

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

BLAIR DOUGLASS, on behalf of himself and all  
similarly situated individuals,

Plaintiff,

v.

OPTAVIA LLC,

Defendant.

Civil Action No. 2:22-cv-00594-CCW

**SETTLEMENT AGREEMENT**

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Settlement Agreement

**1. Introduction.** This Agreement (all capitalized terms shall have the meanings set forth in Section 2) is entered into by and between Optavia and Named Plaintiff, individually and on behalf of the Settlement Class.

- 1.1. Optavia operates and controls the Website, which is open to consumers in the United States through the internet.
- 1.2. This Agreement applies to the Website, New Websites and Mobile Apps, and Subsequently Acquired Websites and Mobile Apps, but not Subsequently Abandoned Websites and Mobile Apps.
- 1.3. Named Plaintiff uses screen reader auxiliary aids to access digital information and is a person with a disability as that term is used in the ADA. Named Plaintiff has attempted to patronize the Website and intends to do so again in the future.
- 1.4. On or about April 21, 2022, Named Plaintiff filed this Lawsuit, alleging that Optavia does not have adequate corporate policies and practices that are reasonably calculated to cause the Website to be Accessible to Blind or Visually Disabled individuals, in violation of the ADA.
- 1.5. Optavia denies Named Plaintiff's allegations but the Parties nevertheless wish to effect a complete resolution and settlement of all claims, disputes, and controversies relating to the allegations of Named Plaintiff and the Settlement Class, and to resolve their differences and disputes by settling this Lawsuit.
- 1.6. This Agreement is binding on Optavia's subsidiaries, successors, and assigns.

**2. Definitions.**

- 2.1. **"Accessibility Consultant"** means the person or company designated by Optavia to serve the purposes of Section 7 of this Agreement.
- 2.2. **"Accessibility Coordination Team"** means the team designated by Optavia to serve the purposes of Section 6 of this Agreement.
- 2.3. **"Accessibility Statement"** means the statement required by Section 10 of this Agreement that must demonstrate Optavia's commitment to implementing Accessible services to Blind or Visually Disabled individuals.
- 2.4. **"Accessibility Strategy"** means the corrective action strategy required by Section 9 of this Agreement, *i.e.*, an Optavia internal document that outlines the practices

put in place by Optavia, which going forward, will ensure the website is (a) remediated; and (b) stays accessible after remediation.

- 2.5. **“Accessibility Support Personnel”** means the individuals providing the support required by Section 14 of this Agreement.
- 2.6. **“Accessible”** or **“Accessibility”** refers to digital content that provides effective communication to all users, generally, in accordance with the success criteria of the WCAG 2.1.
- 2.7. **“ADA”** means Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181 *et seq.*, and its implementing regulations.
- 2.8. **“Agreement”** means this settlement agreement.
- 2.9. **“Agreement Term”** means the time from the Effective Date through the end of three (3) years from the Effective Date.
- 2.10. **“Annual End-User Accessibility Testing”** means the annual testing required by Section 16 of this Agreement.
- 2.11. **“Annual Report”** means the document Optavia shall submit to Class Counsel on the Effective Date’s anniversary date during the Agreement Term pursuant to Section 22 of this Agreement, stating the status of this Agreement’s implementation and identifying any outstanding issues on which the Parties are in disagreement.
- 2.12. **“Blind or Visually Disabled”** means, with respect to an individual, a physical impairment that substantially limits the major life activity of seeing, pursuant to the ADA, 42 U.S.C. § 12102(1)-(2).
- 2.13. **“Class Counsel”** means Kevin W. Tucker and Kevin Abramowicz of East End Trial Group LLC.
- 2.14. **“Client Support Team”** means Optavia’s employees who are responsible for assisting individuals who are Blind or Visually Disabled within published hours of operation.
- 2.15. **“Costs”** means all out-of-pocket expenses reasonably incurred, and shall include (but not be limited to) amounts payable to experts.
- 2.16. **“Court”** means the United States District Court for the Western District of Pennsylvania.

- 2.17. **“Digital Properties”** means the Website, any New Websites and Mobile Apps, and any Subsequently Acquired Websites and Mobile Apps.
- 2.18. **“Dispute Resolution Procedure”** means the process described in Section 23 of this Agreement.
- 2.19. **“Effective Date”** means the date on which all conditions precedent set forth in Section 3 of this Agreement are completed.
- 2.20. **“Final Approval”** means the period thirty-one (31) days following approval of this Agreement given in a written order by a United States District Court Judge or Magistrate of competent jurisdiction after notice to the Settlement Class and hearing, provided no appeal is filed during this period. If an appeal is filed, then Final Approval shall mean the period thirty-one (31) days following the exhaustion of any and all appeal(s).
- 2.21. **“First Extended Agreement Term”** means the time from the end of the Agreement Term through the end of four (4) years from the Effective Date.
- 2.22. **“Initial Accessibility Audit”** means the initial audit required by Section 8 of this Agreement.
- 2.23. **“Injunctive Releasing Parties”** means Named Plaintiff and the Settlement Class Members, and each of their executors, successors, heirs, assigns, administrators, agents, and representatives.
- 2.24. **“Lawsuit”** means *Douglass v. Optavia LLC*, Case No. 2:22-cv-00594-CCW (W.D. Pa.).
- 2.25. **“Letter of Accessibility”** means the letter issued by the Accessibility Consultant at the end of the Agreement Term that confirms the Digital Properties are Accessible, explains the testing standards, and summarizes both the remediation efforts Optavia has taken during the Agreement Term (and, if applicable, the First Extended Agreement Term and the Second Extended Agreement Term) and the policies and practices Optavia has adopted to maintain the Digital Properties in an Accessible manner going forward.
- 2.26. **“Long-Form Notice”** means the long-form class notice attached to the Agreement as Agreement Exhibit 1.
- 2.27. **“Modified Bug Fix Priority”** means the policies required by Section 13 of this Agreement.

- 2.28. **“Named Plaintiff”** means Blair Douglass.
- 2.29. **“New Websites and Mobile Apps”** means any website or mobile application that Optavia develops, starts to operate, and makes publicly available to consumers in the United States after the Effective Date of this Agreement.
- 2.30. **“Notice Deadline”** means the deadline for publishing notice to be set by the Court as part of the Preliminary Approval process.
- 2.31. **“Optavia”** means Optavia LLC.
- 2.32. **“Optavia Parties”** means Optavia and its present and former parents, affiliates and subsidiaries and each of their respective present, former, or future officers, directors, employees, shareholders, administrators, executors, affiliates, successors, and assigns.
- 2.33. **“Optavia Personnel”** means all persons who are employed by Optavia and who have managerial responsibility for the design and development of the Website, New Websites and Mobile Apps, or Subsequently Acquired Websites and Mobile Apps.
- 2.34. **“Optavia Settlement Contact”** means an Optavia employee designated as the initial point of contact for Class Counsel with respect to issues concerning this Agreement. Optavia shall notify Class Counsel in writing of the employee designated as the Optavia Settlement Contact within ten (10) days of the Effective Date. Optavia shall also notify Class Counsel in writing should a new employee be designated as the Optavia Settlement Contact during the Agreement Term. Such notice shall be required within ten (10) days of designation of the new Optavia Settlement Contact.
- 2.35. **“Parties”** refers to Optavia, Named Plaintiff, and the Settlement Class.
- 2.36. **“Party”** refers to Optavia, Named Plaintiff, or the Settlement Class.
- 2.37. **“Preliminary Approval”** means the initial approval by the Court of the terms of this Agreement, which will occur before any notice being provided in accordance with this Agreement.
- 2.38. **“Released Injunctive Claims”** means any and all claims, rights, demands, charges, complaints, actions, suits, and causes of action, whether known or unknown, suspected or unsuspected, accrued or unaccrued, for injunctive, declaratory, or non-monetary relief, based on the Accessibility of the Digital Properties to persons who are limited in the life activity of seeing and who use screen reader auxiliary aids to access digital information, including any injunctive, declaratory, or non-monetary

