

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

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

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

Class Counsel move this Court for an Order authorizing the supplemental distribution of the Net Settlement Funds.<sup>1</sup> In support of the Motion, Class Counsel submit this memorandum and the Supplemental Declaration of Jeanne Chernila from the Court-appointed claims administrator, Epiq Class Action & Claims Solutions (“Epiq”), regarding claim adjudication, distribution activities, and supplemental distribution (“Chernila Decl.”).

**I. INTRODUCTION**

Through this Motion, Class Counsel seek entry of an order (a) authorizing the reissuance of payments totaling \$5,829,679.04 to 5,580 claimants who either did not receive their checks as part of the earlier distribution or who did not timely cash those checks and have subsequently contacted Epiq before November 15, 2023 (“Re-Issue Claimants”); (b) authorizing the redistribution of funds totaling \$9,004,368.89, on *pro rata* basis, to 4,767 Class Members who (i) submitted claims of less than \$2,000 in eligible/qualifying products who were not required to submit supporting documentation but were otherwise denied for failing to do so, (ii) submitted claims of less than \$2,000 in eligible/qualifying products who were required to submit supporting documentation and partially substantiated their claim, and/or (iii) were initially denied by Epiq but upon further review by Class Counsel should have been approved (“Second Distribution Claimants”); (c)

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<sup>1</sup> Class Counsel incorporate by reference here the facts and information set forth in their prior Motion to Authorize Distribution of Net Settlement Funds to Claimants (“First Distribution Order,” ECF No. 1370).

authorizing the issuance of these payments in electronic form, via EpiqPay; and (4) deeming the 5,763 claimants who previously received checks totaling \$6,003,381.62, and who did not timely cash their checks or ask for re-issuance before November 15, 2023, to have forfeited any right they may have had to claim any portion of the Net Settlement Funds (“Lapsed Claimants”), and that those funds be redistributed to the Second Distribution Claimants.

## **II. BACKGROUND**

### **A. The First Distribution**

On June 5, 2023, the Court entered its First Distribution Order. This order authorized payments totaling \$67,200,621.97 (“First Distribution Amount”) to 68,228 Approved Class Members and a hold back of \$2,821,627.31 for certain expenses (“First Hold Back”). *See* First Distribution Order, ¶¶ 3, 5. The Court approved payment of the First Distribution Amount on a *pro rata* basis to Approved Class Members. *Id.*, ¶ 1. The First Distribution Order further concluded that, to the extent any of the First Hold Back funds remained undisbursed and/or any Approved Class Member did not cash their checks, Class Counsel could later move the Court for approval of a supplemental distribution and/or a *cy pres* distribution. *Id.*, ¶ 4.

Consistent with the First Distribution Order, Class Counsel caused the First Distribution Amount to be transferred to Epiq on June 6, 2023. Chernila Decl., ¶ 7. Epiq subsequently attempted to distribute the entirety of the First Distribution Amount to the Approved Class Members in the manner approved by the Court. *Id.*,

¶ 8.<sup>2</sup> As of November 15, 2023, there were 56,798 Approved Class Members (83.3% of Approved Class Members) with payments totaling \$55,190,862.81 (82.1% of the First Distribution Amount) that had received and negotiated (*i.e.*, cashed) their checks (“Paid Claimants”). *Id.*, ¶ 9.

Of the remaining Approved Class Members, (a) 653 Approved Class Members with payments totaling \$954,885.08, requested to have their checks reissued between July 3 and September 14, 2023;<sup>3</sup> (b) 5,580 Approved Class Members with payments totaling \$5,829,679.04 did not receive their check and/or requested re-issuance of their checks between September 28 and November 15, 2023 (these are the Re-Issue Claimants);<sup>4</sup> and (c) 5,763 Approved Class Members with payments totaling \$6,003,381.62 whose checks expired and who did not ask for their checks to be re-issued prior to November 15, 2023 (these are the Lapsed Claimants). *Id.*, ¶¶ 9-11.

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<sup>2</sup> Epiq was ultimately unable to distribute \$1,738.80 of the First Distribution Amount due to the inability to calculate award values to fractions of a penny, and the rounding that occurred as a result. *Id.*, ¶ 8.

<sup>3</sup> As of November 15, 2023, eighty-seven (87) of these Approved Class Members, with payments totaling \$174,959.70, have checks that have not yet expired and have not yet cashed their checks. *Id.*, ¶ 10.

