR RIGHTS AND OPTIONS</u>	
Do Nothing	If you do nothing, you will remain in the Class (and the Lawsuit) unless and until you are later excluded from the Class by the Court. As a member of the Class, you will be bound by the final orders and judgments of the Court in the Lawsuit regarding Plaintiff's claims that Defendants acted unlawfully. If there is a monetary judgment or settlement that benefits the Class, you may receive a share of that recovery.
Opt Out	If you want to keep the right to sue Defendants separately over the claims brought by the Plaintiff, then you must take steps to get out of this Lawsuit. This is called "opting out" of, or asking to be excluded from, the Class. Your options and your rights are explained in the following sections, along with the steps you must take if you wish to opt out of the Class.

Consult the case website at www.DavesKillerBreadProteinClassAction.com, or the Court docket available through Public Access to Court Electronic Records ("PACER") (<http://www.pacer.gov>), for updated information on the Lawsuit.

What Is the Deadline to Opt Out?

The deadline for you to exclude yourself from the Class is May 7, 2025.

About This Lawsuit

What Is This Lawsuit About?

This Lawsuit is about labels on Defendants' Products representing a certain amount of protein on the front label of the Product while omitting the percent daily value ("%DV") for protein from the nutrition facts panel ("NFP") on the back label of the Product.

The Federal Food, Drug, and Cosmetic Act ("FDCA"), which California has adopted into state law, prescribes how manufacturers may advertise protein on food products. Plaintiff alleges that if a product makes a "protein claim" anywhere other than the nutrition facts panel (i.e., on the front label), the law requires the manufacturer to (1) calculate the amount of protein per serving using a method that accounts for protein quality, and (2) to provide the %DV in the NFP based on that calculation. Plaintiff contends that Defendants failed to include a %DV on their Products despite having a protein claim on the Products' front labels. Plaintiff alleges that, as a result, Defendants were able to charge more for the Products than they otherwise would have had they complied with the law.

A copy of Plaintiff's Complaint is available at www.DavesKillerBreadProteinClassAction.com.

Defendants deny any wrongdoing and deny that any damages are available to Plaintiff and the Class on the only claim that has been certified in this class action. First, Defendants contend that the amount of protein representation on the front label of the product is not a "protein" claim that required the %DV to be listed in the NFP. Defendants assert they have complied with the law in all respects and at all times and properly informed customers of the protein content of the Products. Second, Defendants contend that Plaintiff and the Class cannot receive any damages on the single claim that has been certified for alleged purported "unlawful" conduct under the California Unfair Competition Law (UCL) because any such damages are expressly prohibited by binding Ninth Circuit precedent. *See Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (2020).

The Court has not determined whether Plaintiff or Defendants are correct.

Questions? Visit www.DavesKillerBreadProteinClassAction.com or call 1-866-629-0624.

What Has Happened in the Lawsuit?

The Lawsuit was brought as a proposed class action. A class action is a lawsuit in which the claims and rights of many people can be decided in a single court proceeding, rather than in many separate lawsuits. One or more people—called “plaintiffs” or “class representatives”—sue on behalf of people who made similar purchases. All of these people form a proposed “class” and are potential “class members.” When a court “certifies” a class for particular claims (which means it decides that a plaintiff shall represent a group of people for purposes of those claims), then a judgment in the class action resolves those claims for all class members, except those who timely chose to exclude themselves from the Class.

In this Lawsuit, the Court decided to certify the Class identified below for purposes of **one** of Plaintiff’s theories—that Defendants’ conduct is **unlawful**. This is not a determination of the merits of Plaintiff’s claim.

The Court did not certify any class for purposes of Plaintiff’s theories that Defendants’ conduct was unfair, deceptive, or fraudulent.

What Happens Next in the Lawsuit?

A class action trial is currently scheduled to begin on October 6, 2025. There is no guarantee that Plaintiff will win or obtain any money for the Class. Plaintiff could lose.

There is also a hearing currently scheduled for July 29, 2025. At this hearing, the Court will hear arguments from the Plaintiff and Defendants as to why one side or the other may be entitled to a judgment without the need for trial—called summary judgment. Plaintiff could lose summary judgment.

You don’t need to attend any hearing(s) or the trial, but you are welcome to attend if you want. If there is a recovery from the trial or a settlement, you will be notified about how to make a claim for payment.

Are You a Class Member?

Am I a Class Member?

The Class includes all persons in the State of California who purchased the Products between December 29, 2017 and September 5, 2023 (the “Class”). The “Products” include the following Dave’s Killer Bread, Inc. and Flowers Foods, Inc. products:

- **Breads:** 21 Whole Grains and Seeds; Good Seed, Powerseed; 100% Whole Wheat; and Righteous Rye;
- **Thin Sliced Breads:** 21 Whole Grains and Seeds Thin-Sliced; Good Seed Thin-Sliced; Powerseed Thin-Sliced; and Sprouted Whole Grains Thin-Sliced;
- **Bagels:** Epic Everything Bagels; Plain Awesome Bagels; Cinnamon Raisin Remix Bagels; and Boomin’ Berry Bagels; and
- **Buns:** 21 Whole Grains and Seeds Burger Buns; and Burger Buns Done Right.

Notices may be emailed to purchasers for whom Defendants have contact information and who purchased at least one Product between December 29, 2017 and September 5, 2023. Please check your email to see if you received such a notice. Defendants may not have such email addresses so there is no need to be concerned if you did not receive an email notice.