claims under: (i) the ADA; and (ii) any state or local statutory, administrative, regulatory, or code provisions that either (a) directly incorporate the ADA or (b) set forth standards or obligations coterminous with or equivalent to the ADA. The Released Injunctive Claims cover all conduct concerning the Accessibility of the Digital Properties through the Agreement Term and, if applicable, the First Extended Agreement Term and Second Extended Agreement Term.

- 2.39. **“Second Extended Agreement Term”** means the time from the end of the First Extended Agreement Term through the end of five (5) years from the Effective Date.
- 2.40. **“Semi-Annual Automated Accessibility Audit”** means the semi-annual audit required by Section 15 of this Agreement.
- 2.41. **“Settlement Class”** or **“Settlement Class Members”** means all Blind or Visually Disabled individuals who use screen reader auxiliary aids to navigate digital content and who have accessed, attempted to access, or been deterred from attempting to access, or who may access, attempt to access, or be deterred from attempting to access the Website from the United States.
- 2.42. **“Settlement Website”** means the search-engine-optimized website operated by the stipulated class action settlement administrator and located at <https://www.optaviaADAsettlement.com>.
- 2.43. **“Status Report”** means a written evaluation that (a) identifies content, features, and services on the Digital Properties that are not Accessible to individuals who use screen reader auxiliary aids, and (b) recommends steps Optavia must take to ensure their remediation.
- 2.44. **“Subsequently Abandoned Websites and Mobile Apps”** means any website or mobile application, including the Digital Properties, that Optavia ceases to operate or make publicly available to consumers in the United States after the Effective Date of this Agreement.
- 2.45. **“Subsequently Acquired Websites and Mobile Apps”** means any website or mobile application that Optavia acquires from a third party, starts to operate, and makes publicly available to consumers in the United States after the Effective Date of this Agreement.
- 2.46. **“Third-Party Content”** means cloud-based technologies provided by someone other than Optavia and inserted as lines of JavaScript on the Digital Properties in order to transfer data and content between the technology provider and consumers’



browsers. Examples of Third-Party Content include instant messengers (*e.g.*, LiveChat), technology that allows consumers to make installment payments (*e.g.*, Klarna, Affirm, Sezzle, and Afterpay), accessibility overlays (*e.g.*, accessiBe and UserWay), and advertisements displayed in pop-up windows.

2.47. “**WCAG 2.1**” means the Web Content Accessibility Guidelines 2.1, including the WAI-ARIA.

2.48. “**Website**” means the digital property located at <https://www.optavia.com/>.

**3. Conditions Precedent.** This Agreement shall be conditioned and effective only upon the occurrence of all of the following events.

3.1. The Court grants Preliminary Approval of this Agreement and orders certification of the Settlement Class and notice to the Settlement Class Members.

3.2. Notice is provided to the Settlement Class Members in accordance with Section 27 of this Agreement.

3.3. The Court grants Final Approval of this Agreement and enters judgment in accordance with the terms herein after a fairness hearing has been conducted and all such orders and approvals have become final and non-appealable.

**4. Optavia Shall Make the Digital Properties Accessible.** Optavia shall ensure Blind or Visually Disabled individuals have full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations Optavia provides by and through the Digital Properties as provided for in this Section.

4.1. Optavia shall ensure the U.S. portions of the Website are Accessible by the end of the Agreement Term.

4.2. Optavia shall ensure the U.S. portions of any New Websites and Mobile Apps are Accessible at the time of their release.

4.3. Optavia shall ensure the U.S. portions of any Subsequently Acquired Websites and Mobile Apps are Accessible within eighteen (18) months of their acquisition.

4.4. Notwithstanding anything to the contrary contained in this Agreement, it is agreed and understood that Optavia shall not be required to take any actions that would result in an undue burden as defined in 28 C.F.R. § 36.104.

**5. Third-Party Content.**

- 5.1. After the Effective Date of this Agreement, for each new, renewed, or renegotiated contract with a vendor of Third-Party Content, Optavia shall request that the vendor provide Accessible content. If, during this contracting process, Optavia issues a request for a proposal for development or inclusion of Third-Party Content on the Digital Properties, then Optavia shall include Accessibility as a criterion. For Third-Party Content that is not subject to a written contract, Optavia shall seek out such content that ensures Accessibility.
- 5.2. If, after following the process set forth in Section 5.1, Optavia is unable to confirm Accessible Third-Party Content, it shall advise Class Counsel annually, consistent with Section 22, provided, however, that nothing herein shall be construed to require or cause Optavia to violate any contractual provision (including, but not limited to, confidentiality) with any of its vendors.

**6. Accessibility Coordination Team.**

- 6.1. Within three (3) months of the Effective Date of this Agreement, Optavia shall designate a team of its employees as the Accessibility Coordination Team for the Digital Properties. Optavia shall also notify Class Counsel in writing when such designation is complete.
- 6.2. The Accessibility Coordination Team shall be responsible for coordinating Optavia's compliance with Sections 4 through 16 of this Agreement.
- 6.3. Optavia shall maintain the Accessibility Coordination Team through at least the Agreement Term.

**7. Accessibility Consultant and Status Report.**

- 7.1. Within six (6) months of the Effective Date of this Agreement, Optavia shall appoint or retain an Accessibility Consultant who is knowledgeable about digital accessibility, the ADA, and Accessibility. Optavia shall inform Class Counsel of its selection of an Accessibility Consultant. If Class Counsel or Named Plaintiff object to Optavia's selection, the Parties will work in good faith to resolve such objection pursuant to the Dispute Resolution Procedure.
- 7.2. The Accessibility Consultant's duties shall include: (a) assisting Optavia with conducting the Initial Accessibility Audit; (b) advising Optavia as to how to make the Digital Properties Accessible; (c) verifying that the Digital Properties are Accessible in the final Letter of Accessibility; and (d) verifying Optavia's

compliance with Sections 5.1, 5.2 and 5.3 of this Agreement regarding Third-Party Content.