<sup>4</sup> This is comprised of (a) forty-four (44) Approved Class Members, with a total award value of \$48,715.27, who requested a re-issuance of their award checks between September 28, 2023 and November 15, 2023 (after these checks had expired), and (b) 5,536 Approved Class Members, with a total award value of \$5,780,963.77, whose addresses were determined to be invalid and undeliverable after these award checks had been issued and mailed by Epiq. *Id.* ¶ 11.

**B. Epiq and Class Counsel's Activities Since the First Distribution**

Following Epiq's notification to claimants of their awards or denials, Epiq and Class Counsel collectively received more than 9,000 emails and 3,400 telephone calls from individuals disputing or having questions about their claim information and determinations. *Id.*, ¶ 14. Some of these calls were administrative in nature (*e.g.*, requests to reissue checks), while others were more substantive (*e.g.*, contesting claim denials). *Id.*, ¶ 15.

Epiq, working in consultation with Class Counsel, subsequently initiated a supplemental review of all claim submissions that were denied due to (a) failing to respond to an email defect notification; (b) failing to timely provide substantiating documentation, and (c) appearing to be a duplicate of an already-paid claim. *Id.*, ¶ 16. In total, more than 68,000 claim submissions were re-reviewed. *Id.* This supplemental review was conducted both electronically and manually, was done at a highly granular level, and resulted in a thorough and comprehensive re-review of these claims. *Id.*, ¶¶ 16, 18.

As a result of this re-review, Epiq and Class Counsel determined that 4,767 of these previously denied Class members (roughly 7% of those re-reviewed), with an aggregate claim value of \$15,100,550.14, meet necessary criteria for inclusion in a supplemental distribution. *Id.*, ¶ 19. Specifically, Class Counsel proposes that the Court approve a distribution to the following: (a) Class members who submitted claims of less than \$2,000 in eligible/qualifying products who were not required to submit supporting documentation but were otherwise denied for

failing to do so; (b) Class members who submitted claims of less than \$2,000 in eligible/qualifying products who were required to submit supporting documentation and partially substantiated their claim, and (c) claimants who were initially denied by Epiq but upon further review by Class Counsel should have been approved *Id.*, ¶ 5(b). These are the Second Distribution Claimants.

**C. Available Settlement Funds**

As of November 9, 2023, there was \$9,668,368.89 available to distribute to Second Distribution Claimants, and to pay notice and administration expenses that have or will be incurred in connection with the administration and distribution of the Settlements, taxes on interest earned, and unanticipated expenses. *Id.*, ¶ 23. This is comprised of \$6,003,381.62 from Lapsed Claimants (currently held by Epiq), plus \$3,664,987.27 from the First HoldBack (currently held by the Court-approved Escrow Agent, Huntington Bank). *Id.*, ¶ 22.<sup>5</sup> Epiq estimates that a holdback of \$664,000.00 (“Second Holdback”) for future taxes, notice & administration expenses, and other unanticipated expenses is

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<sup>5</sup> At the time of the First Distribution Order was entered, and as a result of interest accumulating on the settlement funds between the time the distribution calculations were done and the time the First Distribution Order was entered, \$4,80,534.91 remained in the settlement funds. *Id.*, ¶ 21. Since then, a total of \$1,242,086.04 has been paid from these funds for taxes and notice and administration expenses, leaving \$3,664,987.27 (as of November 9, 2023) in the settlement funds. *Id.* Interest is currently accumulating on these funds at a roughly a rate of \$3,400 per week. *Id.*

appropriate. *Id.*, ¶ 24.<sup>6</sup> Thus, as of November 9, 2023, and after accounting for the Second Holdback, there was \$9,004,368.89 available to be distributed to the Second Distribution Claimants (if approved by the Court).<sup>7</sup>

In addition, and also as of November 9, 2023, there is \$5,829,679.04 available to be distributed to the 5,580 Re-Issue Claimants. *Id.*, ¶ 11. This is comprised of the funds previously allocated to these Approved Class Members pursuant to the First Distribution Order, and these funds are currently held by Epiq in the Distribution Account. *Id.*

Finally, as of November 9, 2023 there was an additional \$174,959.70 in valid, not-yet-negotiated checks outstanding. *Id.*, ¶ 10. It is possible that some portion of these checks will not be cashed, at which point, those funds would remain in the Distribution Account. *Id.*

### **III. ARGUMENT**

For the reasons set forth below, Class Counsel respectfully request that the Court grant their Motion.

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<sup>6</sup> On a *pro rata* basis, the Second Holdback amount would be attributed as follows from the funds held by Huntington Bank: ABB: \$204,175.76; Alcon: \$94,595.53; B&L: \$22,222.71; CVI: \$9,742.52; and JJVCI: \$333,263.48. *Id.*, ¶ 24.

