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The Honorable Brian M. McDonald
Noted for: July 22, 2024
Without Oral Argument

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

TOD WIX, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

PACIFIC CATARACT & LASER
INSTITUTE, INC. P.C.,

Defendant.

NO. 24-2-06283-1 SEA

**ORDER GRANTING PLAINTIFFS'
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
NOTICE PLAN**

WHEREAS, the above-captioned class action is pending in this Court (the “Action”);

WHEREAS, Plaintiff Tod Wix (“Plaintiff”), individually and on behalf of all others
similarly situated, and Defendant Pacific Cataract & Laser Institute (“PCLI” or “Defendant”)
have entered into a Settlement Agreement (the “Settlement Agreement”) that settles the above-
captioned litigation and provides for a complete dismissal with prejudice of the claims asserted
against Defendant in the above-captioned action (the “Action”) on the terms and conditions set
forth in the Settlement Agreement, subject to the approval of the Court;

WHEREAS, Plaintiff has made an application, pursuant to Rule 23 of the Washington
Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance with
the Settlement Agreement, certifying the Settlement Class for purposes of the Settlement only,
appointing Plaintiff as Class Representatives, appointing Class Counsel as counsel for the

1 Settlement Class, appointing Vertia Global, LLC f/k/a KCC Class Action Services, LLC or KCC,
2 and allowing notice to Settlement Class Members as more fully described herein;

3 **WHEREAS**, the Court has read and considered: (a) Plaintiff's Motion for Preliminary
4 Approval of Class Action Settlement and Notice Plan, and the papers filed and arguments made
5 in connection therewith; and (b) the Settlement Agreement and exhibits attached thereto; and
6

7 **WHEREAS**, unless otherwise defined herein, the capitalized terms herein shall have the
8 same meaning as they have in the Settlement Agreement.

9 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

10 1. **Class Certification for Settlement Purposes Only**. For settlement purposes only
11 and pursuant to Washington Rule of Civil Procedure 23, the Court certifies, solely for purposes
12 of effectuating the proposed Settlement, a Settlement Class in this matter defined as follows:
13

14 All individuals to whom PCLI sent notice of the Data Incident that
15 occurred in November 2023.

16 The Settlement Class includes approximately 14,000 people. The Settlement Class
17 specifically excludes: (1) the judge presiding over this Action, and members of his direct family;
18 (2) Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in
19 which Defendant or their parents have a controlling interest and their current or former officers,
20 directors, and employees; and (3) Settlement Class Members who submit a valid a Request for
21 Exclusion prior to the Opt-Out Deadline.

22 2. **Class Findings**: The Court provisionally finds, for settlement purposes only, that:
23 (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be
24 impracticable; (b) there are issues of law and fact common to the Settlement Class; (c) the claims
25 of the Class Representatives are typical of and arise from the same operative facts and seek
26 similar relief as the claims of the Settlement Class Members; (d) the Class Representatives and
27

1 Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class
2 as the Class Representatives have no interests antagonistic to or in conflict with the Settlement
3 Class and have retained experienced and competent counsel to prosecute this matter on behalf of
4 the Settlement Class; (e) questions of law or fact common to Settlement Class Members
5 predominate over any questions affecting only individual members; and (f) a class action and
6 class settlement is superior to other methods available for a fair and efficient resolution of this
7 controversy.
8

9 3. **Class Representatives and Settlement Class Counsel**: Tod Wix is hereby
10 provisionally designated and appointed as the Class Representative. The Court provisionally
11 finds that the Class Representative is similarly situated to absent Settlement Class Members and
12 therefore typical of the Settlement Class and that he will be an adequate Class Representative.
13 The Court further finds that Philip J. Krzeski of Chestnut Cambronne PA is experienced and
14 adequate counsel and are hereby provisionally designated as Settlement Class Counsel.
15

16 4. **Preliminary Settlement Approval**. The Court hereby preliminarily approves
17 the Settlement, as embodied in the Settlement Agreement, as being fair, reasonable and adequate
18 to the Settlement Class, subject to further consideration at the Final Approval Hearing to be
19 conducted as described below. For the purposes of preliminary approval, the Court finds the
20 proposed settlement is fair, reasonable, and adequate.
21

22 5. **Final Approval Hearing**. A Final Approval Hearing shall be held at 9:00 a.m.
23 on December 13, 2024, in the Superior Court For The State of Washington In and For King
24 County located at King County Courthouse, Courtroom E-762, Seattle, Washington 98104, for
25 the following purposes:

- 26 a. To determine whether the proposed Settlement is fair, reasonable, and adequate to the
27 Class and should be approved by the Court;

- b. To determine whether to grant Final Approval, as defined in the Settlement Agreement;
- c. To determine whether the notice plan conducted was appropriate;
- d. To determine whether the claims process under the Settlement is fair, reasonable and adequate and should be approved by the Court;
- e. To determine whether the requested Class Representative Service Awards in the amount of \$5,000 to each Class Representative, and Class Counsel's attorneys' fees in the amount of \$133,333.33 and litigation expenses not to exceed \$20,000 should be approved by the Court;
- f. To determine whether the settlement benefits are fair, reasonable, and adequate; and,
- g. To rule upon such other matters as the Court may deem appropriate.