- 7.3. Before each anniversary date of the Effective Date of this Agreement, the Accessibility Consultant shall provide Optavia with a Status Report. In the Status Report, the Accessibility Consultant shall: (a) identify content, features, and services on the Digital Properties that are not Accessible to individuals who use screen reader auxiliary aids; and (b) recommend steps Optavia must take to ensure the Accessibility of the Digital Properties.
- 7.4. Optavia shall include copies of the Status Report as an exhibit to the Annual Report provided to Class Counsel on the anniversary of the Effective Date during the Agreement Term.
- 7.5. Optavia shall notify Class Counsel if it appoints or retains a new Accessibility Consultant during the Agreement Term within one (1) month of any change.

**8. Initial Accessibility Audit.**

- 8.1. Within nine (9) months of the Effective Date of this Agreement, Optavia shall complete the Initial Accessibility Audit.
- 8.2. The Initial Accessibility Audit shall be conducted in a professional manner and shall be benchmarked by appropriate processes, including automated and end-user testing, consistent with the Accessibility Consultant's recommendations.
- 8.3. Optavia shall include the results of the Initial Accessibility Audit as an exhibit to the Annual Report due to Class Counsel on the Effective Date's first anniversary.

**9. Accessibility Strategy.**

- 9.1. Within eighteen (18) months of the Effective Date of this Agreement, Optavia shall develop and implement an Accessibility Strategy designed to ensure that the Digital Properties are Accessible.
- 9.2. In developing and implementing the Accessibility Strategy, Optavia shall consider this Agreement, the Initial Accessibility Audit, the Accessibility Statement, and the recommendations and Status Reports of the Accessibility Consultant.
- 9.3. Within eighteen (18) months of the Effective Date of this Agreement, Optavia shall provide a copy of the Accessibility Strategy to Class Counsel.

- 9.4. Within eighteen (18) months of the Effective Date of this Agreement, Optavia shall disseminate the Accessibility Strategy among Optavia Personnel.

**10. Accessibility Statement.**

- 10.1. Within nine (9) months of the Effective Date of this Agreement, Optavia shall develop the Accessibility Statement.
- 10.2. The Accessibility Statement shall, at minimum: (a) state that Optavia is making efforts to maintain and increase access to the goods, services, facilities, privileges, advantages, and accommodations provided by and through the Digital Properties; (b) solicit feedback from visitors to the Digital Properties as to how the accessibility of the Digital Properties can be improved; and (c) include Accessible methods of submitting Accessibility related questions, comments, and complaints, including an email address and the telephone number of Optavia's Client Support Team.
- 10.3. Within nine (9) months of the Effective Date of this Agreement, Optavia shall provide a copy of the Accessibility Statement to Class Counsel.
- 10.4. Within twelve (12) months of the Effective Date of this Agreement, Optavia shall post the Accessibility Statement on the Website.
- 10.5. Within eighteen (18) months of the Effective Date of this Agreement, Optavia shall add an invisible link at the beginning of the Website, directing consumers using screen readers to the Accessibility Statement.
- 10.6. At the time of their release, Optavia shall add an invisible link at the beginning of any New Websites and Mobile Apps, directing consumers using screen readers to the Accessibility Statement located on the Website.
- 10.7. Within six (6) months of their acquisition, Optavia shall add an invisible link at the beginning of any Subsequently Acquired Websites and Mobiles Apps, directing consumers using screen readers to the Accessibility Statement.
- 10.8. The Annual Report shall state the status of the implementation of Section 10.

**11. Accessibility Training.**

- 11.1. Optavia shall train all employees responsible for website or mobile application design, development, or maintenance to ensure the future design, development, and maintenance of the Digital Properties are and remain Accessible within eighteen (18) months of the Effective Date of this Agreement. It is at Optavia's discretion whether this training is conducted in-house or by an outside vendor.

- 11.2. To the extent Optavia has already provided Accessibility training to all current employees responsible for website or mobile application design, development, or maintenance, Optavia shall provide refresher Accessibility training to those employees within eighteen (18) months of the Effective Date of this Agreement.
  - 11.3. Optavia shall provide Accessibility training to all newly-hired employees responsible for website or mobile application design, development, or maintenance within 180 days of their hire date.
  - 11.4. Optavia shall provide refresher Accessibility training to all current employees responsible for website or mobile application design, development, or maintenance on an annual basis commencing in 2023.
  - 11.5. During the Agreement Term and consistent with the annual reporting requirements in Section 22 of this Agreement, Optavia shall provide copies of all Accessibility training materials to Class Counsel for review and to offer feedback. If Accessibility training is provided digitally, Optavia shall provide Class Counsel with a written summary of the training and copies of all materials provided for download by trainees.
- 12. Customer Service Training.** Optavia shall ensure its Client Support Team are trained to assist individuals who are Blind or Visually Disabled who encounter difficulties using the Digital Properties with screen reader auxiliary aids, and to timely assist such individuals within published hours of operation.
- 13. Modified Bug Fix Priority.**
- 13.1. Within eighteen (18) months of the Effective Date of this Agreement, Optavia shall make reasonable efforts to modify its existing bug fix policies, practices, and procedures to include the elimination of bugs that create Accessibility barriers, including those that prohibit effective communication or impair the Accessibility of the Digital Properties.
  - 13.2. Optavia shall ensure that any bugs that create Accessibility barriers to the Digital Properties are remedied with the same level of priority (*e.g.*, speed, resources used to remedy, *etc.*) as any other equivalent loss of function for individuals who are not Blind or Visually Disabled.
- 14. Accessibility Support.**
- 14.1. Within eighteen (18) months of the Effective Date of this Agreement, Optavia shall provide support during regular business hours to assist Blind or Visually Disabled individuals with resolving Accessibility issues regarding the Digital Properties.

Optavia shall train its already-existing Client Support Team to review, handle, or escalate Accessibility related questions, comments, and complaints generated by the telephone number or email address in the Accessibility Statement.

- 14.2. During the Agreement Term and consistent with the annual reporting requirements in Section 22 of this Agreement, Optavia shall provide copies of all training materials distributed to the Client Support Team to Class Counsel.
- 14.3. Any complaint or issue that concerns or relates to compliance with the terms of this Agreement that is made to the Accessibility Support Personnel shall be forwarded to Class Counsel and the Client Support Team, who then shall coordinate internally to ensure that any noncompliance reported by a Blind or Visually Disabled individual is resolved as soon as possible, but no later than one hundred and twenty (120) days after such noncompliance is reported to the Accessibility Coordination Team.
- 14.4. To the extent any such complaint or issue is not resolved within the 120-day period, it shall be subject to the Dispute Resolution Procedure.

**15. Semi-Annual Automated Accessibility Audit.**

- 15.1. During the Agreement Term, Optavia, or a consultant retained on its behalf, shall perform Semi-Annual Automated Accessibility Audits to evaluate whether the Digital Properties are Accessible.
- 15.2. The Optavia Settlement Contact shall forward the results of the Semi-Annual Automated Accessibility Audit to Class Counsel as part of the next Annual Report that Optavia must provide Class Counsel pursuant to this Agreement.

