

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Bell v. CVS Pharmacy, Inc.,
Case No. 1:21-cv-06850-PK (E.D.N.Y.)

If you purchased a CVS branded maximum strength lidocaine patch, cream, roll-on, or spray product between December 11, 2017, and July 18, 2023, you may be entitled to benefits from a class action settlement.

*A federal court authorized this Long-Form Notice. This is not a solicitation from a lawyer.
You are not being sued.*

- A settlement has been reached in a class action lawsuit. In the lawsuit, Plaintiffs Monique Bell, Tree Anderson, and Melissa Conklin (“Plaintiffs”) allege that packaging of Defendant’s Lidocaine Products (as defined below) was false and deceptive in that it led purchasers to believe that the Lidocaine Products delivered a “maximum strength” amount of lidocaine, and that the Products in patch form could reliably adhere to consumer bodies for up to 8 or 12 hours. Defendant does not concede the truth of any of the claims against it and denies that it did anything wrong. The Court has not decided who is right. Instead, the parties agreed to a compromise (“Settlement”).
- The Settlement offers payments to Settlement Class Members who file Valid Claims.
- Your legal rights will be affected even if you do not act. Your rights and options — and the deadlines to exercise them — are explained in this Long-Form Notice. Please read this Long-Form Notice carefully in its entirety. Defined terms have the meanings given to them in the Settlement Agreement.

SETTLEMENT CLASS MEMBERS' LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT

YOUR RIGHTS AND OPTIONS	WHAT THEY MEAN	DEADLINES
DO NOTHING	If you are a Settlement Class Member and do not take any action, you will not receive any financial compensation under the Settlement. Further, if the Settlement is finally approved, you will be bound by the Court's final judgment and the release of claims explained in the Settlement Agreement.	None
SUBMIT A CLAIM FORM	If you are a member of the Settlement Class, you must submit a Valid Claim, choosing between the two claim options detailed in the Settlement and herein, to receive a payment. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, you will receive your payment by check or electronic payment. To find out how to submit a Claim Form, please read Question 11.	Submitted by (if submitted online) or postmarked by (if submitted by mail) the Claims Deadline of November 20, 2023
EXCLUDE YOURSELF (OPT OUT)	Get no benefits from the Settlement. Requesting exclusion from the Settlement (also called "opting out") would allow you to file or continue your own lawsuit against Defendant about the legal claims involved in the Settlement. To find out how to opt out, please read Question 13.	Postmarked on or before the Opt-Out / Objection Deadline of October 6, 2023
OBJECT OR COMMENT	Write to the Court about why you do or do not like the Settlement. To find out how to object or comment, please read Question 15.	Postmarked on or before the Opt-Out / Objection Deadline of October 6, 2023
GO TO FINAL APPROVAL HEARING	Ask to speak in court about the fairness of the Settlement. To find out how to do so, please read Question 18.	Submit a notice of intention to appear at the Final Approval Hearing by October 6, 2023

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BASIC INFORMATION

1. Why did you receive this notice?

This notice (“Long-Form Notice”) has been published because the Court has given its preliminary approval to the Settlement of the Action.

If you received an e-mail concerning the Settlement, that means that Defendant’s records indicate you may be a Settlement Class Member who is affected by the Settlement. You may still be a Settlement Class Member even if you did not receive an e-mail concerning the Settlement. You may also have received or seen a Publication Notice concerning this case.

2. What is this case about?

Plaintiffs filed a lawsuit in which they allege that the packaging of Defendant’s Lidocaine Products was false and deceptive in that it led purchasers to believe that the Lidocaine Products delivered a “maximum strength” amount of lidocaine, and that the Products in patch form could reliably adhere to the body for up to 8 or 12 hours. Defendant denies that it did anything wrong. Accordingly, Defendant has vigorously defended Plaintiffs’ allegations. The Parties, however, have agreed to settle the Action to avoid the cost, delay, and uncertainty of continuing the Action.

3. Why is this a class action?

In a class action, one or more Class Representatives or Named Plaintiffs sue on behalf of all those with the same types of claims arising from the same events. Here, the Class Representatives filed the Action as a proposed class action and asked to represent the class detailed at Question 5. They sue on behalf of people who have similar claims—called the “Settlement Class” or “Settlement Class Members”—which in this case may include you.