<sup>7</sup> On a *pro rata* basis, the proposed second distribution would be paid as follows from the settlement funds currently held by Huntington Bank: ABB: \$922,784.42; Alcon: \$427,530.09; B&L: \$100,436.84; CVI: \$44,031.91; and JJVCI: \$1,506,204.01. *Id.*, ¶ 25. The remaining funds are already held by Epiq in the Distribution Account, pursuant to the First Distribution Order. *Id.*

**A. The Court Should Permit the Requested Distribution**

Consistent with the First Distribution Order, this Motion seeks entry of an order authorizing Class Counsel to (1) distribute \$9,004,368.89 on a *pro rata* basis to 4,767 Second Distribution Claimants, and (2) re-issue payments totaling \$5,829,679.04 to 5,580 Re-Issue Claimants.<sup>8</sup>

Courts routinely permit supplemental distributions of settlement funds (*see, e.g., In re Miva, Inc.*, No. 2:05-cv-00201, 2015 WL 12834962, at \*2 (M.D. Fla. Sept. 23, 2015) (“*In re Miva*”), including to claimants who did not receive compensation as part of an earlier distribution (*see, e.g., In re Washington Mut. Mortg. Backed Sec. Litig.*, No. 2:09-cv-00037, 2014 WL 12616100, at \*1 (W.D. Wash. Jan. 7, 2014)), and to claimants who did not timely deposit their checks but subsequently make an effort to claim those funds (*see, e.g., Mayer v. Nw. Indus., Inc.*, Nos. 82 C 658, 82 C 1599, 1986 WL 8761, at \*1 (N.D. Ill. Aug. 6, 1986)).

Class Counsel therefore request that the Court permit them to work with Epiq to make the requested distribution to the Second Distribution Claimants and to the Re-Issue Claimants.

**B. The Court Should Approve the Use of EpiqPay**

Consistent with the notice, and for the 10,345 Second Distribution Claimants and Re-Issue Claimants who provided email addresses (*see Chernila*

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<sup>8</sup> If requested by the Court to do so, Epiq will provide the Court with the claimants who received payment in connection with the First Distribution Order and/or the claimants who would receive payments in connection with this Motion. *Id.*, ¶ 26.



Decl., ¶ 27)<sup>9</sup> which notified members of the Class that payment to authorized claimants may be issued in this case electronically (*see id.*, ¶ 28; ECF No. 1137-4 at ¶ 36), Class Counsel respectfully requests that the Court permit Epiq to issue these payments electronically, through EpiqPay, to those Class members who provided email addresses (and checks to those who did not). Chernila Decl., ¶ 27.

EpiqPay works as follows. First, payees receive an email prompting them to “Claim Payment” and select the medium of payment (*e.g.*, PayPal, Venmo, ACH, Mastercard). *Id.*, ¶ 31. Depending on the medium selected, the payee will either be asked to confirm their selection or provide additional information necessary to process their payment. *Id.* The payee will then receive updates on the status of their payment, and then thereafter will receive an email with a link to receive their payment or confirming that the funds were electronically deposited. *Id.* These awards will be released within 45 days of the Court’s order approving this Motion and will be live for 60 days. *Id.*, ¶ 27. Unclaimed digital funds would be converted into paper checks mailed to the claimant, which will expire 60 days after issuance. *Id.*, ¶ 27.

Courts routinely approve electronic payments of settlement funds in class actions such as this one (*see, e.g., Pearlstone v. Wal-Mart Stores, Inc.*, No. 4:17CV2856, 2023 WL 2864607, at \*1 (E.D. Mo. Apr. 7, 2023); *Martinelli v. Johnson & Johnson*, No. 2:15-cv-01733, 2022 WL 4123874, at \*6 (E.D. Cal. Sept.

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<sup>9</sup> Claimants who did not provide a valid email address will be issued paper checks, consistent with the First Distribution Order.

9, 2022)), and Class Counsel asks that the Court permit an electronic distribution of funds here, too, to those Second Distribution Claimants and Re-Issue Claimants who provided email addresses.