**16. Annual End-User Accessibility Testing.**

- 16.1. During the Agreement Term, the Accessibility Consultant shall perform Annual End-User Accessibility Testing, with such testing to be performed by individuals who are Blind or Visually Disabled or who have training and experience in the manner in which Blind or Visually Disabled individuals use screen readers to navigate, browse, and conduct business online, to evaluate whether the Digital Properties are Accessible.
- 16.2. The Optavia Settlement Contact shall forward the results of the Annual End-User Accessibility Testing to Class Counsel as part of the next Annual Report that Optavia must provide Class Counsel pursuant to this Agreement.

**17. Agreement Term.** The Agreement Term shall last three (3) years from the Effective Date.

- 17.1. If Optavia is unable to provide the Letter of Accessibility by the Agreement Term, then the term of the Agreement shall extend to the First Extended Agreement Term.
- 17.2. If the term of the Agreement is extended pursuant to Section 17.1, and Optavia is unable to provide the Letter of Accessibility by the First Extended Agreement Term, then the term of the Agreement shall extend to the Second Extended Agreement Term.

**18. Monitoring of Compliance.** Class Counsel and Named Plaintiff shall monitor Optavia's compliance with Sections 4 through 16 of this Agreement as described in this Section.

- 18.1. Class Counsel and Named Plaintiff shall be entitled to visit the Digital Properties at any time without notice for the purpose of evaluating Optavia's compliance with Sections 4 through 16 of this Agreement.
- 18.2. Optavia shall include, in the Annual Report, copies of any Accessibility related questions, comments, and complaints generated by the telephone number or email address published in the Accessibility Statement on the Website or generated or received in any other manner or through any other medium following the Effective Date.

**19. Optavia's Reporting Schedule.** Optavia shall provide the following information to Class Counsel during the Agreement Term.

<b>Information</b>	<b>Deadline</b>	<b>See Agreement at Section</b>
The Annual Report	On the Effective Date's anniversary date during the Agreement Term	22.1
The Letter of Accessibility	To be provided at the end of the Agreement Term	17
Third-Party Content Optavia cannot confirm is Accessible	To be included in the Annual Report	5.2
Confirmation Optavia has designated the Accessibility Coordination Team	Within three (3) months of the Effective Date	6.1
Confirmation Optavia has appointed or retained the Accessibility Consultant	Within six (6) months of the Effective Date	7.1

The Accessibility Consultant's Status Report	To be included as an exhibit to the Annual Report	7.4
Changes to the Accessibility Consultant	Within one (1) month of any change	7.5
Results of the Initial Accessibility Audit	To be included as an exhibit to the Annual Report	8.3
The Accessibility Strategy	Within eighteen (18) months of the Effective Date	9.3
The Accessibility Statement	Within nine (9) months of the Effective Date	10.3
Status of the Accessibility Statement	To be included in the Annual Report	10.8
Accessibility training materials	To be included in the Annual Report	11.5
Complaints received by the Client Support Team	To be included in the Annual Report	14.3
Results of the Semi-Annual Automated Accessibility Audit	To be included in the Annual Report	15.2
Results of the Annual End-User Accessibility Testing	To be included in the Annual Report	16.2
Accessibility related questions, comments, and complaints received by Optavia	To be included in the Annual Report	18.2

**20. Scope of Agreement.**

20.1. The provisions of this Agreement shall apply to Optavia's policies, practices, and procedures with respect to Blind or Visually Disabled individuals within the United States who use screen reader auxiliary aids to access the Digital Properties. The



data Optavia periodically reports to Class Counsel pursuant to this Agreement shall contain relevant information for these individuals.

20.2. The provisions of this Agreement shall not apply to Subsequently Abandoned Websites and Mobile Apps.

20.3. Named Plaintiff expressly agrees that the resolution described herein is fair and adequate, and that the policies and procedures set forth in this Agreement are intended to remedy any and all alleged violations of the ADA and related state and local laws by Optavia with respect to the claims alleged by Named Plaintiff in this Litigation.

**21. Incentive Award to Named Plaintiff.**

21.1. Subject to Court approval, Optavia shall pay Named Plaintiff an incentive award in the amount of One Thousand Dollars and Zero Cents (\$1,000.00).

21.2. Named Plaintiff waives any right to an incentive award in connection with this matter which exceeds the amount provided in Section 21.1.

21.3. Optavia shall pay the amount provided in Section 21.1 within fourteen (14) days of the Effective Date by sending a business check or wire transfer payable to “EAST END TRIAL GROUP LLC IOLTA ATTORNEY TRUST ACCOUNT” to Class Counsel in care of Kevin W. Tucker, East End Trial Group LLC, at an address or account to be confirmed by Class Counsel before payment.

21.4. The incentive award shall not be subject to withholding deductions and Optavia may issue an IRS Form 1099 to Named Plaintiff, through Class Counsel at the address provided in Section 39.1.

**22. Annual Report and Meet-and-Confers.**

22.1. During the Agreement Term, on the Effective Date’s anniversary date, Optavia shall submit a report to Class Counsel, stating the status of the implementation of this Agreement and identifying any outstanding issues on which the Parties are then in disagreement.

22.2. At Class Counsel’s written request, Class Counsel and Optavia, or its counsel, will meet to discuss the Annual Report and review the implementation of this Agreement. Such meetings may be in person or by telephone, as the Parties agree.

**23. Dispute Resolution Procedure.** The Parties shall address disputes relating to any of the provisions of this Agreement as follows.

23.1. Informal Dispute Resolution.

- 23.1.1. If either Party believe a dispute exists relating to any section of this Agreement, it shall notify the other Party in writing, describing the dispute. The other Party shall respond in writing to such notice within fifteen (15) business days of receipt of the notice.
- 23.1.2. If a Settlement Class Member believes a dispute exists relating to any section of this Agreement, he or she may notify Class Counsel who, in turn, shall notify Optavia in writing, describing the dispute. Optavia shall respond in writing to such notice within fifteen (15) business days of receipt of the notice.
- 23.1.3. Further, if Optavia is informed of a dispute relating to any section of this Agreement by a Settlement Class Member, Optavia shall notify Class Counsel in writing, describing the dispute and providing the Settlement Class Member's contact information, if known. Optavia shall respond in writing to the dispute within fifteen (15) business days of receipt of the dispute. The response shall be directed to Class Counsel.
- 23.1.4. Within fifteen (15) business days of receipt of the response described in Sections 23.1.1, 23.1.2, or 23.1.3, counsel for the Parties shall meet-and-confer by telephone or in person and attempt to resolve the issue informally. The Parties may agree to enter mediation on the issue in dispute.
- 23.1.5. The Parties shall be responsible for their own attorneys' fees and costs incurred in pursuing informal dispute resolution of any claim pursuant to Section 23.1.

