

HAYES PAWLENKO LLP
MATTHEW B. HAYES (SBN 220639)
mhayes@helpcounsel.com
KYE D. PAWLENKO (SBN 221475)
kpawlenko@helpcounsel.com
1414 Fair Oaks Avenue, Unit 2B
South Pasadena, CA 91030
(626) 808-4357

Attorneys for Plaintiff:
JAMES MCMANUS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES MCMANUS, individually and)	
as a representative of a class of)	CASE NO.
participants and beneficiaries on behalf)	
of The Clorox Company 401(k) Plan,)	CLASS ACTION COMPLAINT
)	
Plaintiff,)	AND DEMAND FOR JURY TRIAL
v.)	
)	
THE CLOROX COMPANY; THE)	
EMPLOYEE BENEFITS)	
COMMITTEE OF THE CLOROX)	
COMPANY 401(K) PLAN; and DOES)	
1 to 10 inclusive,)	
)	
Defendants.)	
)	

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

PARTIES

4. The Clorox Plan is a defined contribution, individual account, employee pension benefit plan under 29 U.S.C. § 1002(2)(A) and § 1002(34) and is subject to the provisions of ERISA pursuant to 29 U.S.C. § 1003(a).

5. Defendant Clorox is a manufacturer of consumer cleaning and home care products headquartered in Oakland, California.

6. Clorox is both the Plan sponsor under 29 U.S.C. § 1002(16)(B) and the Plan administrator under 29 U.S.C. § 1002(16)(A) with broad authority over the administration and management of the Plan.

7. The Committee was created by Clorox to assist in the management of the Plan and was delegated with authority to, among other things, direct the trustee with respect to the crediting and distribution of the Plan assets.

8. Clorox and the Committee (together “Defendants”) are both named fiduciaries of the Plan and each exercised discretionary authority and discretionary control over the management and administration of the Plan with respect to the matters alleged herein and were fiduciaries of the Plan within the meaning of 29 U.S.C. § 1002(21)(A).

9. Plaintiff is a resident of California, was previously employed by Clorox in California, and is a current participant of the Plan whose account has been charged with a share of the Plan’s administrative expenses.

1 10. The defendants sued by the fictitious names DOES 1 through 10,
2 inclusive, are Plan fiduciaries unknown to Plaintiff who exercise or exercised
3 discretionary authority or discretionary control respecting the management of the
4 Plan, exercise or exercised authority or control respecting the management or
5 disposition of its assets, or have or had discretionary authority or discretionary
6 responsibility in the administration of the Plan and are responsible or liable in some
7 manner for the conduct alleged in the complaint. Plaintiff will amend this complaint
8 to allege the true names and capacities of such fictitiously named defendants when
9 they are ascertained.
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12
13 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

14 11. As required by 29 U.S.C. § 1102(a)(1), the Clorox Plan is maintained
15 under a written document.
16

17 12. In accordance with 29 U.S.C. § 1103(a), the assets of the Clorox Plan
18 are held in a trust fund.
19

20 13. The Plan is funded by a combination of wage withholdings by Plan
21 participants and Company matching and non-elective contributions, each of which
22 is deposited into the Plan's trust fund.
23

24 14. Participants who contribute to the Plan receive a Company matching
25 contribution of 100% of salary deferrals, up to a maximum of 4% of covered
26 compensation.
27
28

1 15. Participants also receive a non-elective Company contribution in the
2 amount of 6% of covered compensation.

3 16. Upon their deposit into the Plan's trust fund, all participant
4 contributions and Company contributions become assets of the Plan.