**C. The Court Should Determine that Lapsed Claimants Have Forfeited Any Right to the Net Settlement Funds**

There are 5,763 Lapsed Claimants, with checks totaling \$6,003,381.62. Chernila Decl., ¶ 22. Class Counsel respectfully request that the Court find that these Lapsed Claimants have forfeited any right to the Net Settlement Funds so as to allow Class Counsel to redistribute these funds to the Second Distribution Claimants. Such a finding is supported by the caselaw. *See, e.g., In re Miva*, 2015 WL 12834962, at \*1 (“Authorized Claimants who do not cash their distribution checks within the time allotted irrevocably forfeit all recovery from the Settlement and therefore, funds allocated to all such stale-dated checks will be available in a re-distribution to other Authorized Claimants”); *see also Pritchard v. Apyx Med. Corp.*, No. 8:19-cv-00919, 2021 WL 2451356, at \*1 (M.D. Fla. June 15, 2021)). Class Counsel therefore ask that the Court conclude these Lapsed Claimants have forfeited any right the Net Settlement Funds and allow Class Counsel to redistribute these funds to the Second Distribution Claimants.

**D. The Court Should Permit Counsel to Later Seek Attorneys’ Fees & Expenses on the Interest Earned on the Settlement Funds**

The Court approved Class Counsel’s motion for payment of attorneys’ fees and expenses on October 12, 2022 (ECF No. 1363; the “Fee & Expense Order”). Class Counsel previously provided notice to the Class that Class Counsel would

seek an award of attorneys' fees of one-third of the Settlements. *See* Fee Order at 5. The fees paid to Class Counsel totaled one-third of the combined settlement funds, excluding the interest earned. *Id.*

Since entry of the Fee & Expense Order on October 12, 2022, the settlement funds have earned a total of \$1,385,534.16 in interest. Chernila Decl., ¶ 21. Also during this time, Class Counsel have devoted substantial time to administering these settlements, including working with Epiq on the initial distribution, communicating with members of the Class, coordinating with Epiq on its supplemental review of previously-denied claims, and working with Epiq on this proposed, second distribution. Class Counsel's work in this case will also continue going forward in connection with this second distribution, as well as any subsequent distributions that may be made.

To the extent any settlements funds remain after this second distribution, Class Counsel respectfully request the opportunity to move the Court for entry of an order permitting them to be compensated for this time by requesting payment from the interest earned on the settlement funds beginning October 13, 2022, inclusive. Put differently, if this Motion is granted, Class Counsel will have twice attempted to distribute 100% of the interest earned on the Settlement Funds to members of the Class, while at the same time, investing substantial additional time in the case to effectuate those payments.

Courts routinely award the interest on fee and expense awards. *See, e.g., City of St. Clair Shores Gen. Employees' Ret. Sys. v. Lender Processing Servs., Inc.*, No.

3:10-cv-01073, 2014 WL 12621611, at \*2 (M.D. Fla. Mar. 4, 2014); *Eastwood Enters., LLC v. Farha*, No. 8:07-cv-1940-T-33EAJ, 2011 WL 13385745, at \*1 (M.D. Fla. May 4, 2011). Courts have also awarded supplemental fees and expenses for work done by counsel and claims administrators that was necessary to effect the distribution of the settlement funds. *See, e.g., Pray v. Lockheed Aircraft Corp.*, Civ. A. Nos. 45-0874, 86-0190, and 86-0191, 1987 WL 9757, at \*2 (D.D.C. Apr. 3, 1987) (counsel); *RMED Int'l, Inc. v. Sloan's Supermarkets, Inc.*, No. 94 Civ.5587, 2003 WL 22251323, at \*1 (S.D.N.Y. Sept. 30, 2003) (claims administrator).

Here, Class Counsel do not intend to seek the interest that was earned on their fee and expense award prior to the Court's Fee & Expense Order. Rather, Class Counsel intend to seek some portion of the interest earned on the settlement funds after that date to compensate them for the time they have spent administering the settlements and effectuating the distribution of funds to members of the Class. Class Counsel respectfully request that, if funds are available after this second distribution, that they be permitted to file such a motion.

#### **IV. CONCLUSION**

For the foregoing reasons, Class Counsel respectfully requests the Court grant this Motion.