When this case settled, the Court had not yet decided whether the case could be a class action. Defendant disputes that a class is appropriate for trial purposes, but the Parties have agreed to the certification of the Settlement Class, as detailed at Question 5, for purposes of the Settlement, and the Court has certified a class action for settlement purposes only. More information about why this is a class action can be found in the Court’s Class Certification Order, which is available at www.lidocainesettlement.com.

4. Why is there a settlement?

The Court has not decided which side is right or wrong in the Action. Instead, both sides agreed to a settlement to avoid the costs and risks of a lengthy trial and appeals process.

After extensive, arm’s-length negotiations overseen by a JAMS mediator, a former federal judge, the lawyers representing the Parties agreed to settle the Action. The Class Representatives and their lawyers think the Settlement is fair, reasonable, adequate, and in the best interests of all Settlement Class Members.

WHO DOES THE SETTLEMENT APPLY TO?

5. Who is in the Settlement Class?

The Settlement Class under the Settlement includes all persons who purchased Products in the United States during the Class Period, which is from December 11, 2017, through and including July 18, 2023.

“Products” means all CVS-branded “maximum strength” lidocaine patches, creams, roll-ons and spray products, including, but not limited to, the products listed in the First Amended Complaint. (ECF No. 53-1.) The Products include the following SKU numbers: 376649, 405343, 977934, 328522, 405623, 250483, 385037, 249024, 235554, 383998, 238921, 197229, 450467, 371271, 188721, 256563, 196728, 256518, 384034, 234274, 834344, 388642.

6. Are there exceptions to being included in the Settlement Class?

The Settlement Class under the Settlement excludes: (a) anyone who purchased or acquired the Products for resale; (b) Defendant and its employees, principals, affiliated entities, legal representatives, successors and assigns; (c) any person who makes a valid, timely opt-out request; (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof); and (e) the judges to whom this Action is assigned and any members of their immediate families.

7. I'm still not sure if I am included.

If you are not sure whether you are included in the Settlement Class, you can call toll-free (833) 747-6949 or visit www.lidocainesettlement.com for more information.

THE SETTLEMENT BENEFITS AND OPTIONS

If the Settlement is approved and becomes final, it will provide the benefits described below to Settlement Class Members. The benefit you may receive from the Settlement depends upon the particular claim option you choose.

8. What is the Settlement Sum?

To resolve the Action, and in consideration for the Settlement and Releases agreed to therein, Defendant will make available the Settlement Sum, which is up to three million eight hundred thousand dollars and zero cents (\$3,800,000).

The Settlement Sum represents Defendant's all-inclusive, sole, exclusive, and full payment for all monetary consideration of any kind whatever to Plaintiffs, Class Representatives, Settlement Class Members, and Class Counsel, including the total amount of monetary relief available (a) to Settlement Class Members for payment of all Valid Claims, (b) for Class Representative Service Awards, and (c) for Class Counsel's Fee Award. The Settlement Sum does not include reasonable Administration Expenses, which Defendant is also paying for the benefit of the Plaintiffs, Class Representatives and Settlement Class Members.

9. What are the benefits of the Settlement for Settlement Class Members?

Each Settlement Class Member will be able to choose between one of the two mutually exclusive Benefit options. One Claim is allowed per Settlement Class Member.

- (a) Settlement Class Members who fill out the Claim Form and do not provide valid Proof of Purchase(s) may recover four dollars and fifty cents (\$4.50) per Unit, limited to up to three (3) total Units (the "Simple Claim"); or
- (b) Settlement Class Members who fill out the Claim Form and provide valid Proof of Purchase(s) in the Class Period may recover four dollars and fifty cents (\$4.50) for each Unit included in the Proof of Purchase(s), without limitation on the number of Units (the "Proof Claim").

"Proof of Purchase" means a receipt or other documentation which reasonably establishes the fact of purchase of the Product during the Class Period in the United States.

A Settlement Class Member may file a Claim Form electing either option, but not both. If no proof or inadequate proof is submitted along with a Proof Claim, but the claim is otherwise a Valid Claim, it will be treated as a Simple Claim and subject to the Unit limitations therein.