5 17. As an individual account, defined contribution retirement plan, the
6 Clorox Plan "provides for an individual account for each participant and for benefits
7 solely upon the amount contributed to the participant's account, and any income,
8 expenses, gains and losses, and any forfeiture of accounts of other participants which
9 may be allocated to such participant's account." 29 U.S.C. § 1002(34).
10

11 18. The Plan incurs expenses for general Plan administrative services such
12 as legal, accounting, and/or recordkeeping services. To pay for these expenses, an
13 annual fee is charged to Plan participants and deducted from their accounts. This
14 annual fee is prorated and deducted on a quarterly basis.
15

16 19. The deduction of these administrative expenses from participant
17 accounts reduces the funds available to participants for distribution and/or investing.
18

19 20. Participants in the Clorox Plan are immediately vested in their own
20 contributions and the Company's matching contributions, along with any income or
21 losses on those balances.
22

23 21. The Company's non-elective contributions, plus any income or losses
24 on those balances, vest in varying rates over a period of 5 years.
25
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1 22. When a participant has a break in service prior to full vesting of the
2 Company's non-elective contributions, the participant forfeits the balance of
3 unvested Company contributions in his or her individual account and Defendants
4 exercise discretionary authority and control over how these Plan assets are thereafter
5 reallocated.
6

7 23. At the discretion of Defendants, forfeited nonvested accounts may be
8 used to pay the Plan's expenses or reduce the Company's contributions to the Plan.
9

10 24. Although Defendants have discretion to use the forfeited funds to pay
11 Plan expenses, and thereby reduce or eliminate the amounts charged to the
12 participants' individual accounts to cover such expenses, Defendants have
13 consistently declined to use any of these Plan assets for such purposes over at least
14 the past 6 years.
15

16 25. Instead, Defendants have consistently chosen to utilize the forfeited
17 funds in the Plan exclusively for the Company's own benefit, to the detriment of the
18 Plan and its participants, by using these Plan assets solely to reduce Company
19 contributions to the Plan.
20

21 26. In 2017, Company non-elective contributions to the Plan were reduced
22 by \$1,023,000 as a result of Defendants' reallocation of forfeited funds for the
23 Company's own benefit, and no forfeited funds were used to pay any part of the
24 \$635,067 in Plan expenses.
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1 27. In 2018, Company non-elective contributions to the Plan were reduced
2 by \$700,000 as a result of Defendants' reallocation of forfeited funds for the
3 Company's own benefit, and no forfeited funds were used to pay any part of the
4 \$958,497 in Plan expenses.
5

6 28. In 2019, Company non-elective contributions to the Plan were reduced
7 by \$1,181,000 as a result of Defendants' reallocation of forfeited funds for the
8 Company's own benefit, and no forfeited funds were used to pay any part of the
9 \$1,143,682 in Plan expenses.
10

11 29. In 2020, Company non-elective contributions to the Plan were reduced
12 by \$650,000 as a result of Defendants' reallocation of forfeited funds for the
13 Company's own benefit, and no forfeited funds were used to pay any part of the
14 \$1,160,889 in Plan expenses.
15

16 30. In 2021, Company non-elective contributions to the Plan were reduced
17 by \$840,000 as a result of Defendants' reallocation of forfeited funds for the
18 Company's own benefit, and no forfeited funds were used to pay any part of the
19 \$1,266,666 in Plan expenses.
20

21 31. In 2022, Company non-elective contributions to the Plan were reduced
22 by \$1,315,000 as a result of Defendants' reallocation of forfeited funds for the
23 Company's own benefit, and no forfeited funds were used to pay any part of the
24 \$1,273,494 in Plan expenses.
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32. While Defendants' reallocation of the forfeitures in the Plan's trust fund to reduce its future non-elective contributions benefitted the Company by reducing its own contribution expenses, it harmed the Plan, along with its participants and beneficiaries, by reducing future Company contributions that would otherwise have increased Plan assets and by causing participants to incur deductions from their individual accounts each year to cover administrative expenses that would otherwise have been covered in whole or in part by utilizing forfeited funds.

CLASS ACTION ALLEGATIONS

33. 29 U.S.C. § 1132(a)(2) authorizes any participant or beneficiary of the Plan to bring an action individually on behalf of the Plan to enforce a breaching fiduciary's liability to the Plan under 29 U.S.C. § 1109(a).