6. **Retention of Claims Administrator and Manner of Giving Notice.** Class Counsel is hereby authorized to retain Vertia Global (the "Settlement Administrator") to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Claims as set for more fully below.

7. **Approval of Form and Content of Notice.** The Court (a) approves, as to form and content, the Long Form Notice, Summary (or Postcard) Notice, and Claim Form attached to the Settlement Agreement as Exhibits A, B and C, and (b) finds that the Notice provided to Settlement Class Members as set forth in the Settlement Agreement (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the releases to be provided thereunder), of Class Counsel's request for Fee Award and Costs, of Class Representatives' requests for Service Award Payments, of their right to object to the Settlement, Class Counsel's request for Fee Award and Costs, and/or Class Representatives' requests for Service Award Payments, of their right to exclude themselves from the Settlement Class, and of their right to appear at the Final Approval Hearing; (iii) constitutes due, adequate and sufficient notice to all persons entitled to receive

1 notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the
2 Washington Rules of Civil Procedure, the United States Constitution (including the Due Process
3 Clause), and all other applicable law and rules. The date and time of the Final Approval Hearing
4 shall be included in the Notice before it is distributed so long as that date is known at the time of
5 Notice.

6
7 8. **Participation in the Settlement.** Settlement Class Members who qualify for and
8 wish to submit a Claim Form shall do so in accordance with the requirements and procedures
9 specified in the Notice and the Claim Form and must do so within ninety (90) days after Notice
10 is mailed to the Settlement Class Members. If a Final Approval Order and Judgment is entered,
11 all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit
12 a claim in accordance with the requirements and procedures specified in the Notice and the Claim
13 Form shall be forever barred from receiving any such benefit, but will in all other respects be
14 subject to and bound by the provisions in the Settlement Agreement, the Release included in that
15 Settlement Agreement, and the Final Approval Order and Judgment.

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17 9. **Claims Process and Distribution and Allocation Plan.** The Settlement
18 Agreement contemplates a process for the Claim's Administrator to assess and determine the
19 validity and value of claims and a payment methodology to Settlement Class Members who
20 submit a timely, valid Claim Form. The Court preliminarily approves the claims process
21 described in the Settlement Agreement and directs that the Settlement Administrator effectuate
22 the distribution of Settlement consideration according to the terms of the Settlement Agreement,
23 should the Settlement be finally approved.

24
25 10. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded
26 from the Settlement Class must mail a written notification of the intent to exclude himself or
27

1 herself from the Settlement Class to the Settlement Administrator at the address provided in the
2 Notice, postmarked no later than **60 Days after the date Notice is mailed to the Settlement**
3 **Class Members** (the “Opt-Out/Exclusion Deadline”). The written notification must include the
4 name of the proceeding, the individual’s full name, current address, personal signature, and the
5 words “Request for Exclusion” or a comparable statement that the individual does not wish to
6 participate in the Settlement at the top of the communication.
7