Dated: November 21, 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. Lebsock  
HAUSFELD LLP  
600 Montgomery Street, Suite 320  
San Francisco, CA 94111  
Telephone: (415) 633-1908  
Facsimile: (415) 217-6813  
clebsock@hausfeld.com

*Co-Lead Class Counsel*

**UNITED STATES DISTRICT COURT  
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<b>In Re:</b>  <b>DISPOSABLE CONTACT LENS ANTITRUST LITIGATION</b>	<b>Case No. 3:15-md-2626-HES- LLL</b>  <b>Judge Harvey E. Schlesinger</b>  <b>Magistrate Judge Laura Lothman Lambert</b>
<b>THIS DOCUMENT RELATES TO:</b> <b>All Class Actions</b>	

**SUPPLEMENTAL DECLARATION OF JEANNE CHERNILA  
REGARDING CLAIM ADJUDICATION, DISTRIBUTION ACTIVITIES,  
AND SUPPLEMENTAL DISTRIBUTION OF NET SETTLEMENT  
FUNDS TO CLAIMANTS**

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. (“JJVCI”), 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

Supplemental Declaration is based upon my personal knowledge and information provided to me by Plaintiffs' counsel, and associates and staff under my supervision, and is accurate and truthful to the best of my knowledge.

2. Epiq is a full-service data processing company and has been administering bankruptcies since 1985 and settlements since 1993, including settlements of class actions, mass tort matters, SEC and FTC disgorgement actions, and other major litigation. Our associates include technology experts, attorneys, paralegals, MBAs, and CPAs. Epiq has administered more than 1,000 settlements, including some of the largest and most complex cases ever settled.

3. Epiq is a firm with more than twenty (20) years of experience in data processing, claims processing, and settlement administration. Epiq's class action case administration services include coordination of all notice requirements, design of direct-mail notice, receipt and processing of opt-outs and objections by potential class members, coordination with the United States Postal Service, claims database management, claim adjudication, fund management, and distribution services. Epiq works with the settling parties, the Court, and the settlement class members in a neutral facilitation role, taking the negotiated terms of a settlement and implementing settlement administration services.

4. Epiq was appointed by the Court to serve as the Claims Administrator for the Settlements. In its capacity as Claims Administrator, Epiq was retained to receive, review, and process the Claim Forms that were submitted in connection

with the Settlements, to handle communications and inquiries from potential Class Members, review claims when necessary, and to otherwise assist Settlement Class Counsel in the administration process.

5. It is my understanding that Class Counsel are filing a motion seeking the following:

- a) Reissue payments totaling \$5,829,679.04 to 5,580 claimants who either did not receive their checks as part of the earlier distribution or who did not timely cash those checks reached out to Epiq prior to November 15, 2023 (“Re-Issue Claimants”);
- b) Redistribute funds totaling \$9,004,368.89, on *pro rata* basis, to 4,767 Class members who (i) submitted claims of less than \$2,000 in eligible/qualifying products who were not required to submit supporting documentation but were otherwise denied for failing to do so; (ii) submitted claims of less than \$2,000 in eligible/qualifying products who were required to submit supporting documentation and partially substantiated their claim, and/or (iii) were initially denied by Epiq but upon further review by Class Counsel should have been approved (“Second Distribution Claimants”);
- c) Permit for these payments be made electronically, via EpiqPay;



and

- d) Deem the 5,763 claimants who previously received checks totaling \$6,003,381.62, and who did not timely deposit their checks or ask for re-issuance prior to November 15, 2023, have forfeited any right they may have had to claim any portion of the Net Settlement Funds (“Lapsed Claimants”), and that these funds be redistributed to the Second Distribution Claimants.

6. This declaration provides information about how Epiq would implement this supplemental distribution, if approved by the Court. It also provides information regarding Epiq’s activities since the previous declarations of Epiq’s Cameron Azari and Jeanne Chernila were submitted to the Court.

**SUMMARY OF POST- DISBURSEMENT ACTIVITY**

7. The Order Authorizing Distribution of the Net Settlement Funds to Claimants (“First Distribution Order,” ECF No. 1371) approved payments totaling \$67,200,621.97 (“First Distribution Amount”) to 68,228 Approved Class Members, as proposed by Class Counsel and calculated by the Claims Administrator. Consistent with the First Distribution Order, Class Counsel caused the First Distribution Amount to be transferred to Epiq on June 6, 2023.

8. Consistent with the First Distribution Order, Epiq issued and mailed the checks totaling the First Distribution Amount to the Approved Class Members. Accounting for reissued checks, between June 27, 2023 and September 20, 2023,

Epiq has issued 68,857 checks totaling \$67,200,621.97. The difference between the as-issue amount and the First Distribution Amount (\$1,738.80) was due to the inability to calculate award values to fractions of a penny, and the rounding that occurred as a result.

