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Mondelez Inks \$8M Deal In Suit Over Sugar In Biscuits

By **Mike Curley**

Law360 (November 16, 2021, 1:02 PM EST) -- A group of consumers is asking a California federal judge to greenlight an \$8 million deal to resolve class action claims that Mondelez International Inc.'s belVita breakfast biscuits misrepresent their sugar content.

In a motion filed Monday, the buyers asked for approval of a nationwide settlement class of all persons who bought the biscuits between November 2013 and the date that the court grants preliminary approval. The court approved two classes in the suit eight months ago.

Mondelez Global LLC, the parent company of Mondelez International, has agreed to pay \$8 million to a non-reversionary common fund, from which class members can make claims for \$0.21 per purchase of the biscuits at the center of the case, up to two per month without proof of purchase, and uncapped with proof of purchase.

According to the motion, the three named plaintiffs will likely ask for \$5,000 service awards, while the class counsel will seek up to one-third of the total settlement fund, or up to \$2.67 million. Any funds remaining after 180 days from the settlement's approval will either be distributed to class members or paid cy pres to the American Heart Association and UCLA Resnick Center for Food Law & Policy.

In addition to the payments, Mondelez has agreed to refrain, for at least three years, from using the allegedly misleading claims on its products if more than 10% of those products' calories come from added sugar.

For instance, the company will not use the term "nutritious" to describe the products in question, or substitute the words "healthy," "balanced" or "wholesome" for "nutritious" on its Steady Energy products.

A spokesperson for Mondelez declined to comment Tuesday.

Representatives for the plaintiffs could not immediately be reached for comment Tuesday.

The consumers, led by named plaintiffs Patrick McMorrow, Marco Ohlin and Melody DiGregorio, alleged in **the 2017 suit** that they didn't realize just how much sugar was in the products when they purchased them and instead believed they were making a healthy choice based on the labels' use of the term "nutritious."

In March 2020, U.S. District Judge Cynthia Bashant denied class certification, finding that the proposed class' damages model **didn't match up** with its claims against the company. In particular, Judge Bashant said their expert's proposed survey for determining damages was at odds with their theory of liability. The consumers had otherwise satisfied the numerosity, commonality, typicality, adequacy and superiority requirements, she said at the time.

In March the following year, however, Judge Bashant **granted** certification to two classes — one in New York and one in California — of all persons who have purchased belVita products that featured the phrases "nutritious steady energy," "nutritious sustained energy" or "nutritious morning energy." In California, the class period begins in November 2013, while in New York it begins in January 2015, according to the order.

The class is represented by Jack Fitzgerald, Paul K. Joseph, Trevor M. Flynn and Melanie Persinger of

Fitzgerald Joseph LLP.

Mondelez is represented by Dean N. Panos, Richard P. Steinken, Kate T. Spelman and Alexander M. Smith of Jenner & Block LLP.

The case is McMorrow et al. v. Mondelez, case number 3:17-cv-02327, in the U.S. District Court for the Southern District of California.

--Additional reporting by Joyce Hanson and Hailey Konnath. Editing by Alyssa Miller.

Update: This story has been updated with Mondelez's response to a request for comment, and with updated counsel information.

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