

**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-HES-LLL</p> <p>Judge Harvey E. Schlesinger</p> <p>Magistrate Judge Laura Lothman Lambert</p>
<p>THIS DOCUMENT RELATES TO: All Class Actions</p>	

**CLASS COUNSEL'S RESPONSE TO
CERTAIN CLAIMANTS' OBJECTIONS TO THE
SUPPLEMENTAL DISTRIBUTION OF NET SETTLEMENT FUNDS**

Class Counsel respectfully submit this response (“Response”) to the submissions of (1) Ms. Noelle Erber (the “Erber Objection,” Decl. of Nathaniel C. Giddings, Ex. A), (2) Messrs. Stan Franklin and Scott Pierce (the “Franklin & Pierce Objection,” ECF No. 1404), and (3) Ms. Jill Swanson (the “Swanson Objection,” ECF No. 1405).¹ In support of this Response, Class Counsel submits the Second Supplemental Declaration of Jeanne Chernila (the “Second Chernila Declaration”) and Declaration of Nathaniel C. Giddings (“Giddings Declaration”).²

For the reasons set forth below, these Objections do not warrant reconsideration of the Court’s Order Authorizing Second Distribution of the Net Settlement Funds to Claimants (the “Second Distribution Order,” ECF No. 1403). Class Counsel respectfully request that the Court enter an order overruling the objections and permitting Epiq to proceed with this supplemental distribution.

I. INTRODUCTION

The Objectors ask the Court to prevent reallocating their *pro rata* allocation to other Approved Class Members. *See* Erber Obj. at 3; Swanson Obj. at 1; Franklin & Pierce Obj. at 1. However, the Objectors’ funds are not being reallocated. Each Objector is a Re-Issue Claimant who is slated to receive in January 2024 their *pro*

¹ The Eber Objection, Franklin & Pierce Objection, and Swanson Objection are collectively referred to herein as the “Objections,” and the individuals lodging these objections are collectively referred to herein as the “Objectors.”

² Class Counsel also cite to the Supplemental Declaration of Jeanne Chernila Regarding Claim Adjudication, Distribution Activities, and Supplemental Distribution of Net Settlement Funds (the “First Chernila Declaration,” ECF No. 1402-1), which was attached to Class Counsel’s Motion to Authorize a Supplemental Distribution of Net Settlement Funds (the “Motion,” ECF No. 1402).

rata distribution approved by the Court in its original Order Authorizing Distribution of the Net Settlement Funds to Claimants (the “First Distribution Order,” ECF No. 1371). *See* Second Chernila Decl., ¶ 6. Because the Objectors are already set to receive 100% of their *pro rata* distribution, their misplaced concerns should not hold up implementing the supplemental distribution.

Franklin & Pierce lob a bevy of other complaints, all of which are equally unfounded. Among other things, Franklin & Pierce falsely claim that the Motion and Second Distribution Order are silent as to whether people who requested re-issuance of their checks will receive funds (they will); falsely claim that unclaimed settlement funds must escheat to the States (they must not); and falsely claim that EpiqPay is affiliated with “Blackhawk Network” (it is not). In short, Franklin & Pierce’s arguments provide no basis to interfere with the distribution of funds under the Second Distribution Order.

The Second Distribution Order is legally sound and will ensure that Class Members receive the *pro rata* distributions to which they are entitled. Class Counsel respectfully request that the Court enter an order overruling the Objections and upholding its earlier determination, which will permit the Re-Issue Claimants and Second Distribution Claimants to receive their *pro rata* allocations promptly, likely in January of 2024.

II. BACKGROUND

A. The Court-Approved First Distribution.

The Court entered its First Distribution Order on June 5, 2023. Under that order, Epiq sent checks totaling \$67,200,621.96 to 68,229 to class members (the “First Round Claimants”). See Chernila Second Dec., ¶ 2. Further information about this first distribution is set forth below.

1. *First Round Claimants, on Average, Received a Check that Was Multiple of the Damages Incurred.*

Collectively, First Round Claimants had an approved claim value of \$67,582,036.61. *Id.*, ¶ 3. On average, each First Round Claimant received a check for \$984.93, which greatly exceeded their alleged damages. *Id.* Specifically, the highest overcharge (across all channels and all Defendants) computed by Plaintiffs’ expert was 22.3%. Giddings Decl., ¶ 3. Applying this overcharge to First Round Claimant’s approved claim value yields a damages figure of \$12,322,807.98.³ That is, First Round Claimants received, on average, more than 5.45 times their damages, as computed by Plaintiffs’ expert.⁴

2. *Epiq Announced the Mailing of Checks on the Settlement Website.*

To effectuate the First Distribution Order, Epiq updated the settlement

³ $\$67,582,036.61$ (total approved claim value of First Round Claimants) \times $(22.3 \div 122.3) = \$12,322,807.98$

⁴ $\$67,200,621.96$ (total value of checks sent to First Round Claimants) \div $\$12,322,807.98$ (damages on First Round Claimants’ collective approved claim value) = 5.45.

website to notify class members that checks would be mailed on June 27, 2023. *Id.*, ¶ 13. A screenshot of this updated banner, which was posted at the top of the settlement website, is below:

On June 5, 2023, the Court approved disbursement of the net settlement funds to claimants who submitted timely and valid claims. The Court's Order is posted [here](#). Award checks are expected to mail to approved Class Members on June 27, 2023. Entities or individuals whose claim submissions were not approved will be notified either by email or US postal mail on June 26, 2023.

Id., Ex. C. This notification remained “live” on the settlement website until approximately November 22, 2023. *Id.*, ¶ 14.

3. *First Round Claimants’ Checks Initially Expired on September 25, 2023, or 90-Days After Issuance.*



Consistent with the First Distribution Order, Epiq mailed checks to First Distribution Claimants on June 27, 2023. *Id.*, ¶ 2. Consistent with the Motion, each check clearly stated that it must be negotiated within ninety (90) days. *Id.*, ¶ 2; *see also* Mot. at 7 (“To encourage Approved Class Members to cash their award checks promptly and to avoid or reduce future expenses relating to uncashed checks, all award checks will bear the notation “Void if not negotiated within ninety (90) days of date of issue.”) (citing First Chernila Decl., ¶ 23). This is shown below in a redacted version of the check issued to Franklin:

DISPOSABLE CONTACT LENS SETTLEMENT ADMINISTRATOR PO BOX 4199 PORTLAND OR 97208-4199	The Huntington National Bank	25-2 440
	CHECK NUMBER [REDACTED]	DATE 06/27/2023
Void if not negotiated within ninety (90) days of date of issue		
PAY EXACTLY [REDACTED]		AMOUNT [REDACTED]
PAY TO THE ORDER OF: S [REDACTED] F [REDACTED]	<small>This check may not be cashed at a check cashing agency or money service business.</small> VOID _____ Authorized Signature	

Second Chernila Decl., Ex. B; *see also id.*, Ex. C (check issued to Pierce).

In addition, the cover letter that enclosed the checks told First Round Claimants to cash their checks promptly. *Id.*, ¶ 2. This is shown in the below picture, which is the cover letter accompanying the check sent to Franklin:

DISPOSABLE CONTACT LENS SETTLEMENT ADMINISTRATOR PO BOX 4199 PORTLAND OR 97208-4199	CHECK DATE: JUNE 27, 2023
	CHECK NUMBER: [REDACTED]
	CHECK AMOUNT: \$ [REDACTED]
	TRACKING NUMBER: [REDACTED]
	CLAIM NUMBER: [REDACTED]



 4874126329034
 600 0008492 00000000 0001 0001 08492 INS: 60
 S [REDACTED] F [REDACTED]
 5717 SHORE FRONT PKWY
 ARVERNE NY 11892-1846

AH821

This check is issued pursuant to the terms of the class action settlement *DISPOSABLE CONTACT LENS ANTITRUST LITIGATION* Case No. 3:15-md-02626. You submitted a claim for a settlement award, and it was determined to be timely and valid. The enclosed check constitutes full satisfaction of your claim.

The enclosed check is only valid for 90 days from the issue date. Please deposit promptly.

If you have any questions about your award, please contact the Settlement Administrator at (877) 253-3649, visit the settlement website at ContactLensSettlement.com, or write to PO Box 2995, Portland, OR 97208-2995.

Id., Ex. B; *see also* Ex. C (cover letter sent to Pierce).

Thus, because these settlement checks were issued on June 27, 2023, First

Round Claimants were required to cash (*i.e.*, negotiate) their checks by no later than September 25, 2023. *Id.*, ¶ 2.

4. *First Round Claimants Who Requested Re-Issuance Between July 3, 2023 and November 15, 2023 Have or Will Receive Their Pro Rata Payment.*

Between July 3, 2023 (the date Epiq received its first request for a re-issuance) and September 20, 2023 (the last date Epiq mailed checks that it had re-issued), Epiq re-issued 653 checks with a combined value of \$954,885.08 to First Round Claimants who requested re-issuance. *Id.*, ¶ 4. These re-issued checks all contained an expiration date ninety (90) days from the re-issuance date. *Id.* To date, 584 of these checks have been deposited, with the last expiring on December 19, 2023. *Id.* To the extent any of these claimants do not cash these re-issued checks, those funds would become available for use in a future distribution. *Id.*

In addition, between September 14, 2023 and November 15, 2023, Epiq received requests from 108 First Round Claimants—including each of the Objectors—requesting that their checks (with a combined value of \$151,232.59) be re-issued. *Id.*, ¶ 5. These claimants are among the Re-Issue Claimants. *Id.* Claimants had nearly five months after checks were mailed to request re-issuance of their checks without waiving any right to their *pro rata* distribution provided for in the First Distribution Order. *Id.* The Objectors were among those who requested re-issuance by November 15, 2023, and thus will be sent a re-issued check for their *pro rata* distribution pursuant to the Second Distribution Order. To be clear, the Objectors' *pro rata* distributions will be sent to them; they will *not*

be reallocated.