The actual amount paid to each Settlement Class Member who makes a Valid Claim will depend upon the number of Valid Claims. If the total amount to be paid as a result of Valid Claims exceeds the amount of the Settlement Sum that remains after the payment of the Class Representative Service Awards and Class Counsel's Fee Award, then the Benefit payable to each Claimant shall be proportionately reduced, such that Defendant's maximum liability under this Agreement shall not exceed the Settlement Sum.

10. Am I entitled to any other relief under the Settlement?

As part of the consideration for this Agreement, and without admitting that the previous labels had any deceptive aspects to a reasonable consumer, Defendant has agreed to have changed the Labeling on the Products (a) to clearly identify that the Products contain the “maximum strength” of lidocaine available over the counter (“OTC”) without a prescription, and (b) to remove any language concerning the length of time the Products in patch form will adhere.

11. What do I need to do to participate in the Settlement?

In order to qualify for a Benefit, a Settlement Class Member must timely submit a completed and valid Claim Form before the deadline. This can be done on the Settlement Website www.lidocainesettlement.com (submitted by the Claims Deadline of November 20, 2023) or by mail (postmarked by the Claims Deadline of November 20, 2023). Settlement Class Members must satisfy each of the Claim Form requirements.

To receive a cash payment, you must submit your Claim Form by the Claims Deadline – no later than November 20, 2023, by following the directions set forth at www.lidocainesettlement.com. Only Valid Claims will be paid.

12. When will the Settlement go into effect?

The Court will hold a Final Approval Hearing on December 19, 2023, to decide whether to approve the Settlement. Even if the Court approves the Settlement, there could be appeals. The time for an appeal varies and could be more than a year.

The Effective Date is the date one business day after the last of the following dates: (a) all Parties have executed the Settlement; (b) the Court has entered the Final Approval Order finally certifying the Settlement Class, finally approving the Agreement, and dismissing the Action with prejudice as to Named Plaintiffs’ and Settlement Class Members’ claims against Defendant; and (c) the date on which the time to appeal or to seek permission to appeal from the Court’s approval of the Settlement Agreement has expired or, if appealed, approval of the Settlement Agreement has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review, or upon the denial of a writ of certiorari to review the order and final judgment from any court, thus making the Final Approval Order a final, non-appealable judgment.

You can visit the Settlement Website at www.lidocainesettlement.com to check the progress of the Court approval process and the setting of the Effective Date. Please be patient.

Valid Claims will be paid within forty-nine (49) days of the Effective Date. The Court will have the power to enforce the terms of the Settlement Agreement.

EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS

If you do not want to participate in the Settlement and instead you want to keep all of your rights to sue Defendant individually about the claims being resolved in the Settlement, then you must take steps to get out of the Settlement Class. This is called asking to be excluded from, or “opting out” of, the Settlement Class.

13. If I do not want to participate in the Settlement, what must I do?

In order to exercise the right to be excluded, a Settlement Class Member must send, postmarked by the Opt-Out/Objection Deadline of October 6, 2023, a written request for exclusion to the Settlement Administrator at the address provided in the Class Notice Program (also provided below), providing: (1) his/her/their name, address, and telephone number; (2) the name and number of this case; (3) documents or information sufficient to establish the person’s standing as a Settlement Class Member (including the Product purchased and date and location of purchase); (4) a statement that he/she/they wishes/wish to be excluded from the Settlement Class; and (5) a signature. No mass or class opt-outs will be permitted.

Your written request for exclusion from the Class should be mailed to:

Bell v. CVS Pharmacy, Inc.
c/o Kroll Settlement Administration LLC
PO Box 5324
New York, NY 10150-5324

If your request is not postmarked by the Opt-Out/Objection Deadline of October 6, 2023, your right to opt out will be waived and you will be bound by all orders and judgments entered in connection with the Settlement. In that case, you will not be entitled to any benefits unless you have filed a Valid Claim.