23.2. Submission to Mediation.

- 23.2.1. In the event that the Parties are unable to resolve their dispute through the informal meet-and-confer process pursuant to 23.1, then within forty-five (45) days of receipt of the notice of the dispute, the dispute shall be submitted to mediation before a mutually agreed-upon mediator with experience in ADA matters and, if the Parties are not able to agree, appointed by the Judicial Arbitration and Mediation Services, Inc. ("JAMS"). The mediation may be conducted in person if the parties mutually agree upon a location; otherwise, the mediation will be conducted electronically. The

Parties shall be responsible for their own attorneys' fees but Optavia shall pay all Costs incurred by Class Counsel and Named Plaintiff in pursuing mediation of a nonfrivolous claim pursuant to Section 23.2. If Optavia declines to pay such fees and Costs, Named Plaintiff may submit the dispute to the Court.

23.3. Submission to the Court.

23.3.1. If the meet-and-confer process and mediation pursuant to Sections 23.1 and 23.2 of this Agreement do not result in a resolution of the dispute within a reasonable time, any Party may make a motion for resolution of the dispute by the United States District Court Judge or Magistrate Judge assigned to the Lawsuit.

23.3.2. In the event that any Party finds it necessary to seek resolution of a dispute by the Court, the Court shall award reasonable attorneys' fees and Costs incurred in pursuing dispute resolution as set forth in Section 23.2 in accordance with the prevailing party standards under the ADA.

**24. Attorneys' Fees and Costs Through the Agreement Term.**

24.1. Subject to Court approval, Optavia shall pay Named Plaintiff's reasonable attorneys' fees and Costs incurred in connection with this matter in the amount of Forty-Five Thousand Dollars and Zero Cents (\$45,000.00). Class Counsel shall provide Optavia with a current W-9 and any further documentation or information necessary to allow it to meet its payment obligations herein.

24.2. Named Plaintiff waives any right to reasonable attorneys' fees and Costs incurred in connection with this matter through the end of the Agreement Term that exceed the amount provided in Section 24.1, other than the right to any reasonable attorneys' fees and Costs awarded pursuant to the Dispute Resolution Procedure.

24.3. Optavia shall pay the amount provided in Section 24.1 within forty-five (45) days following Final Approval by sending a business check or wire transfer payable to "EAST END TRIAL GROUP LLC IOLTA ATTORNEY TRUST ACCOUNT" to Class Counsel in care of Kevin W. Tucker, East End Trial Group LLC, at an address or account to be confirmed by Class Counsel before payment.

**25. Attorneys' Fees and Costs After the Agreement Term.**

25.1. First Extended Agreement Term.

- 25.1.1. If there is a First Extended Agreement Term, Optavia shall pay additional reasonable attorneys' fees and Costs incurred by Named Plaintiff during the First Extended Agreement Term for work performed by Class Counsel pursuant to this Agreement in the amount of Fifteen Thousand Dollars and Zero Cents (\$15,000.00).
- 25.1.2. Other than the right to any reasonable attorneys' fees and Costs awarded pursuant to the Dispute Resolution Procedure, Named Plaintiff waives any right to attorneys' fees and Costs for work performed by Class Counsel during the First Extended Agreement Term that exceeds the amount provided in Section 25.1.1.
- 25.1.3. Optavia shall pay the amount provided in Section 25.1.1 no later than forty-five (45) days after the start of the First Extended Agreement Term or the date Optavia receives all necessary IRS forms from Named Plaintiff and/or Class Counsel, whichever is later, by sending a business check or wire transfer payable to "EAST END TRIAL GROUP LLC IOLTA ATTORNEY TRUST ACCOUNT" to Class Counsel in care of Kevin W. Tucker, East End Trial Group LLC, at an address or account to be confirmed by Class Counsel before payment.

25.2. Second Extended Agreement Term.

- 25.2.1. If there is a Second Extended Agreement Term, Optavia shall pay additional reasonable attorneys' fees and Costs incurred by Named Plaintiff during the Second Extended Agreement Term for work performed by Class Counsel pursuant to this Agreement in the amount of Fifteen Thousand Dollars and Zero Cents (\$15,000.00).
- 25.2.2. Other than the right to any reasonable attorneys' fees and Costs awarded pursuant to the Dispute Resolution Procedure, Named Plaintiff waives any right to attorneys' fees and Costs for work performed by Class Counsel during the Second Extended Agreement Term that exceeds the amount provided in Section 25.2.1.
- 25.2.3. Optavia shall pay the amount provided in Section 25.2.1 no later than forty-five (45) days after the start of the Second Extended Agreement Term or the date Optavia receives all necessary IRS forms from Named Plaintiff and/or Class Counsel, whichever is later, by sending a business check or wire transfer payable to "EAST

END TRIAL GROUP LLC IOLTA ATTORNEY TRUST ACCOUNT” to Class Counsel in care of Kevin W. Tucker, East End Trial Group LLC, at an address or account to be confirmed by Class Counsel before payment.

**26. Preliminary Approval, Objections, and Fairness Hearing.**

- 26.1. Promptly after execution of this Agreement, Named Plaintiff shall request that the Court schedule a preliminary approval hearing within fourteen (14) days of the request, or as soon thereafter as the Court may set the hearing, and that the Court preliminarily approve this Agreement, preliminarily enjoin Settlement Class Members from bringing any Released Injunctive Claims, and approve the proposed form of notice and plan for providing notice submitted by the Parties.
- 26.2. Named Plaintiff shall ask the Court to schedule a final fairness hearing no less than ninety (90) days after the Notice Deadline set by the Court, or as soon thereafter as the Court may set the hearing.
- 26.3. Named Plaintiff shall ask the Court to order Named Plaintiff to file a motion for reasonable attorneys’ fees and Costs within forty-five (45) days after the Notice Deadline set by the Court.
- 26.4. Named Plaintiff shall ask the Court to order the following procedures for objections: Settlement Class Members may object to the proposed Agreement by filing, within sixty (60) days after the Notice Deadline set by the Court, written objections with the Clerk of the Court. Only such objecting Settlement Class Members shall have the right, and only if they expressly seek it in their objections, to present objections orally at the fairness hearing. Responses by Named Plaintiff to any timely-filed objections shall be made no less than five (5) days before the fairness hearing.

**27. Notice.**

- 27.1. As soon as practicable, but no later than twenty-one (21) days after the Court’s entry of a Preliminary Approval order, Optavia shall, at its expense:
  - 27.1.1. Cause the Long-Form Notice accompanying this Agreement as Agreement Exhibit 1 to be published on, and make the following documents filed in the Lawsuit available for download on, the Settlement Website: the class action complaint, motions for preliminary approval of class action settlement and for fees, and supporting documents, and the Court’s orders concerning preliminary approval and fees, as well as any supporting

memorandum. The Settlement Website and the documents identified in this Section shall be fully accessible by individuals who screen reader auxiliary aids. The stipulated class action settlement administrator shall track the number of visitors to the settlement website and shall provide a declaration to Class Counsel no less than five (5) days before the fairness hearing that summarizes the work the administrator performed and the number of visitors to the settlement website.