9. As of November 15, 2023, a total of 56,798 award checks in the aggregate amount of \$55,190,862.81 have been negotiated (*i.e.*, cashed) (“Paid Claimants”). Of the remaining Approved Class Members, (a) 5,580 with payments totaling \$5,829,679.04 did not receive their check and/or requested re-issuance of their checks prior to November 15, 2023 (these are the Re-Issue Claimants), and (b) 5,763 with payments totaling \$6,003,381.62 have expired and did not ask for their checks to be re-issued prior to November 15, 2023 (these are the Lapsed Claimants).

10. In addition, between July 3, 2023, and September 14, 2023, there were 653 Approved Class Members who requested reissuance of their award checks, representing \$954,885.08. Currently, 87 Approved Class Members who were reissued award checks representing \$174,959.70 have not negotiated (*i.e.*, cashed) their checks. It is possible that some or all of these checks will not be negotiated, at which point, those funds would remain in the Distribution Account.

11. As noted above, there are 5,580 Re-Issue Claimants with a total award value of \$5,829,679.04. This is comprised of (a) 44 Approved Class Members, with a total award value of \$48,715.27, who requested a re-issuance of

their award checks between September 28, 2023 and November 15, 2023, after the expiration date of these checks (90 days after issuance), and (b) 5,536 Approved Class Members, with a total award value of \$5,780,963.77, whose addresses were determined to be invalid and undeliverable after these award checks had been issued and mailed by Epiq. These funds are currently held by Epiq in the Distribution Account.

### **CLAIM DENIAL AND RE-REVIEW**

12. After conducting extensive electronic and manual review, 81,422 claim submissions were denied for late submission, duplicate submission, submission by business entity, submission by foreign entity, or for lacking any Eligible Product Purchases claimed. Email notifications regarding denial of submission were sent to claimants with valid email addresses prior to disbursement.<sup>1</sup> For claimants without a valid email address or for whom the email notification was not successfully delivered, denial notification letters were sent via regular U.S. mail. A copy of the template Epiq used for the physical mailing is attached as **Exhibit 1**.

13. After transmitting these claim denial correspondences, Epiq and Class Counsel received numerous outreaches via email, telephone and U.S. mail from claimants disputing Epiq's determination.

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<sup>1</sup> The template Epiq used for this email denial notification was previously provided as Exhibit 3 to the Declaration of Jeanne Chernila filed on May 30, 2023.

14. Between June 27, 2023, and November 15, 2023, Epiq received 9,107 emails and 3,422 telephone calls from individuals disputing or having questions about their claim information and determinations. In addition, Class Counsel was contacted by roughly forty individuals, which Class Counsel forwarded to Epiq for further investigation. Epiq and/or Class Counsel have responded to all email, telephone, and U.S. mail outreach.

15. Some of these inquiries were administrative in nature. For example, Epiq provided information to several Class Members who experienced difficulties with negotiating their award checks as well. Similarly, Epiq re-issued checks to several Class Members who had moved since they filed their claim.

16. Regarding the claimants whose claims were denied, Epiq, working with Class Counsel, initiated a supplemental review of all claim submissions that were denied due to (a) failing to respond to an email defect notification; (b) failing to timely provide substantiating documentation, and (c) appearing to be a duplicate of an already-paid claim. In total, more than 68,000 claim submissions were re-reviewed. This supplemental review was conducted both electronically and manually.

17. In connection with their re-review, Epiq provided reports to Class Counsel containing details regarding individuals who disputed their determinations. The report included salient information about claim submissions, product purchases, nature of dispute, and investigation findings.

18. Epiq is confident this supplemental review was done at a highly granular level and resulted in a thorough and comprehensive re-review of these claims.

19. As a result of this re-review, Epiq and Class Counsel have determined that 4,767 Class members with an aggregate claim value of \$15,100,550.14 meet necessary criteria for inclusion in a supplemental disbursement. *See* ¶ 5(b), *supra*. These are the Second Distribution Claimants.

### **CURRENT STATUS OF SETTLEMENT FUNDS**

20. The Court's Distribution Order authorizes payments to Class Members totaling \$67,200,621.97 and a holdback of \$2,821,627.31. Consistent with the Distribution Order, and in order to effectuate these payments, the Court-approved Escrow Agent, Huntington Bank, transferred \$67,200,621.97 to a distribution account controlled by Epiq on June 23, 2023. The remainder of the settlement funds continued to be held by Huntington Bank.

