

Milk Buyers Challenge 'Cane Juice' Labeling Settlement

By **Linda Chiem**

Law360, New York (July 15, 2013, 5:47 PM EDT) -- Two intervening plaintiffs on Friday asked a Florida federal court to set aside a proposed \$800,000 settlement in a putative class action alleging the maker of Horizon, Silk and Land O'Lakes food products misled consumers by deceptively labeling sugar as evaporated cane juice.

Plaintiffs Alex Ang and Kevin Avoy, who launched their own class action in California but are seeking to intervene in the Florida class action, claim they were never adequately told of the proposed \$800,000 settlement with WWF Operating Co., the manufacturer and distributor of Horizon, Silk, International Delight and Land O'Lakes food products that does business as White Wave Foods. The suits accuse the company of misbranding sugar in its products as "evaporated cane juice" to mislead consumers into thinking they were getting healthier ingredients.

Ang and Avoy claim not only that the settlement is wholly inadequate, but also that WWF's attorneys failed to give reasonable individual notice to all members — even the California intervenors — as required by Rule 23 when they filed their motion seeking court approval of the settlement last month.

"Defendant denied intervenors notice under Rule 23 (c)(2), made misstatements and misrepresentations to this court to finalize the settlement, and misrepresented to the court that the 'evaporated cane juice' claims at issue were not viable," the complaint said. "Through those acts and omissions, defendant deprived this court of the opportunity to truly evaluate the fairness of this settlement, and it deprived intervenors their due process rights."

Ang and Avoy take issue with the fact that the proposed settlement leaves the whole class with just \$272,500, after taking out \$200,000 for injunctive relief, \$252,500 for class counsel and the class representative Brenda Singer, and \$75,000 for administrative costs, according to the complaint.

"Through defendant's and its counsels' improper acts and omissions, defendant finalized the settlement of this class regarding over \$1 billion of 'illegal' goods for the paltry sum of \$272,500 for the class," their complaint said. "Such is neither adequate nor fair."

They are now asking for a preliminary injunction to block the settlement.

"The injunction is necessary to serve the public interest and allow intervenors the right to be heard, as well as to allow the court to reconsider the judgment with full knowledge of the insufficiency of the

settlement and of defendant's procedural failures and misrepresentations," the complaint said. "That injunction should then be made permanent at the final hearing of the merits of this cause concerning the propriety of the settlement and need that it be set aside and reconsidered."

Counsel for the class and WWF were not immediately available for comment Monday.

Ang, Avoy and the intervenors are represented by Gregory S. Weiss of Leopold Law PA, DeWitt M. Lovelace and Valerie Lauro Nettles of Lovelace and Associates PA, Pierce Gore of Pratt & Associates, and David P. Wilson of Provost & Umphrey Law Firm LLP.

Singer and the class are represented by Howard Mitchell Bushman, Sarah Clasby Engel and Lance August Harke of Harke Clasby & Bushman LLP.

WWF is represented by David Storrs Wood and Sandra Millor of Akerman Senterfitt LLP and Angela C. Agrusa of Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP.

The case is Singer v. WWF Operating Co., case number 1:13-cv-21232, in the U.S. District Court for the Southern District of Florida.

--Editing by Elizabeth Bowen.