

Clorox, Buyers Reach \$5.65M Deal Over Tainted Pine-Sol

By **Mike Curley**

Law360 (July 31, 2023, 5:34 PM EDT) -- A proposed class of Pine-Sol buyers is asking a New York federal court to give the go-ahead to a \$5.65 million deal to end litigation alleging that the Clorox Co. sold products that contained harmful bacteria.

In a **motion** filed Friday, the proposed class, led by named plaintiff Bryan Swetz, said the deal would allow for relief beyond what the company's own recall of the products provided, as it will pay buyers who don't have a proof of purchase, while the recall required such proof.

Swetz's suit is one of several **false advertising claims** filed after Clorox's October 2022 recall of Pine-Sol products that had contained the harmful bacteria *Pseudomonas aeruginosa*, which can cause infections in the blood and pneumonia.

In the suit, Swetz alleges that the average consumer would read Pine-Sol's label and understand it to mean that it does not contain harmful bacteria, and therefore the labels were false because of the presence of *Pseudomonas aeruginosa*.

According to Friday's motion, while Clorox has defended this and other actions on several grounds — including arguing that its recall makes such class actions moot and that the suits contain individualized claims not suitable to class treatment — the company has agreed to the deal to avoid further expense and the burden of protracted litigation.

And while the plaintiffs believe in the merits of their claims, Swetz said, a jury may not agree, and a settlement that gets relief for the class soon is preferably to a protracted and zealous "battle of the experts" that would increase the length, risk and costs of litigation.

Swetz told the court that under the settlement, Clorox will establish a \$5.65 million settlement fund to compensate class claims and up to \$1,000 service awards for class representatives, as well as notice and administrative costs, and attorney fees and costs.

Class members with proofs of purchase will receive the full purchase price for any affected products they bought, while those without proof of purchase can receive \$3.57 each for up to two products, according to the motion.

Any money left unspent from the settlement fund will be donated to Equal Justice Works, Swetz said, and none of the funds will revert to Clorox.

The proposed settlement class includes anyone who purchased one or more of the class products between Nov. 1, 2018, and the preliminary approval date, and the settlement will release all claims against Clorox based on the presence of *Pseudomonas aeruginosa*, except for noneconomic claims for physical injuries from exposure to or use of the products.

"The pending settlement pertains to last year's voluntary recall of certain Pine-Sol Scented products and seeks to resolve legal claims by U.S. consumers that the products were inaccurately labeled and advertised," a Clorox spokesperson said Monday. "The Pine-Sol products on shelves today are safe to use as directed."

An attorney for the proposed class declined to comment Monday.

The proposed class is represented by Jason P. Sultzer, Joseph Lipari and Jeremy Francis of The Sultzer Law Group PC, Charles E. Schaffer and David C. Magagna Jr. of Levin Sedran & Berman, Jeffrey K. Brown of Leeds Brown Law PC, and Stephen J. Fearon Jr. and Paul Sweeny of Squitieri & Fearon LLP.

Clorox is represented by Dean N. Panos, Alexander Smith and Kate Spelman of Jenner & Block LLP.

The case is Swetz v. the Clorox Co., case number 7:22-cv-09374, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Collin Krabbe. Editing by Scott Russell.