Your Options

What Are My Options as a Class Member?

You have two options:

- (1) You can remain in the Class if you wish to benefit from and be bound by the decisions, judgments, and/or settlements in the Lawsuit; or
- (2) You can exclude yourself (i.e., opt out) of the Class if you wish to retain the right to sue Defendants separately for the claims in this Lawsuit.

This will likely be your only opportunity to opt out of the Class. If you opt out, you will not obtain a payment from any judgment or settlement in favor of the Class (if any) but will retain the right to pursue claims on your own behalf.

What Happens If I Do Nothing?

If you do nothing and remain in the Class, you will keep the right to a share of any money (if any) that may come from a trial or settlement of the Class's claims in this Lawsuit against Defendants. You will not be able to start another lawsuit, continue another lawsuit, or be part of any other lawsuit against Defendants based on the same legal claims for Dave's Killer Bread purchases during the class period. All the Court's orders and judgments in the case relating to the Class will apply to you and legally bind you. If Plaintiff loses the case, you will also be bound by that loss.

Remaining in the Class may preclude you from bringing your own claims against Defendants under other laws based on the same or similar facts. The Court has not decided whether remaining in the Class would impact your rights to bring your claims under other laws. If you have questions about how remaining in the Class would affect your rights, you should consult your own attorney.

What Happens If I Opt Out?

If you exclude yourself from the Class—also known as “opting out” of the Class—you won't get any money or benefits that the Class may recover, even if Plaintiff obtains them as a result of trial or from any settlement between Defendants and Plaintiff. If you opt out, you will not be legally bound by any of the Court's orders related to the Class or any judgment or release entered in this class action related to the Class, and you may be able to file a lawsuit against (or continue to sue) Defendants about the legal claims brought on behalf of the Class. If you are unsure about what to do, you may want to talk to your own lawyer. You will be responsible for the cost of any services provided by your own lawyer.

How Do I Opt Out?

You can exclude yourself from the Class (i.e., “opt out” of the Class) by going to www.DavesKillerBreadProteinClassAction.com and filling out the online form, or by sending a letter via first-class U.S. mail stating that you want to exclude yourself from the Class in *Swartz v. Dave's Killer Bread, Inc.*, Case No. 21-cv-10053-YGR (N.D. Cal.) to the Notice Administrator at the below address:

Swartz v. Dave's Killer Bread Notice Administrator
P.O. Box 301130
Los Angeles, CA 90030-1130

Be sure to include your name, address, telephone number, and your signature. If you are under eighteen years old and do not want your name included on the list of optouts filed with the Court, your letter must state that you are under eighteen.

You must complete the online form excluding yourself from the Class, or postmark your letter requesting exclusion, no later than May 7, 2025.

Questions? Visit www.DavesKillerBreadProteinClassAction.com or call 1-866-629-0624.

The Lawyers Representing You

Do I Have a Lawyer in this Lawsuit?

The Court has appointed Gutride Safier LLP as Class Counsel. Class Counsel does not represent you individually but only as a member of the Class. Class Counsel is experienced in handling similar cases against other companies.

The contact information for Class Counsel is:

Seth Safier, Esq.
GUTRIDE SAFIER LLP
100 Pine Street, Suite 1250
San Francisco, CA 94111
daveskillerbread@gutridesafier.com
www.gutridesafier.com

Should I Get My Own Lawyer in this Lawsuit?

You are not required to hire your own lawyer to pursue the claims in this Lawsuit, because Class Counsel are working on your behalf as a member of the Class. However, if you wish to do so, particularly if you have concerns over how staying in the Class may affect your rights, you may retain your own lawyer at your own expense.

How Will the Lawyers Be Paid?

The lawyers representing Plaintiff and the Class only get paid if Plaintiff and the Class win or settle the case. If Plaintiff wins or settles the case, then Plaintiff's counsel will ask the Court to approve reasonable attorneys' fees for Class Counsel, as well as reimbursement of expenses Class Counsel have advanced on behalf of the Class pursuant to, without limitation, Cal. Code Civ. Proc. § 1021.5. Defendants do not believe Plaintiff's counsel is entitled to any fees, and reserve all rights to challenge both Plaintiff's counsel's entitlement to fees and the amount of any fees sought in any application to the Court.

If the Court grants Class Counsel's requests, fees and expenses would either be deducted from any money obtained for the Class, or the Court may order the Defendants to pay attorneys' fees and costs in addition to any money awarded to the Class. Members of the Class will not individually have to pay any attorneys' fees or expenses in connection with the Lawsuit.

Getting More Information

How Do I Get More Information?

This notice contains a summary of the Lawsuit. More detailed information about the Lawsuit, copies of Plaintiff's complaint, the Court's order certifying the Class, and other filings are available at www.DavesKillerBreadProteinClassAction.com. Complete copies of public pleadings, Court rulings, and other filings are available through PACER (<http://www.pacer.gov>) or may be accessed in person at the Office of the Clerk of Court, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94012, during normal business hours.

You can contact the Notice Administrator at *Swartz v. Dave's Killer Bread* Notice Administrator, P.O. Box 301130, Los Angeles, CA 90030-1130, or by telephone at 1-866-629-0624.

You can also obtain additional information by contacting Class Counsel using the contact information above.

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