UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

DISPOSABLE CONTACT LENS ANTITRUST LITIGATION.

This document relates to ALL CLASS ACTIONS.

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Case No. 3:15-md-2626 HES-LLL

OBJECTORS' OPPOSITION TO CLASS COUNSEL'S MOTION TO AUTHORIZE A SUPPLEMENTAL DISTRIBUTION OF NET SETTLEMENT FUNDS

Objectors Stan Franklin and Scott Pierce are approved claimants, who met in a Telegram chat room about class action malfeasance, and in this case who purchased contact lenses covered by this action, submitted a timely claim, and did not receive their respective settlement payments. Claimant Scott Pierce requested a reissue of his settlement payment on or around September 20, 2023, and the Settlement Administrator acknowledged that his check reissue was in process on September 22, 2023. Based on these dates, his claim does not fall into the date ranges referred to by Class Counsel in their motion, creating an anomaly.

Claimant Stan Franklin requested a reissue of his settlement payment on or around September 3, 2023, and the Settlement Administrator acknowledged that his check reissue was in process on September 4, 2023, however Claimant Franklin did not receive a reissued payment despite Class Counsel's motion suggesting to the contrary. The Settlement Administrator never notified Claimant Franklin that his check was not cashed. It is unclear what happens in this case.

Regardless, the motion filed by Class Counsel appears confusing, discombobulated, and objectionable for several reasons which are outlined below:

STANDARDS

The courts have recognized that the duty owed by class counsel is to the entire class. *Parker v. Anderson*, 667 F.2d 1204, 1211 (5th Cir. 1982).

Moreover, the district judge is a fiduciary of the class, who is subject therefore to the high duty of care that the law requires of fiduciaries. *See, e.g., Culver v. City of Milwaukee,* 277 F3d 908, 915 (7th Cir. 2002);*Stewart v. General Motors Corp.,* 756 F.2d 1285, 1293 (7th Cir.1985); *In re Cendant Corp. Litigation,* 264 F.3d 201, 231 (3d Cir.2001); *Grant v. Bethlehem Steel Corp.,* 823 F.2d 20, 22 (2d Cir.1987).

The district judge must exercise the highest degree of vigilance in scrutinizing the actions of Class Counsel. *Greisz v. Household Bank (Illinois), N.A.,* 176 F.3d 1012, 1013 (7th Cir.1999); *Rand v. Monsanto Co.,* 926 F.2d 596, 599 (7th Cir.1991); *Duhaime v. John Hancock Mutual Life Ins. Co.,* 183 F.3d 1, 7 (1st Cir.1999); John C. Coffee, Jr., "Class Action Accountability: Reconciling Exit, Voice, and Loyalty in Representative Litigation," 100 *Colum. L.Rev.* 370, – 385 – 93 (2000); David L. Shapiro, "Class Actions: The Class as Party and Client," 73 *Notre Dame L.Rev.* 913, 958 – 60 and n. 132 (1998).

ARGUMENT

I. The Retroactive Deadlines are Arbitrary, Unfair, and Made Without Notice

Class Counsel suggests various deadlines as bar dates to request reissued checks. All of the proposed dates are in the past. However, neither the Claims Administrator nor Class Counsel posted notice of the dates on the website www.contactlensettlement.com and they did not provide affected class members with any other form of notice. In fact, Class Members were not advised on the website that checks were mailed, so they had no reason to suspect they needed to request a reissue.

Rather than allow the retroactive bar dates proposed by Class Counsel -- all of which appear to have been pulled out of the sky without any rational bases -- this Court should establish a bar date to request reissues with at least sixty (60) days notice to Class Members on the website. Better would be for the claims administrator to also email affected class members. After all, who would request a reissue without knowing that a check was not received?

II. The Motion Does Not Explain What Happens to Claimants who Requested Reissue but Did Not Receive the Reissued Payment

As explained above, Objector Franklin requested reissue on or around September 4, 2023, due to the settlement check having not been received, apparently due to a change of address. The motion implies, though it does not state directly, that reissues of settlement checks requested between July 3, 2023 and September 14, 2023 have been sent. However, Franklin did not receive the requested (and confirmed "in process") payment. Class Counsel does not address what happens in the event Class Members (such as Franklin) did not receive a reissued check, what their deadline is to contact the Settlement Administrator, or what happens to their funds since the promised reissued payment was not received.