34. In acting in this representative capacity and to enhance the due process protections of unnamed participants and beneficiaries of the Plan, as an alternative to direct individual actions on behalf of the Plan under 29 U.S.C. § 1132(a)(2), Plaintiff seeks to certify this action as a class action on behalf of all Clorox Plan participants and beneficiaries. Plaintiff seeks to certify the following class:

All participants and beneficiaries of the Clorox Plan from
October 18, 2017 through the date of judgment, excluding
Defendants and members of the Committee of the Clorox Plan.

///

1 35. This action meets the requirements of Rule 23 and is certifiable as a
2 class action for the following reasons:

3 a. The class includes over 9,000 members and is so large that
4 joinder of all its members is impracticable.

5
6 b. There are questions of law and fact common to the class because
7 Defendants owed fiduciary duties to the Plan and to all participants and beneficiaries
8 and took the actions alleged herein as to the Plan and not as to any individual
9 participant. Thus, common questions of law and fact include the following, without
10 limitation: Who are the fiduciaries liable for the remedies provided by 29 U.S.C. §
11 1109(a)? Did the fiduciaries of the Plan breach their fiduciary duties to the Plan with
12 respect to their management and allocation of Plan assets? Did fiduciaries of the
13 Plan engage in prohibited transactions with Plan assets? Did fiduciaries of the Plan
14 violate the anti-inurement provision of ERISA by using Plan assets for their own
15 benefit? What are the losses to the Plan resulting from each alleged breach of
16 ERISA? What Plan-wide equitable and other relief should the Court impose to
17 remedy Defendants' alleged breaches?
18
19

20 c. Plaintiff's claims are typical of the claims of the class because
21 Plaintiff was a participant of the Plan during the class period and all participants in
22 the Plan were harmed by the same alleged misconduct by Defendants.
23

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1 d. Plaintiff is an adequate representative of the class because he was
2 a participant of the plan during the class period, has no interests that conflict with
3 any other members of the class, is committed to the vigorous representation of the
4 class, and has engaged experienced and competent attorneys to represent the class.

5
6 e. Prosecution of separate actions for these breaches of fiduciary
7 duties and prohibited transactions by individual participants and beneficiaries would
8 create the risk of (A) inconsistent or varying adjudications that would establish
9 incompatible standards of conduct for Defendants with respect to their discharge of
10 their fiduciary duties to the Plan and personal liability to the Plan under 29 U.S.C. §
11 1109(a), and (B) adjudications by individual participants and beneficiaries regarding
12 these breaches of fiduciary duties, prohibited transactions, and remedies for the Plan
13 would, as a practical matter, be dispositive of the interests of the participants and
14 beneficiaries not parties to the adjudication or would substantially impair or impede
15 those participants' and beneficiaries' ability to protect their interests. Therefore, this
16 action should be certified as a class action under Rule 23(b)(1)(A) or (B).

17
18 36. A class action is the superior method for the fair and efficient
19 adjudication of this controversy because joinder of all participants and beneficiaries
20 is impracticable, the losses suffered by individual participants and beneficiaries may
21 be small and impracticable for individual members to enforce their rights through
22 individual actions, and the common questions of law and fact predominate over
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1 individual questions. Given the nature of the allegations, no class member has an
2 interest in individually controlling the prosecution of this matter, and Plaintiff is
3 aware of no difficulties likely to be encountered in the management of this matter as
4 a class action. Alternatively, then, this action may be certified as a class under Rule
5 23(b)(3) if it is not certified under Rule 23(b)(1)(A) or (B).
6

7
8 37. Plaintiff's counsel, Hayes Pawlenko LLP, will fairly and adequately
9 represent the interests of the Class and is best able to represent the interests of the
10 class under Rule 23(g).
11

12 **FIRST CLAIM**

13 **BREACH OF FIDUCIARY DUTY OF LOYALTY**

14 **(29 U.S.C. 1104(a)(1)(A))**

15
16 38. Plaintiff realleges and incorporates herein by reference each and every
17 allegation contained in the preceding paragraphs of this Complaint as though fully
18 set forth herein.
19