First Round Claimants who did not timely deposit their check or request reissuance before November 15, 2023 are “Lapsed Claimants” who have forfeited their right to any settlement funds under the First Distribution Order. *Id.*, ¶ 15. Epiq updated the settlement website shortly after that order was entered to inform claimants that they will not receive a re-issued check and that their right to settlement funds has been forfeited. *Id.* This is shown in the picture below:

On November 29, 2023, the Court issued its Order authorizing a supplemental distribution of net settlement funds to specific claimants. The Order is posted [here](#). Claimants meeting specific criteria for inclusion in the supplemental distribution will be contacted directly by the Settlement Administrator. There will be no notification to individuals who are not eligible to participate in the supplemental distribution. There is no opportunity to dispute the Court's Order or terms of inclusion in the supplemental distribution. Class Members who received and did not negotiate their checks prior to their stale dates and request a re-issuance prior to November 15, 2023, have forfeited their rights to receive settlement funds, as per the Court's Order. Electronic disbursement of available funds will be made in January 2024.

Id., Ex. E.

B. The Court-Approved Supplemental Distribution.

To date, Epiq has successfully distributed more than \$55 million to nearly 57,000 First Round Claimants, *see* First Chernila Decl., ¶ 9, leaving more than \$15 million undistributed (after accounting for the earlier-approved holdback and interest earned). *Id.*, ¶ 23.

To quickly distribute as much of these remaining funds to claimants as possible, Class Counsel filed their Motion, which seeks to utilize EpiqPay to electronically reissue payments totaling nearly \$6 million to nearly 6,000 First

Round Claimants who either did not receive their checks or asked for their checks to be re-issued before November 15, 2023. (the “Re-Issue Claimants”). Class Counsel’s Motion also sought to redistribute, on a *pro-rata* basis, more than \$9 million to nearly 6,000 claimants whose claims were previously determined to be invalid but—after an exhaustive re-review of 68,000 claim submissions (*id.*, ¶ 16)—were later determined to meet the necessary criteria for inclusion in a second disbursement (the “Second Distribution Claimants”). *See* Mot. at 2-3; *see also* First Chernila Decl., ¶¶ 9, 17. Notably, roughly \$6 million of the funds proposed to be distributed to the Second Distribution Claimants comes from Lapsed Claimants. Mot. at 3.

Epiq posted the Motion on the settlement website on November 22, 2023 and updated the banner language on the website’s landing page to inform class members that the Motion had been filed. *See* Second Chernila Decl., ¶ 14. This is shown below:

On November 21, 2023, Counsel filed a Motion to authorize a supplemental distribution of net settlement funds to specific claimants. The Motion is posted [here](#). We do not have an expected timeline for when the Court will review and act on this Motion, please try to be patient. Updates will be posted on this website as they become available.

Id., Ex. D.

The Court granted Class Counsel’s Motion on November 29, 2023. Epiq promptly uploaded the Second Distribution Order to the settlement website and updated the website’s landing page to inform class members that the Court had

granted Class Counsel's Motion and that it expected to make a second round of distributions in January 2024. *Id.*, ¶ 15. This is shown in the picture in Part II-A-4, *supra. Id.*, Ex. E.

Concurrently, Epiq began taking steps to ensure the Re-Issue Claimants and Second Distribution Claimants would receive their *pro rata* distributions in January of 2024. *Id.*, ¶ 5. These Objections could substantially delay this supplemental distribution. *Id.*

C. The Objectors Will Receive 100% of Their *Pro Rata* Distribution as Part of the Second Distribution.

As clearly stated in the Motion and Second Distribution Order, Re-Issue Claimants include those individuals who requested a reissuance before November 15, 2023. *See Mot.* at 2; Second Distribution Order at 2.

Each Objector acknowledges that they requested a re-issuance before November 15, 2023. *See Erber Obj.* at 5 (showing a re-issue request on October 6, 2023); *Swanson Obj.* at 1 (claiming a re-issue request on November 15, 2023); *Franklin & Pierce Obj.* at 3 (claiming re-issue requests in September of 2023). Indeed, Epiq had already identified each of these Objectors as a Re-Issue Claimant who was slated to receive their previously allocated *pro rata* distribution via EpiqPay in January 2024. *See Second Chernila Decl.*, ¶ 6.

Had these Objectors reached out to Epiq (or Class Counsel) after the Motion's filing or entry of the Second Distribution Order, they would have been informed that their distributions would be reissued via EpiqPay in January of 2024. Unfortunately, they did not do so. *Id.*, ¶ 12.

Class Counsel and Epiq, however, understand and appreciate that the Objectors received, at times, information from Epiq that they did not fully understand. Epiq regrets any confusion it may have caused and has already taken steps to make clear what is happening and prevent this from happening in the future. *Id.* Since learning of the Objections, Epiq has provided additional information and training to its employees regarding the Second Distribution Order and claimant classification. *Id.* In addition, Epiq has reminded its employees to elevate questions regarding the Second Distribution Order that they are unsure how to address to Ms. Chernila. *Id.*

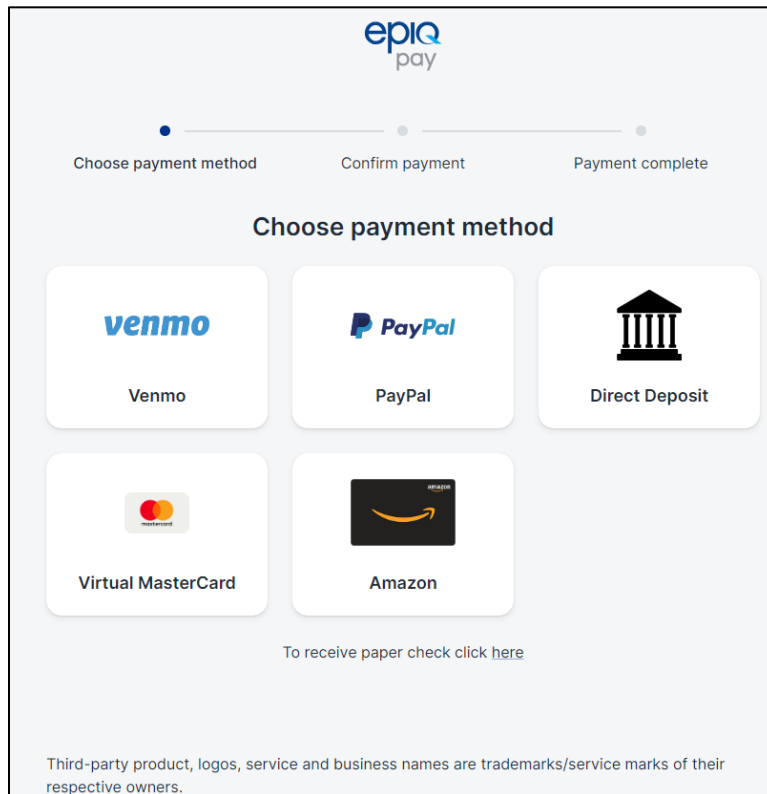
D. EpiqPay is An Accepted Electronic Payment Platform.

As the Motion states, “EpiqPay is Epiq’s proprietary digital payment platform designed by Epiq’s own subject matter experts, leveraging over 50 years of settlement administration experience to design a best-in-class product.” *See* First Chernila Decl., ¶ 29. Class Counsel appreciates that some claimants may not have as much familiarity or comfort with electronic payments and have included additional information about EpiqPay below to address any potential reservations.