III. The Motion Does Not Address People Who Contacted the Settlement Administrator from September 14 through September 27, 2023

Throughout the motion, Class Counsel interposes arbitrary date deadlines that occurred in the past without notice to the class (see objection above). However, there exists no mention of claimants who contacted the claims administrator about their checks between September 14, 2023, through September 23, 2023. Of course, anyone who requested a reissue between these dates should receive both the reissued check and be able to participate in any subsequent *pro rata* distribution. But no explanation exists for omitting the claimants who made contact during this specific period.

IV. Class Counsel Appears to Want to Deprive People Who Had Mailing Issues from Receiving the *Pro Rata* Second Distribution

The motion itself is difficult to understand, but Objectors believe that Class Counsel is suggesting that people who did not receive their initial check for whatever reason, but requested reissuance, will receive a new check, but will not receive the *pro rata* distribution. This makes no sense and will result in the undersigned having to file an appeal to the Eleventh Circuit.

Most claimants that did not receive their check either were not notified that funds were

near distribution, had their check lost in the mail, or changed their address and had to dig through the documentation to determine how to receive a new mailing.

None of these reasons should deprive these claimants of receiving their *pro rata* second share if this Court approves one. There exists no precedent for treating people differently because they did not receive their first check.

In fact, when approving the settlement, this Court necessarily had to find that class members would be treated relatively equally. *See* Fed. R. Civ. Proc. 23(e)(2)(D)("the proposal treats class members equitably relative to each other").

Class Counsel' s suggestion that the persons who did not cash their original check should not receive the *pro rata* second distribution clearly violates the intent of Rule 23(e)(2)(D) as there exists no rational basis to punish people because the claims administrator failed to make sure that class members were paid.

V. The Claims Administrator Maintains a Duty to Notify Claimants Who Did Not Cash their Checks

Nearly 10% of claimants did not receive their checks. Class Counsel suggests that, even though it did not provide any notice that checks would arrive, people who did not receive their checks "forfeited" their money. However, neither the Settlement Administrator nor Class Counsel took any steps to notify claimants that their checks were not cashed despite having emails for most claimants. Hypocritically, Class Counsel asks this Court to make the second payment electronically to class member' s email addresses where it had one. If the Settlement Administrator can do this, this Court must ask itself, "Why couldn' t the claims administrator send an email to these claimants, or a post-card to the claimants that had no email asking them to cash their check or to request a new one?" Objectors certainly did not "forfeit" their claims. This is patently improper and unfair and seems to be an attempt to do as little work as possible to assure class members are paid.

VI. The Claims Administrator Must Turn Over Uncashed Checks to Unclaimed Property, Not Declare them "Forfeited."

Class Counsel deems people that did not receive their checks and did not request reissue

(even though no notice exists that checks were on the way) to have "forfeited" their claims. On the contrary, Florida law -- and the law of every state where claimants purchased their contact lenses -- covers uncashed checks and requires that checks larger than $10, $25, or $50 depending on the state be turned over to unclaimed property.

This Court sits in Florida. Section 717.113 of the Florida Statutes provides that all intangible property held for the owner by any court, government or governmental subdivision or agency, public corporation, or public authority that has not been claimed by the owner for more than one year after it became payable or distributable is presumed unclaimed. Section 717.101(14), F.S., defines intangible property to include items such as moneys, checks, drafts, deposits, interest, dividends, credit balances, customer overpayments, security deposits, unpaid wages, unused airline tickets, and unidentified remittances (list not to be considered all inclusive). Section 717.115, F.S., provides that unclaimed wages, including wages represented by unpresented (i.e., uncashed) payroll checks, that have not been claimed for more than a year after becoming payable, are presumed unclaimed. Sections 717.117 and 717.119, F.S., require that funds or other property presumed unclaimed and subject to the Florida Disposition of Unclaimed Property Act be reported and simultaneously delivered to the DFS, the agency charged with the responsibility for administering the provisions of ch. 717, F.S. Forms for such reports are available on the DFS' s web site. The report is to be filed before May 1 of each year and shall apply to the preceding calendar year. The Department may impose and collect a penalty of $10 per day up to a maximum of $500 for the failure of a local government to timely report information required by ch. 717, F.S. (see s. 717.117, F.S., for the specific reporting requirements).

The claims administrator is notorious for avoiding these statutory requirements under the guise of "redistribution," ostensibly with court approval while concealing their obligations under the laws of the fifty states. It is against public policy for this Court to condone what is essentially an illegal act. The unclaimed checks belong to the claimants who submitted a claim and had their checks lost in the mail or were otherwise not delivered.