27.1.2. Add an invisible link at the beginning of the Website that directs visitors using screen readers to the Settlement Website. The link shall include alternative text which reads “Click to view our ADA class action settlement notice regarding the accessibility of our website.”

27.1.3. Post a link to the Settlement Website on Optavia’s social media accounts, including <https://www.facebook.com/OPTAVIA>, <https://www.instagram.com/OPTAVIA/>, and [https://twitter.com/OPTAVIA\\_tweets](https://twitter.com/OPTAVIA_tweets). The post shall be in a form and substance of the language provided in Section 27.3 (it is agreed and understood that the exact language is subject to change) and shall tag and direct questions about the stipulated class action settlement notice to Class Counsel at their accounts on each respective platform.

27.2. As soon as practicable, but no later than twenty-one (21) days after the Court’s entry of a Preliminary Approval order, Class Counsel shall, at its expense, request that at least the following organizations publish notice in the form of Section 27.4 in their respective electronic newsletters and social media accounts such that the notice is sent out within sixty (60) days of Preliminary Approval: Achieva, American Council of the Blind, American Foundation for the Blind, Blinded American Veterans Foundation, Blinded Veterans Association, Foundation Fighting Blindness, Guide Dogs for the Blind, National Association of Blind Merchants, National Council on Disability, and National Federation of the Blind.

27.3. “OPTAVIA is committed to making all of our digital content accessible to our Coach and Client Community. OPTAVIA has entered into a Class Action settlement whereby it is committing to ADA compliance of its website to ensure that it is accessible to all those seeking Lifelong Transformation, One Healthy Habit at a Time. Please visit <https://www.optaviaADAsettlement.com> to learn more about Optavia’s agreement to make its digital content accessible to screen reader

users. Have questions? Contact East End Trial Group at [https://www.facebook.com/EastEndTrialGroup/ or https://www.instagram.com/eastendtrialgroup/ or https://twitter.com/eastendtrial].

27.4. “A proposed settlement has been reached that would resolve the class action lawsuit *Douglass v. Optavia LLC*, Case No. 2:22-cv-00594-CCW (W.D. Pa.). The lawsuit alleges that Optavia LLC violated the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*, by failing to take the necessary steps to ensure its website does not discriminate against blind or visually disabled consumers who use screen reader auxiliary aids to access digital content. Under the settlement, Optavia LLC agrees to make its website, mobile app, and any new website or mobile app it develops or acquires accessible to screen reader users. For a more complete summary of the terms of the proposed settlement, please visit <https://www.optaviaADAsettlement.com> or contact Class Counsel at <https://eastendtrialgroup.com>.”

27.5. No less than five (5) days before the fairness hearing scheduled in the Lawsuit, Optavia shall file a declaration from the stipulated class action settlement administrator that summarizes the work the administrator performed and the number of visitors to the Settlement Website.

## **28. Judgment, Final Approval, and Dismissal.**

28.1. Class Counsel and Named Plaintiff shall request that the Court enter a final judgment and order granting Final Approval of this Agreement and enjoining Settlement Class Members from asserting any Released Injunctive Claims. Among other things, the final judgment and order granting Final Approval of this Agreement shall attach this Agreement as an exhibit and shall provide that the Court retains jurisdiction through the Agreement Term in order to enforce this Agreement.

28.2. The Parties shall move to dismiss the Lawsuit with prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure no later than forty-five (45) days following the date of Final Approval and Optavia’s payment of fees pursuant to Section 24, whichever occurs later. Pursuant to *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994), the Parties’ joint motion shall request that the Court’s dismissal order expressly retain the Court’s jurisdiction to enforce this Agreement against Mr. Douglass, Optavia, and Settlement Class Members.

**29. No Admission of Liability.** By agreeing to and voluntarily entering into this Agreement, there is no admission or concession by Optavia, direct or indirect, express or implied, that the Website is in any way inaccessible, or that Optavia has violated the ADA or any other federal, state, or local law, code, regulation, order, or rule. Nothing in this Agreement shall

operate as an admission by Optavia in any context other than within the settlement of this Lawsuit that any particular standard or standards apply to the Website under the ADA or any other federal or state law.

**30. Terms Not Confidential; Non-Disparagement.**

30.1. The terms of this Agreement are not confidential and will be publicly filed into the Court record of this Lawsuit.

30.2. The Parties and their respective counsel, agents, and representatives agree not to make any disparaging remarks about the other Party and their respective counsel relating to this Agreement or the negotiations leading to it.

**31. Release.** Effective on the date of Final Approval, the Injunctive Releasing Parties unconditionally and forever fully and finally release, acquit, and discharge the Optavia Parties from the Released Injunctive Claims. Pursuant to this release, Named Plaintiff and Settlement Class Members shall not bring any Released Injunctive Claims concerning the Accessibility of the Digital Properties. Notwithstanding this release, Named Plaintiff and Settlement Class Members may fully utilize the Dispute Resolution Procedure during the Agreement Term.

**32. Entire Agreement.** This Agreement contains all the agreements, conditions, promises, and covenants among Optavia, Named Plaintiff, Class Counsel, and the Settlement Class regarding matters set forth in this Agreement, and supersedes all prior or contemporaneous agreements, drafts, representations, or understandings, whether written or oral, with respect to the subject matter of this Agreement.

**33. Amendment.** Prior to Final Approval, this Agreement can only be amended by written agreement of the Parties hereto. Following Final Approval, no amendment of this Agreement shall be effective unless such amendment is pursuant to Court order.

**34. Severability.** If any provision or any part of this Agreement shall at any time be held unlawful, or inconsistent with applicable law, in whole or in part, under any federal, state, county, municipal, or other law, ruling, or regulation, then the remaining provisions of this Agreement shall remain effective and enforceable.

**35. Drafting of this Agreement.** This Agreement is deemed to have been drafted by all Parties hereto, as a result of arm's length negotiations among the Parties. Whereas all Parties have contributed to the preparation of this Agreement, this Agreement shall not be construed more strictly against one Party than another.

**36. Execution in Counterparts.** The Parties may execute this Agreement in counterparts, each of which shall constitute an original for all purposes, including any copies of the same, and



all duplicate counterparts will be construed together and constitute one agreement. The Parties will be bound by signatures on this document that are transmitted by hand delivery, mail, facsimile, electronic mail, or any other electronic means to the other Party or, if applicable, counsel for the other Party. Such signatures will have the same binding effect as any original signatures. A typed electronic signature will have the same effect as a handwritten signature.