8 Any Settlement Class Member who does not timely and validly exclude himself or herself
9 from the Settlement shall be bound by the terms of the Settlement Agreement. If a Final Approval
10 Order and Judgment is entered, any Settlement Class Member who has not submitted a timely,
11 valid written notice of exclusion from the Settlement Class shall be bound by all proceedings,
12 orders, and judgments in this matter, including but not limited to the Release set forth in the Final
13 Approval Order and Judgment, including Settlement Class Members who have previously
14 initiated or who subsequently initiate any litigation against any or all of the Released Parties
15 relating to the claims and transactions released in the Settlement Agreement. All Settlement Class
16 Members who submit valid and timely notices of exclusion from the Settlement Class shall not
17 be entitled to receive any benefits of the Settlement.
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19 11. **Objections and Appearances**. No Settlement Class Member shall be heard, and
20 no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall
21 be received and considered by the Court, unless the objection is mailed first-class postage prepaid
22 to the Settlement Administrator at the address listed in the Notice, and postmarked by no later
23 than the Objection Deadline, as specified in the Notice. For an objection to be considered by the
24 Court, the objection must also include all of the information set forth in Paragraph 72 of the
25 Settlement Agreement, which is as follows: (i) the name of the proceedings; (ii) the Settlement
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1 Class Member's full name, current mailing address, and telephone number; (iii) a statement of
2 the specific grounds for the objection, as well as any documents supporting the objection; (iv)
3 the identity of any attorneys representing the objector; (v) a statement regarding whether the
4 Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing;
5 (vi) a statement identifying all class action settlements objected to by the Settlement Class
6 Member in the previous 5 years; and (vii) the signature of the Settlement Class Member or the
7 Settlement Class Member's attorney.
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9 12. Any **Settlement** Class Member who fails to comply with the provisions in
10 Paragraph 72 may waive and forfeit any and all rights he or she may have to object, and shall be
11 bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders,
12 and judgments in this matter, including, but not limited to, the release in the Settlement
13 Agreement if a Final Approval Order and Judgment is entered. If a Final Approval Order and
14 Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed
15 herein shall be deemed to have waived his or her objections and shall be forever barred from
16 making any such objections in this Action or in any other proceeding or from challenging or
17 opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement,
18 the motion for Service Award Payments, or the motion for Fee Award and Costs.
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20 13. **Termination of Settlement.** This Order shall become null and void and shall be
21 without prejudice to the rights of the Parties, all of whom shall be restored to their respective
22 positions existing as of the date of the execution of the Settlement Agreement if the Settlement
23 is not finally approved by the Court or is terminated in accordance with the Settlement
24 Agreement. In such event, the Settlement and Settlement Agreement shall become null and void
25 and be of no further force and effect, and neither the Settlement Agreement nor the Court's
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1 orders, including this Order, relating to the Settlement shall be used or referred to for any purpose
2 whatsoever.

3 14. **Use of Order.** This Order shall be of no force or effect if a Final Approval Order
4 and Judgment is not entered or there is no Effective Date and shall not be construed or used as
5 an admission, concession, or declaration by or against Defendant of any fault, wrongdoing,
6 breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an
7 admission, concession, or declaration by or against the Settlement Class Representative or any
8 other Settlement Class Member that his or her claim lacks merit or that the relief requested is
9 inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she,
10 or it may have in this litigation or in any other lawsuit.

11
12 15. **Stay of Proceedings and Temporary Injunction.** Until otherwise ordered by the
13 Court, the Court stays all proceedings in the Action other than proceedings necessary to carry
14 out or enforce the terms and conditions of the Settlement Agreement. Pending final determination
15 of whether the Settlement should be approved, the Court bars and enjoins Plaintiff, and all other
16 members of the Settlement Class, from commencing or prosecuting any and all of the Released
17 Claims against the Released Entities.

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19 16. **Settlement Fund.** The contents of the Settlement Fund shall be deemed and
20 considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the
21 Court, until such time as funds shall be distributed pursuant to the Settlement Agreement and/or
22 further order(s) of the Court.

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24 17. **Taxes.** The Settlement Administrator is authorized and directed to prepare any
25 tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from
26 the Settlement Fund any taxes owed with respect to the Settlement Fund, and to otherwise
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perform all obligations with respect to taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Settlement Agreement.

The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

18. **Summary of Deadlines.** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

<u>FROM DATE OF PRELIMINARY APPROVAL</u>	
PCLI provides Class List to the Settlement Administrator	+7 days
PCLI Pays Administrative Expenses	+20 days
Notice Date	+30 days
Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	+76 days
Reminder Notice	+76 days
Opt-Out & Objection Deadline	+90 days
Settlement Administrator Provide List of Objections/Exclusions to Counsel	+97 days
Claims Deadline	+104 days
<u>Final Approval Hearing</u>	+135 days from Preliminary Approval (at least)
Motion for Final Approval	-14 days before Final Approval Hearing Date
Settlement Administrator Provide Notice of Opt-Outs and/or Objections	-14 days before Final Approval Hearing Date

<u>FROM ORDER GRANTING FINAL APPROVAL</u>	
Effective Date	+31 days (assuming no appeal)
PCLI Pays Balance of Settlement Fund	+30 days after Effective Date (assuming no appeal)
Payment of Fee Award and Expenses	+42 days after Effective Date (assuming no appeal)

FROM DATE OF PRELIMINARY APPROVAL

Payment of Service Awards	+42 days after Effective Date (assuming no appeal)
Payment of Valid Claims	+42 days after Effective Date (assuming no appeal)
Settlement Website Deactivation	+120 days after Effective Date

IT IS SO ORDERED this ____ day of _____, 2024.

The Honorable Brian M. McDonald
Superior County for State of Washington
In and For King County

King County Superior Court
Judicial Electronic Signature Page

Case Number: 24-2-06283-1
Case Title: WIX VS PACIFIC CATARACT & LASER INSTITUTE
Document Title: ORDER

Signed By: Brian McDonald
Date: July 25, 2024



Judge: Brian McDonald

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: EB2FC2BCB5DEBEA152D5B8D72B65DAFD8D8A64C1
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