This is especially so when Class Counsel relied on state law (antitrust repealer statutes) to bring the claims. The fact that the case was litigated in federal court changes nothing and this Court must not turn a blind eye to its obligation to assure that the claims administrator and Class Counsel do not perform civil torts and criminal acts (as in some

states it is an offense not to turn the money over to the appropriate agencies).
Parties cannot, by settlement or agreement, disregard legal requirements. With or without court approval, taking money from uncashed checks is not lawful. It is a class action that will eventually be made against Epiq and could result in its demise.

VII. Epiqpay Should Not be Allowed Unless All Terms Are Disclosed

Based on information, Epiqpay utilizes third parties such as Blackhawk Network to make payments. A review of the internet shows that Blackhawk Network is notorious for completely poor customer service and converting client funds. It is well known from internet searches that Epiq teamed with Blackhawk in other class actions where the funds were provided to BHN, but the claimants could not access their cards, are having trouble initiating arbitration, and never ultimately received their money.
Worse, each so-called "Epiqpay" payment comes with terms and conditions not approved by the Court including an arbitration agreement that stops claimants from suing when they cannot access their funds. However, the arbitration agreement requires use of arbitration services that cost over $230 for a claim to be made -- all for an electronic payment worth about the same or less than the price for filing arbitration. Worse, the agreements provide that Pathward Bank or Blackhawk will pay the arbitration fee and advance it, but they never do. They simply hold the dispute in limbo by not complying with the advancement of payment terms.
Not disclosed are the fees for this so-called Epiqpay. Omitted from the request to use the service is the disclosure of fees. Blackhawk often freezes the cards, but then charges a "dormancy fee." Worse, the agreements with Blackhawk provide that use of the card constitutes agreement that Pathward bank will be custodian of the money, but if you do not use the card, they still charge "dormancy" fees without notice. Common sense is that if you do not activate or use the card, then the terms are not agreed to. Blackhawk takes the fees anyway.
Another problem is that when a claimant receives their payment and does not agree with the terms, Blackhawk/Pathward will not close the account and send the money unless the claimant pays $10, provides a copy of their identification and a selfie, and various explanations as to how they received the card. This information is usually required to be provided using an unencrypted email channel and sent to Blackhawk' s service center in

San Salvador, El Salvador, where employees receive less than $500 per month for a 48 hour workweek. Sending identification information via email is quite the security breach.

Epiqpay also often "baits and switches" the Court promising Paypal, Venmo, ACH, and Mastercard, but when the options actually occur, the choices are Virtual Mastercard, Starbucks, Target, and Amazon. If Epiqpay is going to be allowed, it must provide the options it promised, such as ACH, Paypal, etc., and not be allowed to delete the options at its whim.

Epiqpay must absorb all fees, not the consumer under the guise of "dormancy fees" or check requests if the terms and conditions of the card are not disclosed prior to the consumer being given that choice. A claimant who receives a card should not have to pay if they receive the terms -- that are not disclosed until receipt -- and does not agree. Furthermore, a claimant not agreeing to the terms that they did not receive should not have to jump through hoops to cancel the card and send selfies and personal information to a third-party that is known for scamming consumers and for having data leaks, Blackhawk Networks.

Finally, if a consumer chooses Epiqpay and something goes wrong, it should be required to advance the arbitration fee if Blackhawk and/or Pathward fail to do so despite their written representations that they will advance the fees.

VIII. Attorney Fees Require Notice and an Opportunity to Be Heard Under Rule 23(h)(1)

First, no additional attorney fees should be granted in a case where Class Counsel did not proactively take steps to make sure claimants were paid. Interest is probably something that should be passed.

As shown, the claims administrator and Class Counsel have created the delays resulting in interest and uncashed checks. They did not provide a simple method for claimants to change their address. They did not notify class members that checks were coming or when they should arrive. Class members had no idea how to request a reissue or the deadlines that Class Counsel set for the first time in the motion filed November 21, 2023.

Regardless, if Class Counsel desires to seek attorney fees, they must provide full and fair notice to the class, at least by email where they have the addresses, and post-card or letter to claimants that filed claims. This is required pursuant to Rule 23(h)(1) which

states, "Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner."

To be clear, simply posting the motion for attorney fees on the website will not suffice. Class members who were paid will have no reason to look at the website. Class members who never cashed their checks do not even know that payments were made. If Class Counsel can pay claimants electronically to their emails, they can spend an hour sending a message to all class members who filed a claim with their motion for attorney fees, and a letter to those who did not submit valid emails. That is the minimum reasonable notice that complies with Rule 23(h)(1).