1. *EpiqPay Allows Claimants to Select Between Electronic Payment Options or Request a Paper Check.*

Re-Issue Claimants and Second Distribution Claimants who provided a valid email address will receive an email prompting them to select a preferred payment medium. *See* First Chernila Decl., ¶ 29. The available electronic payment methods are PayPal, Venmo, direct deposit, a virtual MasterCard, and a virtual Amazon gift

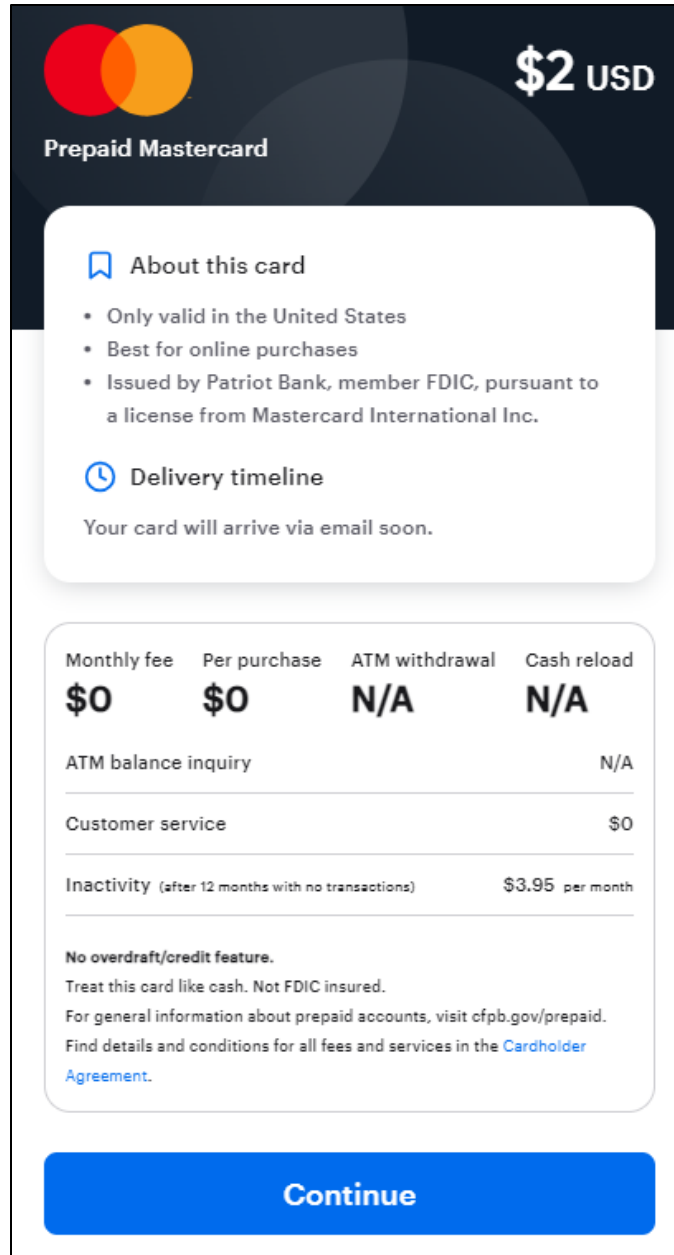
card. *See* Second Chernila Decl., ¶ 20. In addition, individuals will have the option to receive a paper check. *Id.* These payment options are presented to claimants, as shown below:



Id., Ex. F.

2. *There is No Cost to Claimants for Using EpiqPay.*

In this case, Epiq does not and will not charge claimants for using EpiqPay. *Id.*, ¶ 21. However, if a claimant requests their distribution via MasterCard, MasterCard charges a nominal fee to have its card issued, and it charges a fee of \$3.95 per month after twelve months with no transactions on the card. *Id.* These fees are clearly disclosed to claimants before they select this specific MasterCard option on the EpiqPay platform. *Id.* This is shown in the graphic below:



Id., Ex. G.

Thus, in short, claimants using the EpiqPay platform who select Paypal, Venmo direct deposit, a digital Amazon gift card, or a paper check will receive 100% of their *pro rata* distribution, and claimants who select a virtual MasterCard will pay minimal fees that are unambiguously disclosed to claimants before

choosing this option. *Id.*, ¶ 21.

3. *EpiqPay is a Proprietary Platform—It is Not Owned or Controlled by Any Third Parties—And EpiqPay’s Terms Do Not Contain an Arbitration Clause.*

EpiqPay is a proprietary platform owned and controlled by Epiq. *Id.*, ¶ 20. Contrary to what is claimed in the Franklin & Pierce Objection, EpiqPay does not currently rely on BlackHawk or Pathward and will not do so for this distribution. *Id.*, ¶ 21.

EpiqPay’s terms do not contain an arbitration clause. *Id.* However, the payment method claimants select may be subject to an arbitration clause; for example, PayPal’s user agreement contains an arbitration clause. *Id.* Epiq has no control over those terms. *Id.*

III. ARGUMENT

For the reasons set forth below, Class Counsel respectfully request that the Court enter an order overruling the Objections and affirming the Second Distribution Order.

A. The Objectors Ignore the Plain Language of the Motion and Second Distribution Order.

Each of the Objectors appears to claim that Class Counsel’s Motion does not explain how First Round Claimants who did not receive their checks or previously requested reissuance of their checks will be treated under the Second Distribution Order. *See* Erber Obj. at 3; Swanson Obj. at 1; Franklin & Pierce Obj. at II & III.

However, both the Motion and Order clearly state that claimants in the Objectors' position will receive reissued payments. *See* Part II-C, *supra*.

B. Claimants Had Sufficient Notice that a Failure to Cash Their Checks or Request Re-Issuance Could Result in Forfeiting Their Allocated Funds; Epiq Was Under No Obligation to Remind Claimants to Cash Their Checks.

Franklin & Pierce contend that they lacked sufficient notice that failing to cash checks could result in the inability to claim those funds and that Epiq should have reminded claimants—before their checks lapsed—to cash their checks. *See* Franklin & Pierce Obj. at I & V. This argument lacks merit.

First Round Claimants were clearly notified that they should promptly deposit their checks and that their checks otherwise would expire within ninety (90) days. *See* Part I-A-3, *supra*. In addition, the settlement website was updated to notify claimants that checks were being mailed. *See* Part I-A-2, *supra*.

This is standard practice in the administration of class settlements; nothing more was required. *See, e.g., Pines Nursing Home (77), Inc. v. PharMerica Corp.*, No. 1:13-CV-23924-KMM, 2015 WL 9269205, at *2 (S.D. Fla. Nov. 18, 2015) (holding that class members who fail to cash their checks within the time specified on the check “forever waives and releases his or her claim for payment of the amount represented by the settlement check” and that this amount may be redistributed without mentioning any need for further notice); *Adams v. Sitel Operating Corp.*, No. 1:16CV1051, 2019 WL 13296017, at *3 (M.D.N.C. May 29, 2019) (similar); *Khanna v. Intercon Sec. Sys., Inc.*, No. 2:09-CV-2214 KJM EFB, 2014 WL 1379861, at *4 (E.D. Cal. Apr. 8, 2014), order corrected, No. 2:09-CV-

2214 KJM EFB, 2015 WL 925707 (E.D. Cal. Mar. 3, 2015) (similar).

C. Claimants Who Received a First Distribution Are Not Entitled to a Second Distribution.

Swanson, Franklin, and Pierce argue that they—rather than claimants who have yet to receive any compensation—should receive an additional distribution of the available settlement funds. *See* Swanson Obj. at 1; Franklin & Pierce Obj. at IV. Objectors’ position is contrary to the law.

Claimants who have already been fully compensated for the harm incurred, such as the First Round Claimants who cashed checks, are not entitled to additional distributions. *See, e.g., In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 176 (3d Cir. 2013) (finding that a *cy pres* distribution, rather than an additional distribution to claimants, was appropriate “where all class members submitting claims have already been fully compensated for their damages by prior distributions” because “additional individual distributions would overcompensate claimant class members at the expense of absent class members.”); *In re Lupron*, 677 F.3d 21, 35-36 (1st Cir. 2012) (finding no abuse of discretion where the district court approved a *cy pres* distribution instead of using residual settlement funds to award treble damages to claimants, noting that it is “well accepted that protesting class members are not entitled to windfalls in preference to *cy pres* distributions.”); *Klier v. Elf Atochem North Am., Inc.*, 658 F.3d 468, 475 (5th Cir. 2011) (noting that district courts should make additional *pro rata* distributions to claimants “except where an additional distribution would provide a windfall to class members with liquidated-damages claims that were 100 percent satisfied by

the initial distribution.”).

First Round Claimants have already been fully compensated—they received no less than five times their incurred damages—for the harm caused by the alleged misconduct. *See* Part II-A-1, *supra*. While Class Counsel could have requested a *cy pres* distribution of the remaining funds, Class Counsel sought to distribute the available settlement funds to claimants who were initially denied but on further inspection, meet the criteria for compensation. *See* Mot. at 6. The Court acted well within its discretion in approving payments to these yet-to-be-compensated claimants. *See Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 436 (2d Cir. 2007) (reviewing the district court’s determination of how to distribute residual settlement funds under an abuse of discretion standard).

D. Unclaimed Settlement Funds Do Not Escheat to the States.

Contradicting their earlier position that they are somehow entitled to a second distribution from the Lapsed Claimants’ funds (they are not), Franklin & Pierce also wrongly argue that these forfeited funds must escheat to the States as unclaimed property. *See* Franklin & Pierce Obj. at VI.

Franklin & Pierce cite no legal authority for this argument, nor can they; it is wholly unsupported. This Court has broad discretion to dispose of unclaimed settlement funds as it deems appropriate, including through (1) a *cy pres* distribution, (2) a further *pro rata* distribution to class members, (3) escheatment to a governmental authority, or (4) reversion to the defendant. *In re Motorsports Merchandise Antitrust Litig.*, 160 F. Supp. 2d 1392, 1393-94 (N.D. Ga. 2001)

(citing authorities). Indeed, the very argument pressed by Franklin & Pierce here was recently rejected as “baseless” by Judge Marston in the Eastern District of Pennsylvania. *See In re Remicade Antitrust Litig.*, No. 17-CV-04326, 2023 WL 2530418, at *20 (E.D. Pa. Mar. 15, 2023) (finding “baseless” an objection arguing that unclaimed settlement funds must escheat to the States under “the laws of almost every state” rather than be redistributed or given for *cy pres* or used for attorneys’ fees) (quoting objection).

