

## 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 **December 20, 2022**.
- The Court will hold a final hearing to determine whether to approve the settlement on **January 23, 2023**.
- 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 **December 20, 2022**. 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 **December 20, 2022**.

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 **January 23, 2023**. 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:

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