- 37. Continuing Jurisdiction.** The Parties agree that the Court shall have continuing jurisdiction throughout the Agreement Term and, if applicable, the First Extended Agreement Term and Second Extended Agreement Term, to interpret and enforce this Agreement.
- 38. Deadlines.** The Parties and the Court recognize that from time-to-time unforeseen events, such as exigent business circumstances, labor disputes, natural disasters, personnel issues, pandemics, and negotiations with third parties, cause delays in the accomplishment of objectives, no matter how well-intentioned and diligent the Parties may be. Accordingly, with regard to the provisions of this Agreement that require that certain acts be taken within specified periods, the Parties understand and agree that Court approval shall not be required for reasonable extensions of deadlines. In the event that any Party determines that an action required by this Agreement cannot be taken within the specified time period, that Party shall promptly notify the other Party that it anticipates a delay, state the reasons for the delay, and offer a proposed alternative deadline. The Parties shall endeavor to cooperate in reasonably rescheduling such deadlines. However, if the other Party does not agree to the proposed delay, the Parties shall submit the matter to the Dispute Resolution Procedure.
- 39. Communications to Named Plaintiff, Class Counsel, the Settlement Class, and Optavia.** All letters, notices, IRS Form 1099s, requests, demands, and other communications required or permitted to be given to the Parties pursuant to this Agreement shall be in writing, provided by electronic mail, facsimile, and/or next-day express delivery service, and addressed as follows.

39.1. To Named Plaintiff, Class Counsel, or the Settlement Class:

Kevin W. Tucker (He/Him)  
Kevin Abramowicz (He/Him)  
EAST END TRIAL GROUP LLC  
6901 Lynn Way, Suite 215  
Pittsburgh, PA 15208  
ktucker@eastendtrialgroup.com  
kabramowicz@eastendtrialgroup.com  
Tel. (412) 877-5220

39.2. To Optavia:

Robert A. Giacovas  
LAZARE POTTER GIACOVAS & MOYLE LLP  
747 Third Avenue, 16th Floor  
New York, NY 10017  
rgiacovas@lpgmlaw.com  
Tel. (212) 784-2403

Optavia may change the individual(s) to whom notices and communications required or permitted by this Agreement shall be sent by providing Class Counsel with written notification that it wishes to do so.

*Signature block begins on the next page.*

THE PARTIES EXECUTING THIS AGREEMENT BELOW INDIVIDUALLY ACKNOWLEDGE THAT EACH: HAS READ THIS AGREEMENT; UNDERSTANDS, ACCEPTS, AND AGREES TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT; AND EXECUTES THIS AGREEMENT VOLUNTARILY, WITH FULL UNDERSTANDING OF ITS CONSEQUENCES, AND WITHOUT DURESS OF ANY KIND.

**BLAIR DOUGLASS**

Dated: Aug 2, 2022

By: Blair Douglass  
Blair Douglass (Aug 2, 2022 13:16 EDT)

**OPTAVIA LLC**



Dated: August 2, 2022

By: Daniel Chard  
Dan Chard  
Its: Vice President

**APPROVED AS TO FORM AND CONTENT:**

**EAST END TRIAL GROUP LLC**

**LAZARE POTTER GIACOVAS & MOYLE LLP**

By: Kevin W. Tucker  
Kevin W. Tucker  
East End Trial Group LLC  
6901 Lynn Way, Suite 215  
Pittsburgh, PA 15208

By: Robert A. Giacovas  
Robert A. Giacovas  
Lazare Potter Giacovas & Moyle LLP  
747 Third Avenue, 16th Floor  
New York, NY 10017

Counsel for Named Plaintiff  
and the Settlement Class

Counsel for Optavia LLC

Agreement Exhibit 1:  
Long-Form Notice

## NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

### IF YOU ARE A SCREEN READER USER, YOUR LEGAL RIGHTS MAY BE AFFECTED. PLEASE READ THIS NOTICE AND THE INSTRUCTIONS CAREFULLY

- This notice is to inform you about the proposed settlement that would resolve the class action lawsuit *Douglass v. Optavia LLC*, No. 2:22-cv-00594-CCW (W.D. Pa.).
- The settlement covers all blind or visually impaired individuals who use screen reader auxiliary aids and who have accessed, attempted to access, been deterred from accessing, will access, will attempt to access, or will be deterred from accessing: <https://www.optavia.com/>.
- The class action lawsuit alleges that Optavia LLC violated the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*, by failing to take the necessary steps to ensure the Website does not discriminate against blind or visually disabled consumers who use screen reader auxiliary aids to access digital content.
- Optavia denies all liability in the case and asserts that its current practices do not violate applicable federal, state, and local law.
- The settlement, which must be approved by the Court, would resolve the lawsuit.
- Optavia has agreed to ensure the Website meets the success criteria of the Web Content Accessibility Guidelines 2.1 (“WCAG 2.1”) and to follow certain steps to ensure that the Website becomes and remains accessible.
- You have the right to object to the settlement by **DATE**.
- The Court will hold a final hearing to determine whether to approve the settlement on **DATE**.
- Your legal rights are affected whether or not you act. Please read this Notice carefully.

## **I. WHAT IS THIS LAWSUIT ABOUT?**

This case is a class action lawsuit. In a class action, one or more people sue on behalf of others who have similar claims. The person that sues is the class representative. All of the people who have similar claims are part of a “class.” Individual class members do not file lawsuits. Instead, a court resolves all of their claims at once.

This case is a class action that challenges the accessibility of: <https://www.optavia.com/> (“Website”). Plaintiff alleged that the Website was not accessible to persons with vision disabilities that use screen readers to access the internet. Plaintiff alleged that this violated the Americans with Disabilities Act. Plaintiff sought an order to require Optavia LLC to make its Website accessible to screen reader users.

## **II. WHO DOES THIS SETTLEMENT AFFECT?**

This settlement covers all blind or visually disabled individuals who use screen reader auxiliary aids to navigate digital content and who have accessed, attempted to access, or been deterred from attempting to access, or who will access, attempt to access, or be deterred from attempting to access, <https://www.optavia.com/> from the United States.

## **III. WHAT DOES THE SETTLEMENT PROVIDE?**

### **A. Optavia Will Make Its Website Accessible.**

Under the settlement, Optavia agrees to take additional steps to make its Website, mobile applications, and any new website or mobile application it develops or acquires (collectively “Digital Properties”) accessible to blind or visually disabled consumers who use screen reader auxiliary aids to access digital content (“Screen Reader Users”). Optavia will ensure the Digital Properties meet the success criteria of the Web Content Accessibility Guidelines 2.1 (“WCAG 2.1”).

### **B. Optavia Will Institute Accessibility Procedures To Ensure Accessibility.**

Optavia will also incorporate detailed steps into its accessibility policies and practices to ensure its Digital Properties become and remain accessible to Screen Reader Users.

1. For each new, renewed, or renegotiated contract with a vendor of Third-Party Content, Optavia shall request that the vendor commit to provide content in a format that conforms to WCAG 2.1 or can be made to conform to WCAG 2.1.
2. Optavia shall be required to designate one or more employees as the Accessibility

Coordination Team tasked to review, handle, or escalate Accessibility related questions, comments, and complaints concerning the Digital Properties.

