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February 22, 2008

The Honorable Kenneth A. Richstad
Clerk of Court, Court of Appeals
P O Box 11629
Columbia, SC 29211

RECEIVED

FEB 23 2008

SC COURT OF APPEALS

Re Monica Weston v Kim's Dollar Store and CIBA Vision, et al
Civil Action No 2005-CP-40-0655

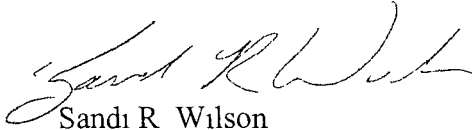
Dear Mr. Richstad

We are writing to the court pursuant to Rule 208(b)(7), SCACR. It has come to the attention of Respondent CIBA Vision, whose Initial Brief was served and filed on February 15, that a pertinent and significant subsequent decision was issued by the United States Supreme Court on February 20, 2008. Specifically, the Supreme Court issued its decision in *Riegel v Medtronic Inc*, 552 U.S. ____ (2008), in which it held that state tort law claims arising out of alleged defects in Class III medical devices, which are subject to the Medical Device Amendments of 1976, are barred due to federal preemption. The issue of the applicability of federal preemption to a Class III medical device is a key issue in the appeal addressed in CIBA Vision's brief at pages 25 through 28 under Issue II titled, "The trial court did not commit reversible error in granting CIBA summary judgment on the basis that South Carolina law conflicts with and is preempted by federal requirements specific to the FreshLook Colors lenses at issue in this case." The decision of the Second Circuit in *Riegel v Medtronic Inc*, 451 F.3d 104 (2d Cir. 2006), which preceded the decision issued this week by the United States Supreme Court is specifically cited in CIBA's Initial Brief on page 26.

In light of the above, CIBA Vision respectfully requests that it have the opportunity in its Final Brief to update its legal argument as set forth in pages 25 through 28 of its Initial Brief to address the decision of the Supreme Court in *Riegel v Medtronic*.

Sincerely,

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