Indeed, if accepted, Franklin & Pierce’s argument would render *cy pres* distributions verboten. That is not the law in this Circuit or any other. *See Nelson v. Mead Johnson & Johnson Co.*, 484 F. App’x 429, 435 (11th Cir. 2012) (finding that a “*cy pres* distribution was a permissible method to distribute unclaimed settlement funds”) (citing cases); *In re Pharm. Indus. Average Wholesale Price Litig.*, 588 F.3d 24, 34 (1st Cir.2009) (“[C]ourts are not in disagreement that *cy pres* distributions are proper in connection with a class settlement, subject to court approval of the particular application of the funds.”) (cleaned up); *Esposito v. I.Q Data Int’l, Inc.*, No: 2:18-cv-437-JES-NPM, 2021 WL 1561479, at *1 (M.D. Fla. Apr. 21, 2021) (“*Cy pres* distribution is a common and proper method of distributing unclaimed settlement funds, subject to court approval of the particular application of the funds.”) (citing cases).

The Court was well within its discretion to redistribute lapsed funds to the Second Round Claimants in the Second Distribution Order.

E. Franklin & Pierce's Speculations About EpiqPay Are False.

Franklin & Pierce assert pages of false and confusing conjecture about EpiqPay. *See* Franklin & Pierce Obj. at VII. As set forth in the accompanying Second Chernila Declaration, Franklin & Pierce's rambling speculations are inaccurate. *See* Part II-D, *supra*. Their false assertions about EpiqPay should not require the issuance of paper checks, which claimants will (in any event) still have the ability to request through EpiqPay. *Id.* The Court should affirm its earlier approval of EpiqPay.

F. Class Counsel Have Not Yet Requested Attorneys' Fees.

Lastly, Franklin & Pierce argue that Class Counsel should not receive additional attorneys' fees. *See* Franklin & Pierce Obj. at VIII. This argument is premature and not germane to the second distribution. Presently, Class Counsel have not requested additional attorneys' fees because it is not yet clear whether any funds will remain after the second distribution. Class Counsel merely requested ***the ability*** to make such a request in the future if funds remain. *See* Mot. at 10-12. Because there is no pending request for additional attorneys' fees, this issue should not delay the second distribution to claimants. To the extent Class Counsel later intend to seek additional attorneys' fees, they would not oppose re-noticing the Class via email if the Court deems it appropriate.

IV. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request the Court enter an order rejecting the Objections and reaffirming its Second Distribution Order.

Dated: December 14, 2023

/s/ Michael E. Lockamy

Michael E. Lockamy
Florida Bar No. 69626
BEDELL, DITTMAR, DEVAULT,
PILLANS & COXE, P.A.
101 East Adams Street
Jacksonville, FL 32202
Telephone: (904) 353-0211
Facsimile: (904) 353-9307
mel@bedellfirm.com

Plaintiffs' Local Counsel

Joseph P. Guglielmo
SCOTT+SCOTT
ATTORNEYS AT LAW LLP
The Helmsley Building
230 Park Avenue, 17th Floor
New York, NY 10169
Telephone: (212) 223-6444
Facsimile: (212) 223-6334
jguglielmo@scott-scott.com

Benjamin Steinberg
ROBINS KAPLAN LLP
1325 Avenue of the Americas
Suite 2601
New York, NY 10019
Telephone: (212) 980-7400
Facsimile: (212) 980-7499
bsteinberg@robinskaplan.com

Nathaniel C. Giddings
HAUSFELD LLP
888 16th Street NW, Suite 300
Washington, DC 20006
Telephone: (202) 540-7200
Facsimile: (202) 540-7201
ngiddings@hausfeld.com

Christopher L. Lebsack
HAUSFELD LLP
600 Montgomery Street, Suite 320
San Francisco, CA 94111
Telephone: (415) 633-1908
Facsimile: (415) 217-6813
clebsack@hausfeld.com

Co-Lead Class Counsel

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

In Re: DISPOSABLE CONTACT LENS ANTITRUST LITIGATION	Case No. 3:15-md-2626-HES- LLL Judge Harvey E. Schlesinger Magistrate Judge Laura Lothman Lambert
THIS DOCUMENT RELATES TO: All Class Actions	

DECLARATION OF NATHANIEL C. GIDDINGS

I, Nathaniel C. Giddings, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a partner with the law firm of Hausfeld LLP, Co-Lead Counsel for the Plaintiffs and the Class in the above captioned action. I submit this declaration in support of *Class Counsel's Response to Certain Claimants' Objections to the Supplemental Distribution of Net Settlement Funds*. I have personal knowledge of the facts stated herein and, if called upon to do so, I could and would testify competently thereto.

2. Attached as **Exhibit A** is a true and correct copy of an email dated December 5, 2023 from Ms. Noelle Erber re: Request to Stop Supplemental Payments.

3. The highest overcharge (across all channels and all Defendants) computed by Plaintiffs' expert was 22.3%.

Executed on December 14, 2023, at Washington, D.C.

/s/ Nathaniel C. Giddings
Nathaniel C. Giddings
HAUSFELD LLP
888 16th Street NW, Suite 300
Washington, DC 20006
Telephone: (202) 540-7200
Facsimile: (202) 540-7201
ngiddings@hausfeld.com

EXHIBIT A

REDACTED

From: Erber, Noelle <Noelle.Erber@wolterskluwer.com>

Sent: Tuesday, December 5, 2023 11:02 AM

To: CHAMBERS FLMD SCHLESINGER <CHAMBERS_FLMD_SCHLESINGER@flmd.uscourts.gov>

Cc: robert@gilbertpa.com; gilbert@kolawyers.com; jad@bedellfirm.com; cburke@scott-scott.com; mlehmann@hausfeld.com; bsweeney@hausfeld.com; clebsock@hausfeld.com; jguglielmo@scott-scott.com; tboardman@scott-scott.com; mhausfeld@hausfeld.com; jpizzirusso@hausfeld.com; ngiddings@hausfeld.com; hsalzman@robinskaplan.com; bpersky@robinskaplan.com; wreiss@robinskaplan.com; george@sampsondunlap.com; lucinda@sampsondunlap.com; dennis@huletharper.com; smarks@podhurst.com; rjosefsberg@podhurst.com; info@ContactLensSettlement.com; info@ContactLensSettlement.com

Subject: Disposable Contacts Antitrust Litigation - Request to Stop Supplemental Payments

CAUTION - EXTERNAL:

Good morning, Judge Schlesinger. I hope you are doing well in sunny Florida. My name is Noelle Erber and I am a retired attorney in St. Louis, where it is cold and dreary here today. I am also a graduate of a former school you taught at, John Marshall Law School.

I am writing to you regarding the Disposable Contacts Antitrust Litigation. I'm not sure where else to turn at this point. I understand you recently issued an order for a supplemental distribution in this case. However, all initial distributions on valid and timely claims have not yet been paid. And, that is due to the mismanagement of payments due from the third party payor, Epiq, in this case, as you will see below.

I timely submitted a valid claim for this settlement. It has been anything but a smooth experience, even from the initial claim submission process online (there were multiple issues I experienced when attempting to submit a claim back in June/July 2022 as shown at the bottom of this thread). The below thread is a portion of the emails I have sent then (some additional emails were also sent from my personal email address, not my work email address). Here is a summary of the emails you will find below:

- I emailed Epiq on July 28, 2023 when I did not receive my check as anticipated.
- I received a general response from Epiq on July 31, 2023 with no status update on my claim.
- I resent all of my information to Epiq on July 31, 2023 because I'm not sure what they are lacking.
- a month later on August 1, 2023, I receive notice that my claim is denied because my "products claimed -were not part of the settlement" (which was untrue).
- on August 1, 2023, I request a review of my claim because the products were included in the settlement agreement
- on September 5, 2023, I was told my claim was being reviewed as "suspicious"
- on September 5, 2023, I emailed back and asked to speak with somebody from Epiq. I had been told too many contradicting things at this point.
- I received an email on 9/29/2023 stating that a check had been emailed to me on 9/20/2023.
- on 10/4/2023, I emailed to ask that a check be re-issued because it was not received. I again provide my mailing address and phone number (which I have provided multiple times at this point)
- on 10/5/2023 I am told that the check was sent to a different address.
- on 10/5/2023, I again provide my correct address and ask for a re-issue or if payment can be done electronically at this point
- on 10/6/2023 I am told that they will reissue the check once it is returned as undelivered or it reaches the stale date
- on 10/6/2023, I request to know the stale date of the check so I know when to check back with them, and I also request to know the amount of the check.
- on 10/15/2023, I receive the information that my check is being re-issued in the amount of \$1404.91, and I should have it within 2-3 weeks

- on 11/16/2023, I sent another email asking where my check is since it's now been 4 weeks.
- on 12/4/2023, I am told that there will be no re-issues after September 20, 2023 and I will not be receiving my settlement funds.

I have spent countless hours dealing with Epiq who was tasked with allocating millions of dollars to settlement members. I think it's important for you, as the judge overseeing this case, to see what this company has put settlement members through, and how they have systematically denied payments to valid claimants by use of false statements and undue delays. I submitted a valid, timely claim, and was falsely told that it was for a product not included in the settlement, my claim was suspicious, that my address was wrong, and that a check was finally being mailed, even when it wasn't.