14. If I exclude myself, can I get anything from the Settlement?

No. Any Settlement Class Member who validly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under, or be affected by, this Agreement; (c) gain any rights by virtue of this Agreement; or (d) be entitled to object to any aspect of the Settlement. Except for those Settlement Class Members who timely and properly file a request for exclusion, all other Settlement Class Members will be deemed to be Settlement Class Members for all purposes under the Agreement, and upon the Effective Date, will be bound by its terms even if they file no Valid Claim. If you exclude yourself, you will receive no payment from the Settlement but will retain the ability to sue Defendant later, subject to the applicable statute of limitations or other defenses.

15. How do I tell the Court if I do not like the Settlement?

If you are a Settlement Class Member, you can object to the Settlement if you do not like any part of it. You can also object to Class Counsel's Application for Attorneys' Fees and Expenses, and the Class Representative Service Awards. You can give reasons why you think the Court should not approve the Settlement or Application. The Court will consider your views.

Anyone who objects to the Settlement, the Settlement Agreement, the Application for Attorneys' Fees and Expenses or the Class Representative Service Award, or the other matters to be considered at the Final Approval Hearing must, on or before the Opt-Out / Objection Deadline of October 6, 2023, serve a written objection. The written objection must include the following information:

- A caption or title that identifies it as "Objection to Class Settlement in Bell v. CVS Pharmacy, Inc.";
- Name, address, and telephone number for the objecting Settlement Class Member;
- Documents sufficient to establish the person's standing as a Settlement Class Member (including the Product purchased and date and location of purchase);
- The facts supporting the objection;
- The legal grounds on which the objection is based, including all citations to legal authority and evidence supporting the objection;
- The name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"); and
- The objector's signature (an attorney signature is not sufficient).

If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement within the last five years, then the objection must include a statement identifying each such case by full case caption and the amount of any payment received. No mass or class objections will be permitted.

Any Settlement Class Member who fails to object to the Settlement in the manner described in this Section shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of this Agreement by appeal or other means.

If an objecting person chooses to appear at the Final Approval Hearing, a notice of intention to appear must be filed with the Court no later than the Opt-Out / Objection Deadline. The notice of intention to appear must identify: (i) whether the appearance will be through counsel, (ii) any witnesses the objecting person may call to testify at the Final Approval Hearing; and (iii) copies of all exhibits the objecting person intends to introduce into evidence at the Final Approval Hearing. Only Settlement Class Members who submit timely objections including notices of intention to appear may speak at the Final Approval Hearing. If a Settlement Class Member makes an objection through an attorney, the Settlement Class Member will be responsible for his/her/their personal attorney's fees and costs.

You must also serve the objection and notice of intention to appear (if any) on the Settlement Administrator, Class Counsel, and Defense Counsel, as follows:

*Upon the Settlement
Administrator at:*

Bell v. CVS Pharmacy, Inc.
c/o Kroll Settlement
Administration LLC
PO Box 5324
New York, NY 10150-5324

Upon Defendant's Counsel at:

Mark S. Eisen
Emily N. Dillingham
Benesch Friedlander Coplan & Aronoff LLP
71 S. Wacker Dr.
16th Floor
Chicago, IL 60606
312-212-4949
Fax: 312-767-9192
meisen@beneschlaw.com
edillingham@beneschlaw.com

Upon Class Counsel at:

Joseph I. Marchese
Bursor & Fisher, P.A.
1330 Avenue of the Americas
New York, New York 10019
jmarshese@bursor.com

Upon Class Counsel at:

Adrian Gucovschi, Esq.
GUCOVSKI ROZENSHTEYN, PLLC
140 Broadway, Suite 4667
New York, NY 10005
Telephone: (212) 884-4230
E-Mail: adrian@gr-firm.com

If you do not comply with the foregoing procedures and the Opt-Out/Objection Deadline for submitting written objections, you may lose substantial legal rights to contest the orders or judgments of the Court entered in connection with the Settlement, including the ability to object.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

If you are a Settlement Class Member and do not opt out, you have a lawyer in this case. The Court has appointed the law firms of Bursor & Fisher, P.A. and Gucovschi Rozenshteyn, PLLC as Class Counsel to represent the Settlement Class Members. The only fees, costs, and expenses these lawyers will seek are those described in Question 17 below. If you want to be represented by your own lawyer in this case, you may hire one at your own expense.