3. Optavia shall retain or appoint an Accessibility Consultant knowledgeable about digital accessibility, the ADA, and accessibility. The Accessibility Consultant's duties shall include, among other things: (a) assisting Optavia to conduct the initial accessibility audit of the Website; (b) advising Optavia as to how to make the Digital Properties accessible; (c) verifying the Digital Properties are Accessible in the final Letter of Accessibility; and (d) verifying Optavia's compliance with Sections 5.1, 5.2 and 5.3 of the Agreement regarding Third-Party Content.
4. Optavia shall complete an accessibility audit of the Website that is conducted in a professional manner and benchmarked by appropriate processes, including automated and end-user testing, consistent with the accessibility consultant's recommendations.
5. Optavia shall develop and implement an accessibility strategy designed to ensure the Digital Properties are Accessible within thirty-six (36) months.
6. Optavia shall create an accessibility statement that, at minimum, (a) states that Optavia is making efforts to maintain and increase access to the goods, services, facilities, privileges, advantages, and accommodations provided by and through the Digital Properties; (b) solicits feedback from visitors to the Digital Properties as to how the accessibility of the Digital Properties can be improved; and (c) includes accessible methods of submitting accessibility related questions, comments, and complaints, including an email address and telephone number of Optavia's Client Support Team.
7. Optavia shall display a link to the accessibility statement at the beginning of a screen reader user's experience on the Digital Properties so that screen reader users perceive the link to the accessibility statement as if it were located at the top of each homepage throughout the Digital Properties.
8. Optavia shall train all employees responsible for website and mobile application design, development, and maintenance to ensure future design, development, and maintenance of the Digital Properties to ensure the Digital Properties are and remain accessible.
9. Optavia shall provide accessibility training to all newly-hired employees responsible for website and mobile application design, development, and maintenance within 180 days of their hire date.

10. Optavia shall provide refresher accessibility training to such employees on an annual basis commencing in 2023.
11. Optavia shall ensure its Client Support Team is trained to assist individuals who have a visual disability and to timely assist such individuals within published hours of operation
12. Optavia shall make reasonable efforts to modify existing bug fix policies, practices, and procedures to include the elimination of bugs that create accessibility barriers.
13. Optavia shall provide support during regular business hours to help individuals who have a visual disability resolve accessibility issues encountered while using the Digital Properties. Optavia shall train its already existing Client Support Team to review, handle, or escalate accessibility related questions, comments, and complaints generated by the telephone number or email address published in the Accessibility Statement of the Website.
14. Optavia, or a consultant retained on its behalf, shall perform an automated accessibility audit twice per year to evaluate whether the Digital Properties are accessible.
15. Optavia's accessibility consultant shall perform an annual end user test to evaluate whether the Digital Properties are accessible.

**C. Optavia Will Create A Dispute Resolution Procedure To Address Accessibility Issues.**

Additionally, Optavia will forward any complaint or issue raised to its customer services regarding the accessibility of its Digital Properties to Class Counsel (defined below), who shall work with Optavia to ensure the issue is resolved consistent with the proposed settlement. Class Counsel will monitor Optavia's compliance with the settlement as well.

**D. Optavia Will Pay Class Co-Counsel's Attorneys' Fees And Costs.**

The settlement also provides that the named individual plaintiff who served as class representative will receive a \$1,000.00 incentive award, subject to court approval, in return for a release of his individual claims.

Finally, East End Trial Group LLC ("Class Counsel"), the attorneys who represent the class, will have the right to seek attorneys' fees and costs up to (a) \$45,000.00 for work performed up to Optavia's deadline to make its Digital Properties accessible, (b) \$15,000.00 for additional work if Optavia requires one extra year to make the Digital Properties accessible, and (c) another \$15,000.00 if Optavia requires a second year to make the Digital Properties accessible. Class



Counsel will file a motion asking the Court to award reasonable fees and costs to reimburse them for work they performed on this case. The Court must approve the amount awarded even if the parties reach an agreement on the amount. This motion for fees and costs will be available at <https://www.optaviaADAsettlement.com> after it is filed with the Court.

#### **IV. DOES THE SETTLEMENT AFFECT MY LEGAL RIGHTS?**

All class members will be bound by the terms of the settlement relating to access to the Website for blind or visually disabled persons who use screen reader auxiliary aids to access digital content, if the settlement agreement is approved by the Court. If the settlement is approved, all class members will release and forever discharge all claims for injunctive relief under all federal, state, and local laws related to alleged discrimination by Optavia against blind or visually disabled persons who use screen reader auxiliary aids to access digital content that arose before the Settlement Agreement becomes effective. Class members, other than the named plaintiff in the lawsuit, are not releasing any claims for monetary damages.

#### **V. CAN I OBJECT TO THE SETTLEMENT?**

You have the right to object to the proposed settlement agreement if you do not like part or all of it.

If you wish to object to the proposed settlement, you must do so in writing on or before **DATE**. Your written objections must:

- a) clearly identify the case name and number, *Douglass v. Optavia LLC*, No. 2:22-cv-00594-CCW (W.D. Pa.);
- b) be submitted to the Court either by mailing them to the Clerk of the Court for the United States District Court for the Western District of Pennsylvania, 700 Grant Street, Courtroom 9B, Pittsburgh, PA 15219, or by filing them in person at any location of the United States District Court for the Western District of Pennsylvania;
- c) and be received on or before **DATE**.

If you wish to appear and present your objection orally at the fairness hearing, you must first submit a written objection and in your written objection you must indicate your intention to appear and be heard at the fairness hearing. If you appear through your own attorney, you are responsible for paying that attorney.

#### **VI. DO I HAVE A LAWYER IN THIS CASE?**

The Court has appointed Kevin Tucker and Kevin Abramowicz of East End Trial Group

as Lead Counsel (“Class Counsel”) on behalf of the class members. Class Counsel’s contact information can be found in Section IX.

You do not need to hire a lawyer because Class Counsel is working on your behalf. You do not need to pay Class Counsel, as the settlement provides that Optavia LLC will pay their fees and costs in an amount approved by the Court.

## **VII. WHEN AND WHERE WILL THE COURT APPROVE THE SETTLEMENT?**

The Court will hold a hearing to decide whether to approve the settlement on **DATE**. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. You are not required to attend the final fairness hearing.

## **VIII. HOW DO I GET MORE INFORMATION ABOUT THE SETTLEMENT?**

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at <https://www.optaviaADAsettlement.com>, contact Class Counsel using the information below, access the Court docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.pawd.uscourts.gov>, or visit the office of the Clerk of the Court for the United States District Court for the Western District of Pennsylvania, 700 Grant Street, Courtroom 9B, Pittsburgh, PA 15219, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

To obtain a copy of this notice in alternate accessible formats, contact Class Counsel using the information below.

## **IX. CONTACT INFORMATION**

Please do not contact the Court, the Court clerk’s office, or Defense Counsel with questions about this settlement. Any questions must be directed to Class Counsel at the numbers and addresses below.

Class Counsel:  
Kevin Tucker  
Kevin Abramowicz  
EAST END TRIAL GROUP LLC  
6901 Lynn Way, Suite 215  
Pittsburgh, PA 15208  
ktucker@eastendtrialgroup.com  
kabramowicz@eastendtrialgroup.com  
Tel. (412) 877-5220  
<https://eastendtrialgroup.com/>