I respectfully request that the Court issue an order to stop any supplement settlement payments until all initial valid and timely claims have been properly paid. And, I respectfully request that the plaintiff's attorneys in this case get Epiq on-board with the Court's order to re-issue checks. This entire process has been made a mess by Epiq and it will take action by both the Judge and attorneys to straighten this ship.

Thank you for your time and attention to this matter. And, I look forward to hearing from you.

Respectfully,

Noelle Erber, J.D.
4043 Sequoia Drive
Edwardsville, IL 62025
618-803-0729
Confirmation Claim: OZRYP0LT

(Please note, I am moving on December 18, 2023. I have submitted a forwarding address with the USPS and my new address as of 12/18/23, will be: 375 Point of View Drive, Edwardsville, IL 62025)

From: info_ContactLensSettlement <info@ContactLensSettlement.com>

Sent: Monday, December 4, 2023 3:47 PM

To: Erber, Noelle <Noelle.Erber@wolterskluwer.com>

Subject: RE: Re: Re: Fw: Re: Re: Re: Re: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

Dear Noelle Erber,

Thank you for your email.

Unfortunately, there will be no further reissues beyond September 20, 2023 for this settlement.

We understand your concern. We are Epiq, a neutral third party appointed by the Court to fulfill certain administrative responsibilities in this case, including adhering to all deadline dates.

Regards,

Miaka F.

Disposable Contact Lens Settlement Administrator

----- Original Message -----

From: Noelle.Erber@wolterskluwer.com

Received: 11/16/2023 12:09 PM

To: info@ContactLensSettlement.com

Subject: Re: Re: Fw: Re: Re: Re: Re: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

CAUTION: This email originated from outside of Epiq. Do not click links or open attachments unless you recognize the sender and know the content is safe. Report phishing by using the "Phish Alert Report" button above.

Good afternoon. Below you stated that a new check was to be mailed and I should allow 2-3 weeks to receive my payment. It has been 4 weeks and I have not yet received my check. Can you please check the status of my payment?

Thank you,

Noelle Erber

618-803-0729

Conf. Code: OZRYP0LT

From: info_ContactLensSettlement <info@ContactLensSettlement.com>

Sent: Sunday, October 15, 2023 11:37 PM

To: Erber, Noelle <Noelle.Erber@wolterskluwer.com>

Subject: RE: Re: Fw: Re: Re: Re: Re: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

Dear Noelle Erber,

Thank you for your email.

Your settlement payment in the amount of \$1,404.91 has been queued for reissue, being the initial payment was returned as Undeliverable. Thank you for your patience as we continue to work to process all settlement payments. Please allow 2-3 weeks to receive your payment.

Regards,

Mounika S.
Disposable Contact Lens Settlement Administrator

----- Original Message -----

From: Noelle.Erber@wolterskluwer.com
Received: 10/6/2023 6:39 AM
To: info@ContactLensSettlement.com
Subject: Re: Fw: Re: Re: Re: Re: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

Thank you for all your help. Can you please inform me of the original check's stale date? Also, can you please tell me what amount the check is for?

Thanks again and I hope you have a wonderful weekend.

Noelle

From: info_ContactLensSettlement <info@ContactLensSettlement.com>
Sent: Friday, October 6, 2023 6:15 AM
To: Erber, Noelle <Noelle.Erber@wolterskluwer.com>
Subject: RE: Fw: Re: Re: Re: Re: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

Dear Noelle Erber,

Thank you for your email.

This is to confirm we have received your request for a change of address and have updated our records accordingly.

Your check reissue request is in process. We are processing the information provided and will notify you if additional information is required. For security reasons, a check reissue cannot take place until either the original check is received back by us, the mailing has been returned to us as undeliverable, or until the original stale date of the check has passed or expired. We thank you for your patience.

Regards,

Priyanka S.
Disposable Contact Lens Settlement Administrator

----- Original Message -----

From: Noelle.Erber@wolterskluwer.com
Received: 10/5/2023 6:33 AM
To: info@ContactLensSettlement.com
Subject: Fw: Re: Re: Re: Re: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

Good morning. Thank you for your response. That address should be:

4043 Sequoia Drive
Edwardsville, IL 62025

Can you please reissue the check and send it to the address listed above? Or, if an electronic payment would work better at this time, we can do it that way.

Thank you for your help,
Noelle Erber

From: info_ContactLensSettlement <info@ContactLensSettlement.com>
Sent: Thursday, October 5, 2023 8:21 AM
To: Erber, Noelle <Noelle.Erber@wolterskluwer.com>
Subject: RE: Re: Re: Re: Re: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

Dear Noelle Erber,

Thank you for your email.

Our records indicate that a Settlement payment was mailed on 9/20/2023 to the following address: 200 BRIGHTLY WAY, GLEN CARBON, IL 62034-3415.

Regards,

Mounika P.
Disposable Contact Lens Settlement Administrator

----- Original Message -----

From: Noelle.Erber@wolterskluwer.com
Received: 10/4/2023 12:59 PM
To: info@ContactLensSettlement.com
Subject: Re: Re: Re: Re: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

Good afternoon. Thank you for your email stating a check was mailed to me on 9/20. However, it has now been 14 days and the check has not been received. None of my information, including my mailing address has changed. Can you please reissue and mail the settlement check to my address on file?

Thank you,

Noelle Erber
Conf. Code OZRYPOLT
4043 Sequoia Drive
Edwardsville, IL 62025

From: info_ContactLensSettlement <info@ContactLensSettlement.com>
Sent: Friday, September 29, 2023 4:25 AM

To: Erber, Noelle <Noelle.Erber@wolterskluwer.com>

Subject: RE: Re: Re: Re: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

Dear Noelle Erber,

Thank you for your email.

Our records indicate that a Check was mailed to you on 9/20/2023. This represents your share of the net settlement fund.

Regards,

Vandita T.
Disposable Contact Lens Settlement Administrator

----- Original Message -----

From: Noelle.Erber@wolterskluwer.com

Received: 9/28/2023 7:52 AM

To: info@ContactLensSettlement.com

Subject: Re: Re: Re: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

Good morning. I have still not received a response. I understand additional settlement payments were just recently made for customers who were not included in the first round of payments. I still have yet to receive my settlement payment. Can you please update me on the status of my claim. If you are denying it, I need a very specific reason as to why.

Thank you,
Noelle Erber
Conf. Code OZRYPOLT

From: info_ContactLensSettlement <info@ContactLensSettlement.com>

Sent: Wednesday, September 6, 2023 7:43 AM

To: Erber, Noelle <Noelle.Erber@wolterskluwer.com>

Subject: RE: Re: Re: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

Dear Noelle Erber,

Thank you for your email.

We are looking into your inquiry and will get back to you as soon as possible.

Regards,

Gayathri Y.
Disposable Contact Lens Settlement Administrator

----- Original Message -----

From: Noelle.Erber@wolterskluwer.com

Received: 9/5/2023 7:21 AM

To: info@ContactLensSettlement.com

Subject: Re: Re: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

Good morning. I am hoping I can speak with somebody regarding this claim. I have received multiple different reasons from the class administrator about why I have not received my settlement check. First it was a question about my address (unchanged address), then it was that the contacts I purchased weren't included in the settlement (not true), and now it is that there were two claims submitted and they have been flagged as suspicious. This latest reason of "suspicious" claim (dated today, 9/5/23) took over a month for you to claim after my last email (8/1/23) asking about my settlement check.

When initially attempting to file my claim online I experienced issues with your system. I emailed you several times about the issues and I received multiple responses back (responses dated 7/1/2022, 7/4/2022, 7/6/2022, and then confirmation of my claim finally being received 7/11/2022). The first 3 emails were all to/from a different email address of mine (Noelle4@gmail.com). When I submitted my claim through my work email (the email this is coming from), it finally went through. I have copies of all of the emails I sent/received from Noelle4@gmail.com documenting the issues I was having with your system.

So, if more than one claim went through, it was only because of the problems with your system I was experiencing, documenting, and contacting you directly about. I only intended for one claim to be submitted. I only received confirmation for one claim on 7/11/2022 at 8:49AM from noelle.erber@wolterskluwer.com with a confirmation code of OZRYPOLT.

Please issue my settlement check and confirm that it is being sent. If you believe there are still issues with this claim, please explain in detail. This process has been frustrating, and I would like to receive my settlement and close this claim. Should I be reaching out to lead counsel who represented the class for this settlement?

Thank you,
Noelle Erber
noelle.erber@gmail.com

From: info_ContactLensSettlement <info@ContactLensSettlement.com>

Sent: Tuesday, September 5, 2023 1:10 AM

To: Erber, Noelle <Noelle.Erber@wolterskluwer.com>

Subject: RE: Re: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

Dear Noelle Erber,

Thank you for your email.

Both claim submissions associated with OZRYPOLT are under review for suspicious activity.

Regards,

Gayathri Y.
Disposable Contact Lens Settlement Administrator

----- Original Message -----

From: Noelle.Erber@wolterskluwer.com
Received: 8/1/2023 6:51 AM
To: info@ContactLensSettlement.com
Subject: Re: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

Hello. Can you please re-review my claim? The products purchased and claimed on my form are most definitely listed on the claim form as qualified products.

From: info_ContactLensSettlement <info@ContactLensSettlement.com>
Sent: Tuesday, August 1, 2023 8:44 AM
To: Erber, Noelle <Noelle.Erber@wolterskluwer.com>
Subject: RE: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

Dear Noelle Erber,

Thank you for your email.