17. How will the lawyers be paid?

Class Counsel has worked without compensation on this case since it was filed. In connection with the Final Approval Hearing on the Settlement, Class Counsel will apply to the Court for an award of Attorneys' Fees and Expenses, with the total amount not to exceed \$1,140,000.00. This amount is being paid from the Settlement Sum.

Class Counsel will also apply to the Court for the Class Representative Service Awards in an amount not to exceed \$3,000 each. The Class Representative Service Awards compensates the Class Representatives for their efforts and commitment on behalf of the Settlement Class during the Action. This amount is being paid from the Settlement Sum.

THE COURT'S FINAL APPROVAL HEARING

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement and whether to grant Class Counsel's Application for Attorneys' Fees and Expenses and Class Representative Service Awards. You may attend and you may ask to speak if you have filed a timely and compliant notice of intention to appear, but you do not have to do either one.

The Final Approval Hearing will be held before the Honorable Peggy Kuo on December 19, 2023, at 11:30 a.m. **Eastern Time**, at United States District Court, Eastern District of New York 225 Cadman Plaza East Brooklyn, Room 11C South, New York 11201.

Do not write or call the judge or the clerk concerning this Long-Form Notice or the Action.

The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement should be finally approved as fair, reasonable, and adequate, and in the best interests of the Settlement Class, and to consider awarding the Fee Award to Class Counsel and the Class Representative Service Awards. At the hearing, the Court will hear any objections and arguments that have properly been submitted, as set forth above, concerning the fairness of the Settlement or the fees.

The date of the Final Approval Hearing may change without further notice to the Settlement Class. Settlement Class Members should be advised to check the Settlement Website at www.lidocainesettlement.com to check on the date of the Final Approval Hearing, the Court-approval process, and the Effective Date.

19. Do I have to come to the Final Approval Hearing?

No, you are not required to come to the Final Approval Hearing. Class Counsel will answer any questions the Court may have.

If you send an objection, you do not have to come to the Court to talk about it. As long as you served your written objection by the Opt-Out/Objection Deadline and complied with the other requirements for a proper objection, the Court will consider it.

20. May I speak at the Final Approval Hearing?

You or your lawyer may ask the Court for permission to speak at the Final Approval Hearing if you have filed a timely and compliant notice of intention to appear.

You may not be able to speak at the hearing if you do not comply with the procedures set out in this Long-Form Notice and the Settlement Agreement.

IF YOU DO NOTHING

21. What happens if I do nothing?

If you are a Settlement Class Member, you must file a Valid Claim by the Claims Deadline, November 20, 2023, as described in response to Question 11, to receive a cash payment.

IF YOU DO NOTHING OR YOUR CLAIM FORM IS INVALID AND THE SETTLEMENT IS FINALLY APPROVED, YOU WILL BE BOUND BY THE COURT'S FINAL JUDGMENT AND RELEASE OF CLAIMS EXPLAINED IN THE SETTLEMENT AGREEMENT, AND WILL NOT BE ENTITLED TO COMPENSATION.

GETTING MORE INFORMATION

22. How do I get more information?

This Long-Form Notice is only a summary of the terms of the Settlement. More details about the Settlement, the Effective Date, the Opt-Out/Objection Deadline, the Claims Deadline, and your options are available in a longer document called the Settlement Agreement. This Settlement Agreement can be reviewed at www.lidocainesettlement.com.

The Settlement Website also contains answers to common questions about the Settlement, plus other information to help you determine whether you are a Settlement Class Member. In addition, some of the key documents in the case will be posted on the Settlement Website. If you would like this Long-Form Notice, the Claim Form, or the Settlement Agreement mailed to you, please call (833) 747-6949 or write to the Settlement Administrator at:

Bell v. CVS Pharmacy, Inc.
c/o Kroll Settlement Administration LLC
PO Box 5324
New York, NY 10150-5324

Alternatively, all of the court documents in this case are on file and available for review during regular office hours at the Clerk of the Court, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201.

Please do not call the Court or the Court Clerk's Office to inquire about this Settlement or the Claims Process.