21. At the time of the First Distribution Order was entered, and as a result of interest accumulating on the settlement funds between the time the distribution calculations were done and the time the First Distribution Order was entered, \$4,809,534.91 remained in the settlement funds. Since then, a total of \$1,242,086.04 has been paid from these funds for taxes (\$349,592.00) and notice and administration expenses (\$892,494.04), and between June 6, 2023 and October 31, 2023, a total of \$97,538.40 in interest was earned on the funds held by

Huntington Bank, resulting in \$3,664,987.27 (as of November 9, 2023) in the settlement funds held by Huntington Bank. Since the Court approved Class Counsel's motion for payment of attorneys' fees and expenses on October 12, 2022 (ECF No. 1363), the settlement funds have earned a total of \$1,385,534.16 in interest, and interest is currently accumulating on the settlement funds at a rate of roughly \$3,400 per week.

22. This \$3,664,987.27 (held by Huntington Bank, as of November 9, 2023) is in addition to the \$6,003,381.62 worth of checks previously issued to Lapsed Claimants, which is currently held in the Distribution Account controlled by Epiq.

23. Thus, as of November 9, 2023, there was \$9,668,368.89 in total funds available to distribute to Second Distribution Claimants, and to pay notice and administration expenses that have or will be incurred in connection with the administration and distribution of the Settlements, as well as taxes on interest earned, and/or unanticipated expenses (if approved by the Court).

24. Epiq believes that a holdback amount of \$664,000.00 to pay notice and administration expenses that have or will be incurred in connection with the administration and distribution of the Settlements, taxes on interest earned, and/or unanticipated expenses is appropriate at this point in time. On a *pro rata* basis, this Second Holdback Amount would be attributed as follows from the funds held by Huntington Bank:

- a) ABB - \$204,175.76
- b) Alcon - \$94,595.53
- c) B&L - \$22,222.71
- d) CVI - \$9,742.52
- e) JJVCI - \$333,263.48

25. Thus, as of November 9, 2023, and after accounting for the above holdback amount, there was \$9,004,368.89 available to be redistributed to Second Distribution Claimants, if approved by the Court. Of this, \$6,003,381.62 is already in the Distribution Account held by Epiq, and \$3,000,987.27 is held by Huntington Bank. On a *pro rata* basis, the amount that would be transferred from each settlement fund to the Distribution Account would be as follows:

- a) ABB - \$922,784.42
- b) Alcon - \$427,530.09
- c) B&L - \$100,436.84
- d) CVI - \$44,031.91
- e) JJVCI - \$1,506,204.01

**SUPPLEMENTAL DISTRIBUTION THROUGH EPIQPAY**

26. As set forth above, 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. If requested by the Court to do so, Epiq will provide the Court with the

claimants who received payment in connection with the First Distribution Order and/or the claimants who would receive payments in connection with this Motion.

27. Assuming the Court authorizes a supplemental distribution to the Re-Issue Claimants and/or the Second Distribution Claimants, 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 within 45 days of the Court’s approval. Digital payments will be live for 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 60 days. Claimants who did not provide a valid email address will be issued paper checks, consistent with the First Distribution Order.

28. 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, if approved by the Court.

29. 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. 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.

30. EpiqPay's payment process works via Epiq sending payees a series of payment emails and claiming EpiqPay payments via those emails is simple and easy. All EpiqPay payment and reminder emails contain a 'Claim Payment' link. A template of what this email looks like is attached as **Exhibit 2**.

31. Payees receive these EpiqPay emails and click the 'Claim Payment' link which takes them to a payment dashboard where they can choose their preferred method of payment. EpiqPay typically presents users up to six payment options to choose from (amongst a set of over 15 different partners Epiq works with, including popular payment options such as PayPal, Venmo, ACH, and Mastercard). Depending on the method of payment, users may be asked to simply confirm their selection, or, alternatively, supply one or two pieces of information so their payment can be processed. After that, users will receive a small number of interim notifications from our payment partners letting them know their payment is 'in process'. Finally, users will receive a link to their payment card or confirmation the funds were sent to their account.

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

Executed on November 21, 2023 at Rio Nido, California.

*Jeanne Chernila*  
Jeanne Chernila

# **Exhibit 1**

<<Mail ID>>  
«name1»  
«name2»  
«addr1»  
«addr2»  
«city», «state» «zip5»  
«country\_name»

**Notice of Claim Determination**  
***In re: Disposable Contact Lens Antitrust Litigation***  
**Case No. 3:15-md-2626-J-20JRK**

**Name: \$\$Key\_Name\$\$**  
**Claim Number: \$\$Claim\_Number\$\$**

re Disposable Contact Lens Antitrust Litigation. PLEASE NOTE: This is the only notice you will receive with respect to your Claim(s). This determination is final, irreversible, and cannot be appealed.

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For more information, contact the Settlement Administrator at the address below.