Your claim was denied due to the product purchases you included on your claim form were not part of this settlement.

Regards,

Sai P.
Disposable Contact Lens Settlement Administrator

----- Original Message -----

From: Noelle.Erber@wolterskluwer.com
Received: 7/31/2023 7:38 AM
To: info@ContactLensSettlement.com
Subject: Re: Disposable Contacts Antitrust Litigation– Website Correspondence

Good morning and thank you for your response. None of my information has changed, including my address. Below is all of my current (unchanged) information. I read the below email you sent, but I have no idea if the check was returned to you, or if the check has expired by now. So, can you please advise as to when payment will be received?

Noelle Erber
4043 Sequoia Drive
Edwardsville, IL 62025

618-803-0729
Noelle4@gmail.com

Confirmation Code: OZRYPOLT

If sending it via Venmo would be easier, that is fine, instead of a paper check.

Thank you for your attention to this matter,
Noelle Erber

From: info_ContactLensSettlement <info@ContactLensSettlement.com>

Sent: Monday, July 31, 2023 9:10 AM

To: Erber, Noelle <noelle.erber@wolterskluwer.com>

Subject: RE: Disposable Contacts Antitrust Litigation– Website Correspondence

Caution, this email may be from a sender outside Wolters Kluwer. Verify the sender and know the content is safe.

Dear Noelle Erber,

Thank you for your email.

Once we have this information, we can update our records to reflect your current address.

If the Check is \$100.00 or greater:

All reissue requests must be sent in writing to the Claims Administrator at the address listed below or via email address at Info@ContactLensSettlement.com.

Disposable Contacts Antitrust Litigation
Settlement Administrator
P.O. Box 2995
Portland, OR 97208-2995

If the name of the Class Member on the check should be changed, please send in or attach documentation, as applicable, according to the following checklist:

- Name Change – If your name has changed, please provide documentation showing this to be the case, which can include documents such as a marriage certificate or court papers indicative of a name change.
- Name Removal – In order to have a name removed from a check reissue, either have both parties on the check sign a letter and return the check, or return the check with documentation that shows that one party is unable to negotiate the check (i.e. death certificate).
- Deceased Class Member – If the Class Member indicated on the check is deceased, please submit acceptable documentation showing that you are the beneficiary of his or her Estate. Acceptable documentation may be a death certificate, together with the pertinent portion of the Will, or Court Order/Letters Testamentary naming you as Personal Representative, Administrator, Executor, or Executrix.
- Incapacitated Class Member – If the claimant cannot act on his or her own behalf, acceptable documentation is a Power of Attorney, or guardianship or custodial paperwork.
- Closed Business – If business is no longer active, please provide documentation of the business closure or asset sale.

For reasons of security, a check reissue cannot take place until either the original check is received back by us, a mailing has been returned to us as undeliverable, or until the original stale date of the check has passed or expired.

Because one of these events must occur before we can act on your request, it is not possible for us to provide an estimated date for the reissue to take place. We thank you for your patience.

If the Check is less than \$100.00:

If your bank will not cash the check, please return the original check along with a letter, signed under penalty of perjury, declaring that you are lawfully designated to receive the funds on behalf of the deceased class member, to the Settlement Administrator at:

Disposable Contacts Antitrust Litigation
Settlement Administrator
P.O. Box 2995
Portland, OR 97208-2995

OR

Email Info@ContactLensSettlement.com.

For reasons of security, a check reissue cannot take place until either the original check is received back by us, a mailing has been returned to us as undeliverable, or until the original stale date of the check has passed or expired.

Because one of these events must occur before we can act on your request, it is not possible for us to provide an estimated date for the reissue to take place. We thank you for your patience.

Regards,

Sravani Y.
Disposable Contact Lens Settlement Administrator

----- Original Message -----

From: noelle.erber@wolterskluwer.com

Received: 7/28/2023 2:20 PM

To: info@ContactLensSettlement.com

Subject: Disposable Contacts Antitrust Litigation– Website Correspondence

Website Correspondence

Name: Noelle Erber

Message: Hi. I saw on your website that payments were expected to go out in early 2023. I have not received my payment yet. My confirmation code is: OZRYP0LT. Can you please provide a status update? Thank you!

CAUTION - EXTERNAL EMAIL: This email originated outside the Judiciary. Exercise caution when opening attachments or clicking on links.

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

In Re: DISPOSABLE CONTACT LENS ANTITRUST LITIGATION	Case No. 3:15-md-2626-HES- LLL Judge Harvey E. Schlesinger Magistrate Judge Laura Lothman Lambert
THIS DOCUMENT RELATES TO: All Class Actions	

**SECOND SUPPLEMENTAL DECLARATION OF JEANNE CHERNILA
REGARDING CERTAIN CLAIMANTS' OBJECTIONS TO THE
SUPPLEMENTAL DISTRIBUTION OF NET SETTLEMENT FUNDS**

I, Jeanne Chernila, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a Project Manager employed by Epiq Class Action & Claims Solutions (“Epiq”) in Beaverton, Oregon. I am familiar with the actions taken by Epiq with respect to the settlements (“Settlements”) reached in this case between Plaintiffs and the Alcon Vision LLC f/k/a Alcon Laboratories, Inc. (“Alcon”), Johnson & Johnson Vision Care, Inc. (“J JVCI”), Bausch & Lomb, Inc. (“B&L”), and Cooper Vision, Inc. (“CVI”), and ABB Optical Group, LLC (“ABB”) (collectively the “Defendants”), and the corresponding Claim Forms submitted and the processing of the Claim Forms and subsequent activities. This Second Supplemental Declaration is based upon my personal knowledge and information

provided to me by Class Counsel, and associates and staff under my supervision, and is accurate and truthful to the best of my knowledge.

2. Initial award payments were issued June 27, 2023, for Approved Class Members (“First Round Claimants”) and were made from five (5) separate Net Settlement Funds: the B&L Settlement Fund (\$2,901,043.91), the CVI Settlement Fund (\$535,922.73), the ABB Settlement Fund (\$18,923,468.03), the Alcon Settlement Fund (\$12,709,817.23), and the JJVCI Settlement Fund (\$34,951,997.37). A total of 68,229 Approved Class Members received award payments from one (1) or more Settlement Funds, depending on the settlement(s) to which they made a claim. Each check payment clearly stated that it must be negotiated within ninety (90) days.

3. Award payments were made based on *pro rata* calculations for each individual Net Settlement Fund (*i.e.*, after payment of Court-approved Attorney Fees and Costs, Named Plaintiff Service Awards, and notice and administration expenses, and taxes; and after receipt of interest earned on the Settlement Funds), less a holdback of \$2,821,627.31 to account for not-yet-paid administration and tax expenses in addition to a reserve for any unanticipated expenses. The First Round Claimants had an aggregate approved Eligible Product Purchase Claim Value of \$67,582,36.61. Epiq calculated the *pro rata* distribution amount for each claim by calculating each Eligible Product Purchase price percentage of the total allowed covered Eligible Product Purchases and applying that percentage to the

total dollar value for each applicable Net Settlement Fund available for distribution. Approved Class Member claims where the award amount was less than \$10.00 had a *de minimis* applied, with the lowest award amount being \$14.25. Each Approved Class Member on average received approximately \$984.93 based on the distribution methodology described herein.

4. In addition, between July 3, 2023, and September 14, 2023, there were 653 First Round Claimants who requested reissuance of their award checks, representing \$954,885.08. Epiq mailed these First Round Claimants re-issued checks, which all contained an expiration date that was ninety (90) days from the re-issuance date. Currently, 584 of these checks have been negotiated (*i.e.*, cashed). The last of these checks will go stale on December 19, 2023. It is possible that some or all of the not-yet-cashed checks will not be negotiated, at which point, those funds would become available for a further distribution in this action.

5. Between September 14, 2023, and November 15, 2023, Epiq received requests from 108 First Round Claimants (including each of the Objectors) requesting that their checks be reissued. These checks have a combined value of \$151,232.59. These 108 claimants are among the Re-Issue Claimants who will be receiving their *pro rata* distribution as part of the supplemental distribution. November 15, 2023 is fifty-one (51) days after the initial 90-day expiration period on these checks expired. That is, First Round Claimants had nearly five months from initial issuance of their checks to request a re-issue and still receive their *pro*

rata distribution.

6. Since the Court's Order approving Class Counsel's motion for a supplemental distribution and in order to make these supplemental *pro rata* distribution in January of 2024, Epiq has begun preparing for the Supplemental Distribution, including finalizing the award amounts and populations for the distributions. Any change to the supplemental distribution plan will necessarily require additional work on Epiq's part to apply any needed changes and will likely result in delays in this distribution.

7. The calculations performed for the initial calculation and disbursement were done with a *pro rata* rate determination for each of the applicable settlement funds, in accordance with the Court's Order Authorizing Distribution of the Net Settlement Funds to Claimants. Re-Issue Claimants are receiving their exact *pro rata* amount as determined in that calculation without any reduction or alteration. The award checks for Ms. Swanson, Mr. Franklin, and Mr. Pierce each were returned to Epiq as having undeliverable mailing addresses, and all three of these Objectors requested re-issuance of their checks prior to November 15, 2023. They are therefore Re-Issue Claimants, who will receive their initial *pro rata* distribution as part of this supplemental distribution.

