

**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	

**CLASS COUNSEL'S MOTION TO RE-ISSUE PAYMENTS TO
LAPSED CLAIMANTS WHO SHOW GOOD CAUSE**

Class Counsel respectfully move this Court for an Order authorizing the Court-appointed Claims Administrator, Epiq Class Action & Claims Solutions (“Epiq”), to reissue *pro rata* payments up to a total of \$75,000 (seventy-five thousand dollars) to Approved Class Members who did not timely cash their settlement check or request a reissued check before November 15, 2023 (“Lapsed Claimants”), and who show good cause for their failure to do so.¹ In support of this Motion, Class Counsel submit this memorandum and the Supplemental Declaration of Jeanne Chernila from Epiq (“Chernila Decl.”).

I. INTRODUCTION

On June 5, 2023, the Court entered its first Order Authorizing Distribution of Net Settlement Funds to Claimants. *See* ECF No. 1371 (“First Distribution Order”). The First Distribution Order authorized Epiq to distribute *pro rata* payments via check totaling \$67,200,621.97 to 68,228 Approved Class Members. *Id.* at ¶ 3. Each check stated it must be negotiated within ninety (90) days. *See* ECF No. 1406 at 4-5. As of November 15, 2023, 56,798 Approved Class Members cashed checks totaling \$55,190,862.81, and 6,233 Approved Class Members had requested their *pro rata* payments be reissued. (“Re-Issue Claimants”). *See* ECF No. 1402 at 4.

¹ Class Counsel incorporate by reference here the facts and information set forth in their Motion to Authorize Distribution of Net Settlement Funds to Claimants, ECF No. 1370 (“First Distribution Motion”), and their Motion to Authorize a Supplemental Distribution of Net Settlement Funds, ECF No. 1402 (“Second Distribution Motion”).

On November 21, 2023, Class Counsel filed their Second Distribution Motion, which sought, *inter alia*, entry of an order authorizing the redistribution of payments to Re-Issue Claimants; authorizing payments to previously-unpaid claimants (“Second Distribution Claimants”); and forfeiting any claim by Lapsed Claimants—claimants who were sent checks as part of the First Distribution but did not timely cash them or request reissuance before November 15, 2023. The Court granted the Second Distribution Motion on November 29, 2023. *See* ECF No. 1403 (“Second Distribution Order”).²

Following the Court’s Second Distribution Order, certain Lapsed Claimants contacted Class Counsel or Epiq to request that their payments be redistributed, citing personal reasons as to why they did not timely cash their checks or request reissuance before November 15, 2023. *See* Chernila Decl. at ¶ 4. This Motion seeks authority for Epiq to reissue, at its discretion, *pro rata* payments to Lapsed Claimants who promptly show good cause as to why they did not timely cash their checks or request reissuance before November 15, 2023.³ Epiq believes that there are sufficient Net Settlement Funds remaining to reissue up to a total of \$75,000 in *pro rata* payments to such Lapsed Claimants, while maintaining sufficient reserves for other expenses, including taxes. *See id.* at ¶ 5.

² At Class Counsel’s direction, Epiq has postponed effectuating the Second Distribution Order pending the Court’s resolution of certain objections filed in thereafter. *See* ECF Nos. 1404, 1405, 1407, 1408, 1411, and 1423.

³ Any *pro rata* payments approved by Epiq would be in the same amount as the initial payment to the Lapsed Claimant that was forfeited by operation of the Second Distribution Order.

II. ARGUMENT

A. **Epiq Should be Permitted to Reissue up to \$75,000 in Payments to Lapsed Claimants Who Show Good Cause**

The Court should authorize Epiq to redistribute *pro rata* payments of up to \$75,000 to Lapsed Claimants who, in Epiq’s discretion, promptly show good cause as to why they did not timely cash their checks or request reissuance before November 15, 2023. Courts permit supplemental distributions of settlement funds to approved class members like the Lapsed Claimants here. *See, e.g., In re Miva, Inc.*, No. 2:05-cv-00201, 2015 WL 12834962, at *2 (M.D. Fla. Sept. 23, 2015). Reissuing settlement payments is appropriate where class members did not timely deposit their checks but subsequently made efforts to claim the funds they were allocated. *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) (authorizing “supplemental *pro rata* distribution” to claimants who did not cash their checks and participated in recanvassing).

