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Direct Digital To Pay \$4.5M In False Ad Settlement

By Ryan Boysen

Law360, New York (March 6, 2017, 2:11 PM EST) -- Direct Digital has agreed to pay \$4.5 million to settle a class action over claims that its joint health supplements aren't clinically proven and don't work as advertised, pending authorization by an Illinois federal court, according to documents filed Friday.

The settlement is the result of roughly a year's worth of discovery and negotiations, after the Seventh Circuit affirmed a lower court's class certification and the U.S. Supreme Court declined to hear the case February 2016. Both sides said the cost of continued litigation would outweigh the benefits at this stage.

"This is undoubtedly a complex case, and continued litigation will come at considerable expense to plaintiff and Direct Digital, and at significant expense to the limited resources of the court," according to lead plaintiff Vince Mullins' memorandum in support of the motion.

Under the terms of the settlement, Direct Digital LLC will put \$4.5 million into a settlement fund, with \$400,000 going to attorneys' fees and administration costs and the rest going toward reimbursing purchasers of Direct Digital's Instaflex Joint Support supplement.

Mullins and his attorneys will petition the court for roughly \$1.5 million in fees and costs to be paid from the settlement fund, the memo said. Direct Digital will also agree to stop advertising Instaflex as promoting joint health and may no longer represent the product as "special, revolutionary or exclusively formulated," it said.

Mullins filed suit in 2013, claiming Instaflex is marketed as "scientifically formulated" and "clinically tested" to improve joint health when in reality, clinical studies on the product's main ingredient, glucosamine, have shown it does not help joints.

The district court granted certification in 2014, and the Seventh Circuit affirmed it the following year, in a ruling that **analyzed and systematically rejected** a Third Circuit standard that heavily emphasized plaintiffs' ability to identify class members based on receipts and other hard data. The Supreme Court declined to hear the case in February 2016.

Per the terms of the settlement, consumers are eligible to receive up to \$15 for each bottle of Instaflex they claim they purchased, up to seven bottles, or \$115, allowing them to recover roughly 20 percent of the \$70 price of a bottle of Instaflex, the memo said. They will not have to show proof of purchase for those claims.

Mullins said the notice plan proposed in the settlement should reach roughly 75 percent of

the target audience of Instaflex purchasers, utilizing print and internet ads.

Counsel for Mullins declined to comment on Monday, and Direct Digital did not respond to a request for comment.

Mullins is represented by Stewart M. Weltman and Joseph Siprut of Siprut PC, Elaine A. Ryan and Patricia N. Syverson of Bonnett Fairbourn Friedman & Balint PC and Max A. Stein of Boodell & Domanskis LLC.

Digital Direct is represented by Ari N. Rothman, Samantha M. Williams, Benjamin E. Horowitz and Daniel S. Silverman of Venable LLP and Darrell J. Graham of Roeser Bucheit & Graham LLC.

The case is Vince Mullins v. Direct Digital LLC, case number 1:13-cv-01829, in U.S. District Court for the Northern District of Illinois.

--Editing by Christine Chun.

Correction: A previous version of this story incorrectly identified Stewart Weltman as an attorney with Boodell & Domaskis. The error has been corrected.

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