20 39. Pursuant to 29 U.S.C. § 1104(a)(1)(A), Defendants were required to
21 discharge their duties to the Clorox Plan "solely in the interest of the participants
22 and beneficiaries" and "for the exclusive purpose of: (i) providing benefits to
23 participants and their beneficiaries; and (ii) defraying reasonable expenses of
24 administering the plan."
25

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1 40. Defendants have continually breached this duty of loyalty with respect
2 to their control and management of the Plan's assets throughout the class period by
3 choosing to utilize forfeited funds in the Plan for the benefit of the Company rather
4 than solely in the interest of the participants and beneficiaries.
5

6 41. Instead of acting solely in the interest of Plan participants by utilizing
7 forfeited funds in the Plan to reduce or eliminate the administrative expenses charged
8 to their individual accounts, Defendants chose to use these Plan assets for the
9 exclusive purpose of reducing its own future contributions to the Plan, thereby
10 saving the Company millions of dollars at the expense of the Plan which received
11 decreased Company contributions and its participants and beneficiaries who were
12 forced to incur avoidable expense deductions to their individual accounts.
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15

16 42. As a direct and proximate result of Defendants' fiduciary breaches
17 described herein, the Plan suffered injury and loss for which they are personally
18 liable and are subject to appropriate equitable relief, pursuant to 29 U.S.C. § 1109,
19 including, without limitation, the disgorgement of all ill-gotten profits to Defendants
20 resulting from the breach of their duty of loyalty.
21
22

23 43. Each Defendant knowingly participated in the breach of the other
24 Defendants, knowing that such acts were a breach, enabled other Defendants to
25 commit a breach by failing to lawfully discharge its own fiduciary duties, knew of
26 the breach by the other Defendants and failed to make any reasonable effort under
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1 the circumstances to remedy the breach. Thus, each Defendant is liable for the losses
2 caused by the breach of its co-fiduciary under 29 U.S.C. § 1105(a).

3 **SECOND CLAIM**

4 **BREACH OF FIDUCIARY DUTY OF PRUDENCE**

5 **(29 U.S.C. 1104(a)(1)(B))**

6
7 44. Plaintiff realleges and incorporates herein by reference each and every
8 allegation contained in the preceding paragraphs of this Complaint as though fully
9 set forth herein.
10

11 45. Pursuant to 29 U.S.C. § 1104(a)(1)(B), Defendants were required to
12 discharge their duties with respect to the Clorox Plan “with the care, skill, prudence,
13 and diligence under the circumstances then prevailing that a prudent man acting in
14 a like capacity and familiar with such matters would use in the conduct of an
15 enterprise of a like character and with like aims.”
16
17

18 46. Defendants have continuously breached their duty of prudence under
19 29 U.S.C. § 1104(a)(1)(B) throughout the class period by declining to use the
20 forfeited funds in the plan to eliminate the administrative expenses charged to
21 participant accounts and instead using such Plan assets to reduce the Company’s own
22 contributions to the Plan.
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24

25 47. Defendants failed to engage in a reasoned and impartial decision-
26 making process to determine that using the forfeited funds in the Plan to reduce the
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28

1 Company's own contribution expenses, as opposed to the administrative expenses
2 charged to participant accounts, was in the best interest of the Plan's participants or
3 was prudent, and failed to consider whether participants would be better served by
4 another use of these Plan assets after considering all relevant factors.
5

6 48. By declining to use forfeited funds in the Plan to eliminate the
7 administrative expenses charged to participant accounts, and instead using such Plan
8 assets to reduce the Company's own contribution expenses, Defendants caused the
9 Plan to receive fewer contributions that would otherwise have increased Plan assets
10 and caused participants to incur expense deductions from their individual accounts
11 that would otherwise have been covered in whole or in part by utilizing the forfeited
12 funds to pay Plan expenses.
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16 49. As a direct and proximate result of Defendants' fiduciary breaches
17 described herein, the Plan suffered injury and loss for which Defendants are
18 personally liable and are subject to appropriate equitable relief, pursuant to 29 U.S.C.
19 § 1109, including, without limitation, the disgorgement of all ill-gotten profits to
20 Defendants resulting from the breach of their duty of prudence.
21
22

23 50. Each Defendant knowingly participated in the breach of the other
24 Defendants, knowing that such acts were a breach, enabled other Defendants to
25 commit a breach by failing to lawfully discharge its own fiduciary duties, knew of
26 the breach by the other Defendants and failed to make any reasonable effort under
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1 the circumstances to remedy the breach. Thus, each Defendant is liable for the losses
2 caused by the breach of its co-fiduciary under 29 U.S.C. § 1105(a).