Given the size of the Class here, a small number of Lapsed Claimants may have compelling reasons for failing to timely cash their checks or request reissuance before November 15, 2023. To address these exceptional circumstances, Epiq should be permitted to reissue up to a total of \$75,000 in *pro rata* payments to Lapsed Claimants who it determines have shown good cause for failing timely cash their checks or request reissuance before November 15, 2023. *See cf. Commodity Futures Trading Comm’n v. Oasis Int’l Grp., Ltd.*, No. 8:19-CV-886, 2023 WL 2523449, at *1 (M.D. Fla. Mar. 15, 2023) (Covington, J.)

(authorizing reissuance of distribution checks if, in the receiver’s discretion, “reasonable proof” is shown of their right to the distribution); *Grimm v. Am. Eagle Airlines, Inc.*, No. LA CV11-00406, 2014 WL 12746376, at *5 (C.D. Cal. Sept. 24, 2014) (giving the claims administrator “complete and exclusive discretion” to resolve claim determinations based on information provided by class members).

Moreover, reissuing *pro rata* payments to Lapsed Claimants who demonstrate good cause is consistent with the Court’s First Distribution Order, which authorized Epiq to distribute the same *pro rata* payments to the same claimants in June 2023. *See* ECF No. 1371 at ¶ 6. Any Lapsed Claimant who Epiq determines, in its discretion, has shown good cause will receive the same *pro rata* amount they were originally allocated. Any *pro rata* payments reissued to Lapsed Claimants will be paid from the remaining Net Settlement Funds, will not affect the payments authorized under the First or Second Distribution Orders, and will not inflate or dilute any other Approved Class Members’ *pro rata* allocation.

III. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request the Court grant this Motion and authorize Epiq to do the following:

1. Proceed with the previously approved Second Distribution; and
2. Reissue up to a total of \$75,000 in *pro rata* payments to Lapsed Claimants who promptly show good cause as to why they did not timely cash their checks or request re-issuance before November 15, 2023.

Dated: February 26, 2024

/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
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 JEANNE CHERNILA IN SUPPORT OF CLASS
COUNSEL’S MOTION TO RE-ISSUE PAYMENTS TO LAPSED
CLAIMANTS WHO SHOW GOOD CAUSE**

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. I submit this Declaration in support of Class Counsel’s Motion to Re-Issue Payments to Lapsed

Claimants Who Show Good Cause. This Fifth 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. Pursuant to the Court's November 29, 2023 Order Authorizing Second Distribution of the Net Settlement Funds to Claimants (ECF No. 1403, "Second Distribution Order"), 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, were held to have forfeited any right they may have had to claim any portion of the Net Settlement Funds ("Lapsed Claimants").

3. Since entry of the Second Distribution Order, a small number of these Lapsed Claimants have contacted Epiq and requested a further reissuance of their award checks.

4. If permitted by the Court, Epiq will evaluate requests by Lapsed Claimants for a further reissuance of their *pro rata* award payments and determine whether any have demonstrated good cause as to why they did not timely cash their check or request reissuance prior to November 15, 2023. Epiq has experience evaluating claimants' requests for further reissuance beyond a Court ordered deadline from other cases and would bring that experience to bear here.

5. Epiq believes there are sufficient Net Settlement Funds remaining to reissue up to \$75,000 in *pro rata* award payments to any such Lapsed Claimants, while maintaining sufficient reserves for other expenses, including taxes. The portion of the \$75,000 Epiq pays to any such Lapsed Claimants, if any, would be paid *pro rata* from the \$664,000.00 holdback approved in the Second Distribution Order.

6. Consistent with the Second Distribution Order, Epiq would make any such payments via EpiqPay, or as otherwise ordered by the Court.

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

Executed on February 23, 2024 at Rio Nido, California.

Jeanne Chernila
Jeanne Chernila