8. Epiq mailed Ms. Swanson's award check on June 27, 2023, to the address on record. On July 8, 2023, Ms. Swanson contacted Epiq and provided an updated physical address. Ms. Swanson's check was reissued and mailed on

September 20, 2023 to the updated address. The reissued check was returned to Epiq as having an undeliverable address. Ms. Swanson has not provided an updated physical address since July 8, 2023.

9. Epiq mailed Mr. Franklin's award check on June 27, 2023, to the address on record, providing a 90-day negotiation period. **Exhibit A** is a true and correct redacted copy of Mr. Franklin's award check and cover letter. On September 3, 2023, Mr. Franklin contacted Epiq and provided an updated physical address. Epiq has since updated their records to reflect the address provided by Mr. Franklin on September 3, 2023. Mr. Franklin's *pro rata* distribution is among those that will be re-issued as part of the supplemental distribution.

10. Epiq mailed Mr. Pierce's award check on June 27, 2023, to the address on record. **Exhibit B** is a true and correct redacted copy of Mr. Pierce's award check and cover letter. On September 20, 2023, Mr. Pierce contacted Epiq and provided an updated physical address. Epiq has since updated their records to reflect the address provided by Mr. Pierce on September 20, 2023. Mr. Pierce's *pro rata* distribution is among those that will be re-issued as part of the supplemental distribution.

11. Regarding Ms. Noelle Erber, Epiq's records indicate that Ms. Erber filed two claims: one for herself and one for Serena R. Legnaioli. Ms. Erber's personal claim was denied for a failure to identify qualifying purchases; Ms. Erber

was notified by email of her denial on June 26, 2023; Epiq has no indication that this email notification was not delivered, and Epiq has no record of Ms. Erber contesting the denial of her personal claim.

12. Ms. Erber's claim on behalf of Serena Legnaioli was accepted, and an award check was mailed to the address on file. This check was subsequently returned as being undeliverable. Ms. Erber contacted Epiq on July 28, 2023, specifically referencing the claim number associated with this claim, and requested a re-issued check. Epiq mailed a re-issued check to the address provided by Ms. Erber on September 20, 2023. Ms. Erber reached out to Epiq again on October 5, 2023 regarding this claim and provided another address (the same that was provided with her personal claim submission). The earlier re-issued check was returned to Epiq as undeliverable. Serena Legnaioli's *pro rata* distribution is among those that will be re-issued as part of the supplemental distribution.

13. None of the Objectors contacted Epiq regarding their payment after the Court approved the supplemental distribution. In an effort to help maintain consistent communications with the Class, in early December Epiq provided additional information and training to its employees. Where employees are unsure how to address an inquiry they have been instructed to escalate the inquiry to me.

WEBSITE UPDATES

14. On or about June 6, 2023, Epiq updated the Home Page of the settlement website (contactlenssettlement.com) informing Claimants the Court had issued its Final Approval Order and providing date information for disbursement of awards. Attached as **Exhibit C** is a true and correct screenshot showing the banner notification.

15. On or about November 22, 2023, Epiq updated the Home Page of the settlement website informing individuals that Counsel had filed a Motion for Supplemental Disbursement of Net Settlement Funds, providing access to the filed documentation. Attached as **Exhibit D** is a true and correct screenshot showing the notification.

16. On or about November 30, 2023, Epiq once again updated the Home Page of the settlement website, stating the Court had issued its Order granting Class Counsel's Motion and providing an expected disbursement date of January of 2024. This update also confirmed that Class Members who received and did not negotiate their checks prior to their stale dates and request a re-issuance prior to November 15, 2023, had forfeited their rights to receive settlement funds. Attached as **Exhibit E** is a true and correct screenshot showing the notification.

SUPPLEMENTAL DISTRIBUTION THROUGH EPIQPAY

17. Epiq and Class Counsel have determined that there are (a) 4,767 Second Distribution Claimants, and (b) 5,580 Re-Issue Claimants. All but two of

these individuals provided email addresses when they submitted their claims.

18. Epiq believes that each, with the exception of the two individuals who did not provide emails (10,345 out of 10,347) can and should be issued digital payments via “EpiqPay,” with award amounts to be released in January of 2024 (assuming no delays in the distribution process). Digital payments will be live for sixty (60) days, and those digital payments that remain unclaimed will be converted into paper checks that will be mailed to claimants that will expire within sixty (60) days. Claimants who did not provide a valid email address will be issued paper checks, consistent with the First Distribution Order.

19. Digital payments were referenced in the Court-approved notice, and Epiq can leverage EpiqPay for the upcoming distribution to those claimants who provided email addresses. *See* ECF No. 1137-4 at ¶ 36. For those who did not, Epiq will again issue a check as part of this supplemental distribution.

20. EpiqPay is Epiq’s proprietary digital payment platform owned by Epiq and designed by Epiq’s own subject matter experts, leveraging over fifty (50) years of settlement administration experience to design a best-in-class product. Class Members participating in a new disbursement or reissue disbursement will receive an email (at the email address provided on the Claim Form) prompting Class Members to select payment preference. Class Members can receive payment via a variety of digital options such as digital debit card or PayPal, or can elect to receive a check. For Class Members who do not respond to select payment

preference, a physical check will be mailed to the mailing address on file. A true and correct screenshot of these options is attached as **Exhibit F**. Barring any unforeseen events (or unless the Court directs that one or more of these payment methods not be made available for use in this supplemental distribution), the payment methods shown in Exhibit F are the payment methods that will be made available to claimants who are taking part in the supplemental distribution.

21. EpiqPay does not currently use Blackhawk or Pathward, nor will either be used for the supplemental distribution in this case. There is no concealed or undisclosed arbitration clause to which class members agree as a part of EpiqPay. PayPal's terms and conditions do contain an arbitration clause, but this does not originate from Epiq. Class members do not incur any fees for using EpiqPay; however, there are fees associated with one payment type (virtual MasterCard) that are clearly disclosed when the class member makes their selection. A true and correct screenshot showing the disclosure of these fees that class members using EpiqPay receive when selecting a virtual MasterCard as their preferred payment method is attached as **Exhibit G**. Put differently, there are no fees associated with ACH, PayPal or Venmo, or with requesting a paper check be sent.

///

///

///

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 14, 2023 at Rio Nido, California.

Jeanne Chernila
Jeanne Chernila

EXHIBIT A

DISPOSABLE CONTACT LENS
SETTLEMENT ADMINISTRATOR
PO BOX 4199
PORTLAND OR 97208-4199

CHECK DATE: JUNE 27, 2023
CHECK NUMBER: [REDACTED]
CHECK AMOUNT: \$ [REDACTED]
TRACKING NUMBER: [REDACTED]
CLAIM NUMBER: [REDACTED]



4674126329034
000 0008492 00000000 0001 0001 08492 INS: 0 0

S [REDACTED]
F [REDACTED]

AI4631

This check is issued pursuant to the terms of the class action settlement *DISPOSABLE CONTACT LENS ANTITRUST LITIGATION* Case No. 3:15-md-02626. You submitted a claim for a settlement award, and it was determined to be timely and valid. The enclosed check constitutes full satisfaction of your claim.

The enclosed check is only valid for **90 days** from the issue date. Please deposit promptly.

If you have any questions about your award, please contact the Settlement Administrator at (877) 253-3649, visit the settlement website at ContactLensSettlement.com, or write to PO Box 2995, Portland, OR 97208-2995.

DISPOSABLE CONTACT LENS
SETTLEMENT ADMINISTRATOR
PO BOX 4199
PORTLAND OR 97208-4199

The Huntington National Bank

25-2
440

CHECK NUMBER
[REDACTED]

DATE
06/27/2023

Void if not negotiated within ninety (90) days of date of issue

PAY EXACTLY [REDACTED]

AMOUNT
[REDACTED]

PAY TO THE ORDER OF:

S [REDACTED] F [REDACTED]

This check may not be cashed at a check cashing agency or money service business.

VOID

Authorized Signature

[REDACTED]

EXHIBIT B

DISPOSABLE CONTACT LENS
SETTLEMENT ADMINISTRATOR
PO BOX 4199
PORTLAND OR 97208-4199

CHECK DATE:
CHECK NUMBER:
CHECK AMOUNT:
TRACKING NUMBER:
CLAIM NUMBER:

JUNE 27, 2023

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



4674126340502
000 0006424 00000000 0001 0001 06424 INS: 0 0

S [REDACTED] P [REDACTED]
[REDACTED]

AI4631

This check is issued pursuant to the terms of the class action settlement *DISPOSABLE CONTACT LENS ANTITRUST LITIGATION* Case No. 3:15-md-02626. You submitted a claim for a settlement award, and it was determined to be timely and valid. The enclosed check constitutes full satisfaction of your claim.

The enclosed check is only valid for **90 days** from the issue date. Please deposit promptly.

If you have any questions about your award, please contact the Settlement Administrator at (877) 253-3649, visit the settlement website at ContactLensSettlement.com, or write to PO Box 2995, Portland, OR 97208-2995.

DISPOSABLE CONTACT LENS
SETTLEMENT ADMINISTRATOR
PO BOX 4199
PORTLAND OR 97208-4199

The Huntington National Bank

25-2
440

CHECK NUMBER

DATE
06/27/2023

Void if not negotiated within ninety (90) days of date of issue

PAY EXACTLY ***** [REDACTED]

AMOUNT

PAY TO THE ORDER OF:

S [REDACTED] P [REDACTED]

This check may not be cashed at a check cashing agency or for money services business.

