

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Karen Poteat,	)	Case No.: 1:15-cv-02306
	)	
Plaintiff,	)	Judge James S. Gwin
	)	
v.	)	
	)	
Visionworks of America, Inc.,	)	
	)	
Defendant.	)	
Cheryl Lenart,	)	Case No.: 1:16-cv-2505
	)	
Plaintiff,	)	Judge James S. Gwin
	)	
v.	)	
	)	
Visionworks of America, Inc.,	)	
	)	
Defendant.	)	

**Defendant's Notice Of Joinder In And Response To Plaintiffs' Motion For Preliminary Approval Of Class Action Settlement Agreement**

Defendant Visionworks of America, Inc. ("Visionworks") respectfully submits this Notice Of Joinder In And Response to Plaintiffs' January 10, 2017 request for an Order from this Court (a) preliminarily approving the settlement, (b) conditionally certifying a class for purposes of settlement only, (c) approving notice to the settlement class, and (d) scheduling a final approval hearing. In support thereof, Visionworks states as follows:

1. Visionworks joins in the relief that Plaintiffs seek, namely approval of the parties' proposed class settlement. Visionworks believes (as do Plaintiffs) that a settlement class is properly conditionally certified here under the legal standards applicable to class-action settlements, and that the settlement itself is fair, adequate, and reasonable.

2. However, Visionworks does not endorse all factual and legal statements in Plaintiffs' supporting brief. As to the criticisms of Visionworks' use of BOGO promotions, Plaintiffs' brief properly acknowledges that Visionworks has denied, and continues to deny, Plaintiffs' allegations, and contends that those allegations, and Plaintiffs' causes of action in this case, are without merit. As shown in Visionworks' vigorous defense of its practices in this litigation, Visionworks stands ready to defeat Plaintiffs' allegations and claims on summary judgment and/or at trial on the basis of fact and expert evidence.

3. In addition, as Plaintiffs' brief makes clear, it asserts the propriety of certification of a class here for settlement purposes. Visionworks joins in that requested relief, but reserves the right to oppose certification of a class here for purposes of trial in the event that the settlement is for any reason not consummated. See Settlement Agreement §§ 2.1 (reciting that "Visionworks and the Released Parties deny that any violation of any such law, rule or regulation has ever occurred, as well as the validity of each of the claims and prayers for relief asserted in the Litigation" and that proceedings in connection with settlement do not constitute "evidence of any presumption, concession, or admission by any of the Released Parties of the truth of any fact alleged

by Plaintiffs"); 2.2.1 (expressly reserving Visionworks' "rights to oppose certification of any plaintiff's claim in future proceedings").

4. Visionworks acknowledges its obligations under 28 U.S.C. § 1715(b) to "serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement." Visionworks will serve the required notice no later than January 20, 2017 (i.e., within ten days of Plaintiff's filing the proposed settlement with the Court) and will file a declaration with the Court concerning its compliance with § 1715(b) in advance of the fairness hearing.

#### CONCLUSION

WHEREFORE, subject to the foregoing statements, Visionworks respectfully requests that the Court grant the relief requested in Plaintiffs' preliminary approval motion, and enter an Order (a) preliminarily approving the settlement, (b) conditionally certifying a class only for purposes of settlement, (c) approving notice to the settlement class, and (d) scheduling a final approval hearing.

Date: January 10, 2017

Respectfully submitted,

/s/ Ronald D. Holman, II

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**CERTIFICATE OF SERVICE**

The foregoing was filed through the Court's electronic filing system this 10th day of January 2017. Notice of this filing will be sent to all parties listed on the Court's electronic filing system. Parties may access this filing through the Court's system.

*/s/Ronald D. Holman, II* \_\_\_\_\_  
One of the Attorneys for Defendant

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