Trustee,  
Disposable Contact Lens Antitrust Litigation  
P.O. Box  
Portland, OR  
1-877-253-3649

[www.ContactLensSettlement.com](http://www.ContactLensSettlement.com)

# **Exhibit 2**

**Email Notice**  
**PrePayment Notification Email**

**Subject:**

*In re Disposable Contact Lens Antitrust Litigation* – Notice of Upcoming Settlement Payment

**Header:**

*In re Disposable Contact Lens Antitrust Litigation* – Notice of Upcoming Settlement Payment

**Content:**

Dear **\$\$Key\_Name\$\$**,

According to our records, you are eligible to receive a payment of **\$\$Amount\$\$** in the settlement for the matter entitled *In re Disposable Contact Lens Antitrust Litigation*, 3:15-md-2626-HES-LLL.

As Administrator for the matter, we're sending you this courtesy email to inform you that on **PAYMENTDATE**, you will receive a payment notification email that contains a link to claim your payment electronically. Once you receive that email, you will have until **CAMPAIGNEND** to claim your payment.

Please monitor your email inbox carefully for our next email. Additional details about this matter are available at [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com) or by contacting us via one of the following methods:

**Toll free:** 1-877-253-3649

**Email:** [info@ContactLensSettlement.com](mailto:info@ContactLensSettlement.com)

**Mail:**

Disposable Contacts Antitrust Litigation

Settlement Administrator

P.O. Box 2995

Portland, OR 97208-2995

**Email Notice**  
**Payment Notification Email**

Subject:

*In re Disposable Contact Lens Antitrust Litigation* - Claim Your Settlement Payment

Header:

*In re Disposable Contact Lens Antitrust Litigation* - Claim Your Settlement Payment

Content:

Dear **\$\$Key\_Name\$\$**,

Pursuant to the terms of the settlement in the matter entitled *In re Disposable Contact Lens Antitrust Litigation*, 3:15-md-2626-HES-LLL, you are eligible to receive a payment of **\$\$Amount\$\$**.

Please click the **Claim Payment** button below. You will then be directed to our digital payment portal, where you can select how you'd like to receive your payment. Please claim your payment promptly. It is available until **CAMPAIGNEND**.

Additional details about this matter are available at [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com) or by contacting us via one of the following methods:

**Toll free:** 1-877-253-3649

**Email:** info@ContactLensSettlement.com

**Mail:**

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

**<<CLAIM PAYMENT>>**

**Email Notice**  
**Reminder Email**

Subject:

Reminder – *In re Disposable Contact Lens Antitrust Litigation* – Unclaimed Settlement Payment

Header:

*In re Disposable Contact Lens Antitrust Litigation* - Reminder - Unclaimed Settlement Payment

Content:

Dear **\$\$Key\_Name\$\$**,

According to our records, you are eligible to receive a payment of **\$\$Amount\$\$** in the matter entitled *In re Disposable Contact Lens Antitrust Litigation*, 3:15-md-2626-HES-LLL, but have not yet claimed your payment.

You will not be able to claim your award electronically after **CAMPAIGNEND**, so please claim your award promptly by clicking the **Claim Payment** button below.

Additional details about this matter are available at [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com) or by contacting us via one of the following methods:

**Toll free:** 1-877-253-3649

**Email:** [info@ContactLensSettlement.com](mailto:info@ContactLensSettlement.com)

**Mail:**

Disposable Contacts Antitrust Litigation

Settlement Administrator

P.O. Box 2995

Portland, OR 97208-2995

**<<CLAIM PAYMENT>>**



**Email Notice**  
**Payment Confirmation Email**

**Subject:**

*In re Disposable Contact Lens Antitrust Litigation – Your Payment is Confirmed!*

**Header:**

*In re Disposable Contact Lens Antitrust Litigation – Your Payment is Confirmed!*

**Content:**

You have received **\$\$Amount\$\$** in the settlement for the matter entitled *In re Disposable Contact Lens Antitrust Litigation*, 3:15-md-2626-HES-LLL. Your payment was completed via the payment method listed below. You will receive an email from our payment partner Tremendous or the funds will be in your specified account.

Answers to frequently asked questions about digital payments are available at [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com) or by contacting us via one of the following methods:

**Toll free:** 1-877-253-3649

**Email:** [info@ContactLensSettlement.com](mailto:info@ContactLensSettlement.com)

**Mail:**

Disposable Contacts Antitrust Litigation

Settlement Administrator

P.O. Box 2995

Portland, OR 97208-2995