VOID

Authorized Signature

[REDACTED]

EXHIBIT C

Disposable Contacts Antitrust Litigation

Case No. 3:15-md-02626-HES

If You Purchased Certain Disposable Contact Lenses For Your Own Use Between June 1, 2013, and December 4, 2018, this Litigation and Settlements with two of the Defendants Could Affect Your Rights.

On June 5, 2023, the Court approved disbursement of the net settlement funds to claimants who submitted timely and valid claims. The Court's Order is posted [here](#). Award checks are expected to mail to approved Class Members on June 27, 2023. Entities or individuals whose claim submissions were not approved will be notified either by email or US postal mail on June 26, 2023.

The purpose of this website is to provide information concerning Settlements with Johnson & Johnson Vision Care, Inc. ("JJVCI"), Alcon Vision, LLC ("Alcon"), CooperVision, Inc. ("CVI"), ABB Concise Optical Group, LLC ("ABB") and Bausch & Lomb Inc. ("B&L")

If you have any questions after reading this website, you should contact lead counsel or the Settlement Administrator. Please do not call or write the court.

Please read this website carefully and in its entirety. You may be a member of the Classes described below and your rights may be affected by this pending class action lawsuit. This website advises you of your options regarding the class action and the Settlements.

Important Information about your Rights:

To participate in the Settlement Classes or the Litigation Classes, your purchases must be contact lenses manufactured by any of the following manufacturers: Alcon, B&L, CVI, or JJVC.

The deadline to exclude yourself from the Alcon and/or JJVCI Settlement(s) was **August 22, 2022**.

If you excluded yourself from the Alcon and/or JJVCI Settlement(s), you will not be eligible for any benefits from the Alcon and/or JJVCI Settlement(s). If you excluded yourself from the Litigation Classes, you will not be eligible to claim in the Alcon or JJVCI Settlements.

The deadline to exclude yourself from the ABB Settlement and Litigation Classes was March 10, 2021.

If you excluded yourself from the ABB Settlement, you will not be eligible for any benefits from the ABB Settlements.

The deadline to exclude yourself from the CVI and B&L Settlements was January 31, 2020.

If you excluded yourself from the CVI and B&L Settlements, you will not be eligible for any benefits from the CVI and B&L Settlements.

Current Status

On October 12, 2022, the Court held a fairness hearing and granted final approval to the Alcon and JJVC Settlements.

Important Dates

October 12, 2022, at 9:30 a.m. EST

Fairness Hearing for the Alcon and JJVCI Settlements

August 22, 2022

Deadline to Object to the Alcon and JJVCI Settlements

August 22, 2022

Deadline to Opt Out of the Alcon and JJVCI Settlements

August 22, 2022

Deadline to File a Claim under the Alcon and JJVCI Settlements

May 9, 2022

Court Granted Preliminary Approval of the Alcon and JJVCI Settlements

June 1, 2021

Court Granted Approval of ABB Settlement

May 19, 2021, at 10:00 a.m.

Fairness Hearing for the ABB Settlement

March 10, 2021

Deadline to Object to the ABB Settlement

March 10, 2021

Deadline to Opt Out of the ABB Settlement

March 10, 2021

Deadline to File a Claim under the ABB Settlement

November 10, 2020

Court Granted Preliminary Approval to the ABB Settlement

March 4, 2020

Court Granted Final Approval to the CVI and B&L Settlements

February 25, 2020 at 2:15 p.m.

Fairness Hearing for the B&L and CVI Settlements

January 31, 2020

Deadline to Object to the B&L and/or CVI Settlements

January 31, 2020

Deadline to Exclude Yourself from the B&L and/or CVI Settlements

June 1, 2013 - December 4, 2018

Class Period

[Contact Us](#) [Privacy Policy](#) [Terms of Use](#)

Questions? Contact the Settlement Administrator at info@ContactLensSettlement.com or 1-877-253-3649 (Toll-Free).

 © 2019 Epic All rights reserved | Version: 1.0.0.101 | Updated: 6/6/2023 4:11:55 PM

EXHIBIT E

Disposable Contacts Antitrust Litigation

Case No. 3:15-md-02626-HES

If You Purchased Certain Disposable Contact Lenses For Your Own Use Between June 1, 2013, and December 4, 2018, this Litigation and Settlements with two of the Defendants Could Affect Your Rights.

On November 29, 2023, the Court issued its Order authorizing a supplemental distribution of net settlement funds to specific claimants. The Order is posted [here](#). Claimants meeting specific criteria for inclusion in the supplemental distribution will be contacted directly by the Settlement Administrator. There will be no notification to individuals who are not eligible to participate in the supplemental distribution. There is no opportunity to dispute the Court's Order or terms of inclusion in the supplemental distribution. Class Members who received and did not negotiate their checks prior to their stale dates and request a re-issuance prior to November 15, 2023, have forfeited their rights to receive settlement funds, as per the Court's Order. Electronic disbursement of available funds will be made in January 2024.

The purpose of this website is to provide information concerning Settlements with Johnson & Johnson Vision Care, Inc. ("JJVCI"), Alcon Vision, LLC ("Alcon"), CooperVision, Inc. ("CVI"), ABB Concise Optical Group, LLC ("ABB") and Bausch & Lomb Inc. ("B&L")

If you have any questions after reading this website, you should contact lead counsel or the Settlement Administrator. Please do not call or write the court.

Please read this website carefully and in its entirety. You may be a member of the Classes described below and your rights may be affected by this pending class action lawsuit. This website advises you of your options regarding the class action and the Settlements.

Important Information about your Rights:

To participate in the Settlement Classes or the Litigation Classes, your purchases must be contact lenses manufactured by any of the following manufacturers: Alcon, B&L, CVI, or JJVC.

The deadline to exclude yourself from the Alcon and/or JJVCI Settlement(s) was **August 22, 2022**.

If you excluded yourself from the Alcon and/or JJVCI Settlement(s), you will not be eligible for any benefits from the Alcon and/or JJVCI Settlement(s). If you excluded yourself from the Litigation Classes, you will not be eligible to claim in the Alcon or JJVCI Settlements.

The deadline to exclude yourself from the ABB Settlement and Litigation Classes was March 10, 2021.

If you excluded yourself from the ABB Settlement, you will not be eligible for any benefits from the ABB Settlements.

The deadline to exclude yourself from the CVI and B&L Settlements was January 31, 2020.

If you excluded yourself from the CVI and B&L Settlements, you will not be eligible for any benefits from the CVI and B&L Settlements.

On October 12, 2022, the Court held a fairness hearing and granted final approval to the Alcon and JJVC Settlements.

Important Dates

October 12, 2022, at 9:30 a.m. EST

Fairness Hearing for the Alcon and JJVCI Settlements

August 22, 2022

Deadline to Object to the Alcon and JJVCI Settlements

August 22, 2022

Deadline to Opt Out of the Alcon and JJVCI Settlements

August 22, 2022

Deadline to File a Claim under the Alcon and JJVCI Settlements

May 9, 2022

Court Granted Preliminary Approval of the Alcon and JJVCI Settlements

June 1, 2021

Court Granted Approval of ABB Settlement

May 19, 2021, at 10:00 a.m.

Fairness Hearing for the ABB Settlement

March 10, 2021

Deadline to Object to the ABB Settlement

March 10, 2021

Deadline to Opt Out of the ABB Settlement

March 10, 2021

Deadline to File a Claim under the ABB Settlement

November 10, 2020

Court Granted Preliminary Approval to the ABB Settlement

March 4, 2020

Court Granted Final Approval to the CVI and B&L Settlements

February 25, 2020 at 2:15 p.m.

Fairness Hearing for the B&L and CVI Settlements

January 31, 2020

Deadline to Object to the B&L and/or CVI Settlements

January 31, 2020

Deadline to Exclude Yourself from the B&L and/or CVI Settlements


June 1, 2013 - December 4, 2018

Class Period

[Contact Us](#) [Privacy Policy](#) [Terms of Use](#)

Questions? Contact the Settlement Administrator at info@ContactLensSettlement.com or 1-877-253-3649 (Toll-Free).


EXHIBIT F





● ——— ● ——— ●


Choose payment method Confirm payment Payment complete


Choose payment method


Venmo


PayPal


Direct Deposit



Virtual MasterCard


Amazon


To receive paper check click [here](#)

Third-party product, logos, service and business names are trademarks/service marks of their respective owners.


EXHIBIT G

 **\$2 USD**

Prepaid Mastercard

 **About this card**

- Only valid in the United States
- Best for online purchases
- Issued by Patriot Bank, member FDIC, pursuant to a license from Mastercard International Inc.

 **Delivery timeline**

Your card will arrive via email soon.

Monthly fee	Per purchase	ATM withdrawal	Cash reload
\$0	\$0	N/A	N/A
ATM balance inquiry			N/A
Customer service			\$0
Inactivity (after 12 months with no transactions)			\$3.95 per month

No overdraft/credit feature.
Treat this card like cash. Not FDIC insured.
For general information about prepaid accounts, visit cfpb.gov/prepaid.
Find details and conditions for all fees and services in the [Cardholder Agreement](#).

Continue