3
4 **THIRD CLAIM**

5 **BREACH OF ERISA’S ANTI-INUREMENT PROVISION**

6 **(29 U.S.C. 1103(c)(1))**

7
8 51. Plaintiff realleges and incorporates herein by reference each and every
9 allegation contained in the preceding paragraphs of this Complaint as though fully
10 set forth herein.

11
12 52. Pursuant to 29 U.S.C. § 1103(c)(1), “the assets of a plan shall never
13 inure to the benefit of any employer and shall be held for the exclusive purpose of
14 providing benefits to participants in the plan and their beneficiaries and defraying
15 reasonable expenses of administering the plan.”

16
17 53. The balance in a participant’s accounts that a participant forfeits when
18 incurring a break in service prior to full vesting of the Company’s contributions to
19 the participant’s account is an asset of the Clorox Plan.

20
21 54. By electing to utilize these Plan assets as a substitute for the Company’s
22 own future contributions to the Plan, thereby saving the Company millions of dollars
23 in contribution expenses, Defendants caused the assets of the plan to inure to the
24 benefit of the employer in violation of 29 U.S.C. 1103(c)(1).

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55. Each Defendant is personally liable under 29 U.S.C. § 1109(a) to make good to the Plan any losses to the Plan resulting from violation of ERISA’s anti-inurement provision as alleged in this claim and to restore to the Plan all profits secured through their use of Plan assets, and is subject to other equitable or remedial relief as appropriate.

FOURTH CLAIM

PROHIBITED TRANSACTIONS

(29 U.S.C. 1106(a)(1))

56. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

57. 29 U.S.C. § 1106(a)(1) provides that “[a] fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect . . . exchange . . . of any property between the plan and a party in interest . . . or use by or for the benefit of a party in interest, of any assets of the plan.”

58. Clorox and the Committee are parties in interest, as that term is defined under 29 U.S.C. §1002 (14), because they are Plan fiduciaries and because Clorox is the employer of Plan participants.

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1 59. By electing to use forfeited funds in the Plan as a substitute for future
2 employer contributions to the Plan, and thereby saving the Company millions of
3 dollars in contribution expenses, Defendants caused the Plan to engage in
4 transactions that constituted a direct or indirect exchange of existing Plan assets for
5 future employer contributions and/or a use of Plan assets by or for the benefit of a
6 party in interest.
7

8
9 60. As a result of these prohibited transactions, Defendants caused the Plan
10 to suffer losses in the amount of the Plan assets that were substituted for future
11 employer contributions and the lost investment returns on those assets.
12

13 61. Each Defendant is personally liable under 29 U.S.C. § 1109(a) to make
14 good to the Plan any losses to the Plan resulting from the prohibited transactions
15 alleged in this claim, to reverse and/or correct the prohibited transactions, to restore
16 to the Plan all assets and profits obtained through the use of Plan assets and is subject
17 to other equitable or remedial relief as appropriate.
18

19
20 **FIFTH CLAIM**

21 **PROHIBITED TRANSACTIONS**

22 **(29 U.S.C. 1106(b)(1))**

23
24 62. Plaintiff realleges and incorporates herein by reference each and every
25 allegation contained in the preceding paragraphs of this Complaint as though fully
26 set forth herein.
27
28

1 68. This claim is asserted against Clorox only.

