



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

## Clif Bar Buyers Seek OK On New \$12M False Ad Settlement

By **Mike Curley**

Law360 (November 1, 2023, 5:18 PM EDT) -- A proposed class of consumers is asking a California federal judge to give the go-ahead to a \$12 million settlement ending claims that Clif Bar & Co. misled consumers by advertising its bars as nutritious, saying the new agreement remedies issues that caused the court to reject the previous \$10.5 million deal.

Though the consumers led by Ralph Milan and Elizabeth Arnold informed the court they reached a \$10.5 million settlement with Clif Bar **last year**, U.S. District Judge James Donato denied preliminary approval at the time, pointing to several potential issues with the deal.

The judge had concerns about a nationwide class bringing claims based on California and New York law as well as the amount each potential class member could expect to get out of the deal.

According to **Tuesday's motion**, the new settlement class period is shortened from nine years to four for those not in California and New York, with residents of those states eligible for purchases made between April 2014 and March 2023, while non-residents are eligible for purchases made between March 2019 and March 2023.

The plaintiffs told the court the residents of other states would not have viable claims from before March 2019 and that including them would create a windfall while diluting the settlement fund for others. This effectively cuts the total potential class members in half, and the increased total of the common fund should allow a higher payout for class members, according to the motion.

The consumers told the court that potential class members can receive up to \$5 if they bought up to 30 bars, up to \$10 for 31 to 60 bars, and \$15 if they purchased more than 60 bars. Those with proof of purchase can receive \$15 for the first 60 bars plus \$.25 for each additional bar, up to \$50 total.

Any money left over will either be distributed to potential class members or donated in equal shares to the Resnick Center for Food Law and Policy at the University of California, Los Angeles School of Law and the Tufts University Friedman School of Nutrition Science & Policy, with none reverting to Clif Bar.

Judge Donato had also expressed concerns about the release in the initial deal, calling it too broad, so the new settlement's release is limited to only claims based on the facts alleged in the complaint, according to the motion.

Milan and Arnold sued California-based Clif Bar in May 2018, claiming it marketed its bars with labels conveying a health and wellness message even though 37% of the calories in the Clif Kid ZBars and "Classic" Clif Bars come from added sugar.

According to Tuesday's motion, the settlement also binds Clif Bar to making meaningful changes to its labeling, so the products will not use the word "nutrition" or "nutritious" on the packaging for at least two years, so long as 10% or more of a bar's calories come from added sugars.

The consumers also told the court the notice procedures have been revised in the new settlement to address the judge's concern they were unclear, with many potential class members now set to receive direct notice of the settlement.

Representatives for the parties could not immediately be reached for comment Wednesday.

The plaintiffs are represented by Jack Fitzgerald, Paul K. Joseph, Melanie Persinger, Trevor M. Flynn and Caroline S. Emhardt of Fitzgerald Joseph LLP.

Clif Bar is represented by David T. Biderman and Jasmine W. Wetherell of Perkins Coie LLP and Christopher Van Gundy, Jay T. Ramsey and Khirin A. Bunker of Sheppard Mullin Richter & Hampton LLP.

The case is Milan et al. v. Clif Bar & Co., case number 3:18-cv-02354, in the U.S. District Court for the Northern District of California.

--Additional reporting by Lauren Berg. Editing by Philip Shea.

---

All Content © 2003-2024, Portfolio Media, Inc.