

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

<p>In Re:</p> <p>DISPOSABLE CONTACT LENS ANTITRUST LITIGATION</p>	<p>Case No. 3:15-md-2626-J-20JRK</p> <p>Judge Harvey E. Schlesinger Magistrate Judge James R. Klindt</p>
<p>THIS DOCUMENT RELATES TO:</p> <p>All Class Actions</p>	

JOINT NOTICE REGARDING COURT’S APRIL 24, 2020 ORDER

Plaintiffs and Defendants (the “Parties”) respectfully submit this notice pursuant to the Court’s April 24, 2020 Order, ECF No. 1187, which directed “[t]he Parties [to] file a joint notice within 30 days that updates the Court on any progress they may have made regarding a potential settlement.”

A. Joint Statement

Consistent with the Court’s April 24, 2020 Order, as well as the Court’s “urg[ing] the Parties to earnestly confer with each other in a deliberate attempt to reach an agreement that completely resolves this litigation,” Order, ECF No. 1180, Plaintiffs separately approached each of the Defendants at various points regarding a potential settlement. Defendants represent that they will continue to evaluate their positions on the subject of settlement, but there are no settlements to report.

B. Plaintiffs’ Separate Statement

At this time, Plaintiffs believe that entry of jury instructions—at least with respect to the application of the antitrust law—may help the Parties evaluate the respective

strengths and weaknesses of their positions, and that this may facilitate settlement. While Plaintiffs believe that the Parties have made substantial progress on the majority of the proposed instructions, material disagreements as to virtually all of the proposed antitrust instructions remain. Plaintiffs therefore intend to submit a motion seeking entry of proposed jury instructions within 14 (fourteen) days.

C. Defendants' Separate Statement

Plaintiffs' effort to link jury instructions and settlement efforts is improper and ignores the status of the Parties' ongoing discussions about the jury instructions, as well as the reasons for this District's well-settled practice of submitting jury instructions after all other pre-trial proceedings are complete. First, the Parties are continuing to refine their proposed jury instructions in an effort to narrow any disputes, and both sides have continued to modify their competing instructions based on comments received from the other side. That ongoing meet-and-confer process benefits both the Parties and the Court. Second, supplemental expert discovery remains underway, not only with expert depositions over the course of this month but also with expert disputes that remain pending given Defendants' motion to strike the supplemental expert disclosures from Dr. Michael Williams and Plaintiffs' motion to compel additional expert discovery from Dr. John McClane. Third, the Case Management and Scheduling Order in this case provides that "Counsel shall meet for the purpose of exchanging proposed jury instructions and submitting an agreed-to set of jury instructions" and written objections to disputed instructions five days before trial—not before a trial date has even been set. ECF No. 204 (Case Management & Scheduling Order) ¶ 8(D). Following that well-settled practice

would allow the completion of ongoing expert discovery and other pre-trial proceedings, which have the potential to impact the proposed instructions. Plaintiffs' proposal, by contrast, risks wasting the resources of the Court (and the Parties) if and when subsequent revisions to the jury instructions are required. Fourth, Defendants do not believe that the entry of jury instructions at this stage of the case would have any material impact on any settlement negotiations.

In short, Defendants submit that briefing jury instructions at this point—before a new trial date is even set—would lead to unnecessary efforts on the part of the Court and the Parties, while not actually advancing Plaintiffs' stated rationale for their approach. Defendants would therefore oppose any motion to enter jury instructions prior to an additional conference with the Court and the setting of a new trial date.

Dated: May 22, 2020.

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CERTIFICATE OF SERVICE

I certify that on May 22, 2020, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

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