2 69. Clorox oversaw the overall governance of the Plan and had the
3 authority to delegate fiduciary responsibilities.
4

5 70. Clorox created the Committee to assist in the management of the Plan
6 and delegated to the Committee the authority and discretion to direct the trustee with
7 respect to the crediting and distribution of the Plan assets.
8

9 71. A monitoring fiduciary must ensure that the person to whom it
10 delegated fiduciary duties is performing its fiduciary obligations and must take
11 prompt and effective action to protect the plan and participants when the delegate
12 fails to properly discharge its duties. To the extent any of the fiduciary
13 responsibilities of Clorox were delegated to another fiduciary, the Company's
14 monitoring duties included an obligation to ensure that any delegated tasks or
15 responsibilities were being performed in accordance with ERISA's fiduciary
16 standards.
17
18
19

20 72. Clorox breached its fiduciary monitoring standard with respect to the
21 Committee by, among other things, failing to monitor the Committee's management
22 and use of forfeited funds in the Plan and by failing to take steps to ensure that the
23 Committee was discharging its duties with respect to Plan assets for the sole benefit
24 of Plan participants and beneficiaries.
25
26

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73. As a direct result of the breach of its fiduciary duty to monitor, the Plan suffered losses.

PRAYER FOR RELIEF

For these reasons, Plaintiff, on behalf of the Plan and all similarly situated Plan participants and beneficiaries, respectfully requests that the Court:

- find and declare that Defendants have breached their fiduciary duties and engaged in prohibited conduct and transactions as described above;
- find and adjudge that Defendants are personally liable to make good to the Plan all losses to the Plan resulting from each violation of ERISA described above, and to otherwise restore the Plan to the position it would have occupied but for these violations;
- order the disgorgement of all assets and profits secured by Defendants as a result of each violation of ERISA described above;
- determine the method by which Plan losses under 29 U.S.C. § 1109 should be calculated;
- order Defendants to provide all accounting necessary to determine the amounts Defendants must make good to the Plan under 29 U.S.C. § 1109(a);

///

- remove the fiduciaries who have breached their fiduciary duties and enjoin them from future ERISA violations;
- surcharge against Defendants and in favor of the Plan all amounts involved in any transactions which such accounting reveals were improper, excessive and/or in violation of ERISA;
- certify the class, appoint Plaintiff as a class representative, and appoint Hayes Pawlenko LLP as class counsel;
- award to Plaintiff and the class their attorneys' fees and costs under 29 U.S.C. § 1132(g)(1) and the common fund doctrine;
- order the payment of interest to the extent it is allowed by law; and
- grant other equitable or remedial relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of these claims by jury to the extent authorized by law.

DATED: October 18, 2023

HAYES PAWLENKO LLP

By: /s/Kye D. Pawlenko
Matthew B. Hayes
Kye D. Pawlenko
Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

James McManus

(b) County of Residence of First Listed Plaintiff San Joaquin, California
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Hayes Pawlenko LLP, 1414 Fair Oaks Avenue, Suite 2B,

DEFENDANTS

The Clorox Company

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☐ 2 U.S. Government Defendant

☒ 3 Federal Question
(U.S. Government Not a Party)

☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice PERSONAL INJURY 365 Personal Injury – Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities– Employment 446 Amer. w/Disabilities–Other 448 Education PRISONER PETITIONS HABEAS CORPUS 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty OTHER 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee– Conditions of Confinement	625 Drug Related Seizure of Property 21 USC § 881 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation ☒ 791 Employee Retirement Income Security Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 835 Patent–Abbreviated New Drug Application 840 Trademark 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS–Third Party 26 USC § 7609	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 485 Telephone Consumer Protection Act 490 Cable/Sat TV 850 Securities/Commodities/ Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District (specify)

☐ 6 Multidistrict Litigation–Transfer

☐ 8 Multidistrict Litigation–Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 USC 1132

Brief description of cause:

Breach of fiduciary duties; anti-inurement; prohibited transactions

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

☐ EUREKA-MCKINLEYVILLE

DATE

October 18, 2023

SIGNATURE OF ATTORNEY OF RECORD

/s/Kye D. Pawlenko

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Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
 - (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”

Date and Attorney Signature. Date and sign the civil cover sheet.