CONCLUSION

Based on the above issues, this Court should deny Class Counsel' s motion, require the claims administrator to take the necessary steps to assure all claimants receive notice before doing something with their uncashed checks, and require proactive steps for notice and payment to those who submitted timely claims. If the checks cannot be issued, they should be turned over to state unclaimed property. Any second distribution should be fair and equitable with all claimants receiving a *pro rata* share including those who contacted the claims administrator. Any use of electronic payments should require oversight by the Court, full disclosure of the terms before a claimant accepts the electronic payment, and absorption of the fees by the claims administrator, not by unwitting claimants. Finally, the claims administrator cannot bait and switch the offerings and turn Paypal, Venmo, ACH into Starbucks, Target and Amazon because it may be cheaper and more convenient for them at the expense of their clients, who they owe a fiduciary duty to.

Respectfully submitted,

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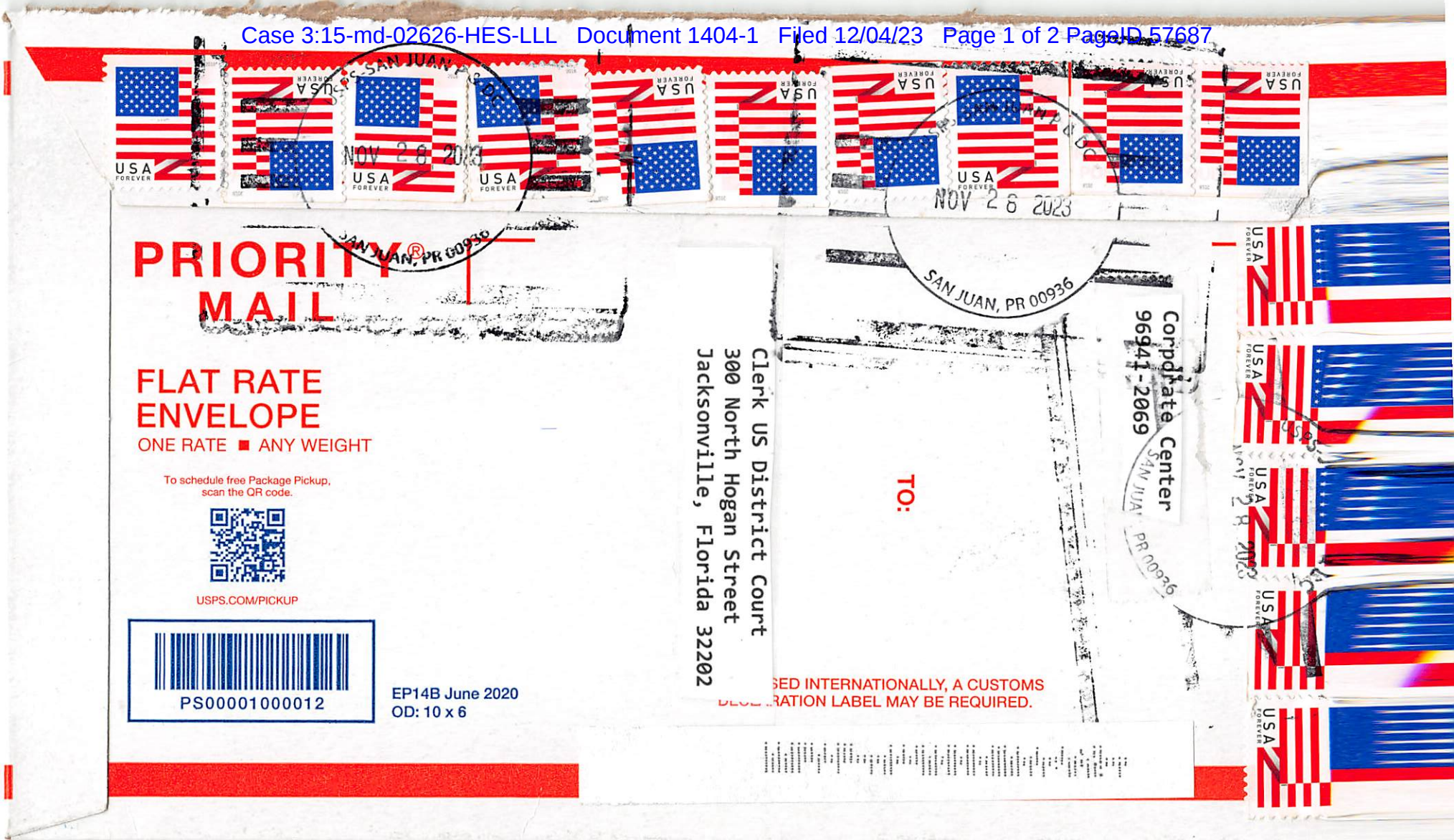
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