

**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	

**ORDER AUTHORIZING SECOND DISTRIBUTION OF THE NET
SETTLEMENT FUNDS TO CLAIMANTS**

WHEREAS, this Court previously granted final approval to Class Plaintiffs' settlements with Alcon Vision, LLC ("Alcon"), Johnson & Johnson Vision Care, Inc. ("JJVCI"), CooperVision ("CVI"), Bausch & Lomb ("B&L"), and ABB Optical Group ("ABB") (the "Settlements") (*see* ECF Nos. 1164 (CVI and B&L); 1257 (ABB); 1362 (Alcon and JJVCI));

WHEREAS, the Court previously appointed Epiq Class Action & Claims Solutions, Inc. ("Epiq") as the Claims Administrator for these Settlements (*see, e.g.*, ECF No. 1343, ¶ 11);

WHEREAS, the notice disseminated to potential Class members notified them that the Net Settlement Funds would be distributed together on a *pro rata* basis (*see, e.g.*, ECF No. 1137-4, ¶¶ 30, 32);

WHEREAS, the notice disseminated to potential Class members notified them that payments to eligible Claimants could be made via check or digital means, such as via digital debit card or PayPal (*see, e.g., id.*, ¶ 36);

WHEREAS, Class Counsel previously submitted a Motion to Authorize Distribution of Net Settlement Funds to Claimants (“First Motion”) that proposed a *pro rata* distribution of the Net Settlement Funds to Approved Class Members, together with a *de minimis* payment of \$14.25 to Approved Class Members with a calculated award amount of less than \$10.00 (*see* ECF No. 1371, ¶ 4);

WHEREAS, the Court previously granted the First Motion and entered an order authorizing distribution of \$67,200,621.97 to 68,228 Approved Class Members on a *pro rata* basis (with some minimum payments), as proposed by Class Counsel and as calculated by Epiq, as well as a holdback of \$2,821,627.31 (“First Holdback Amount”) for the payment of certain expenses (*see* ECF No. 1371, ¶ 6; the “First Distribution Order”);

WHEREAS, the First Distribution Order permitted Class Counsel to “later move the Court for approval of a second distribution to Approved Class Members or a *cy pres* distribution (if a second distribution is not economically feasible)” (*see id.*, ¶ 4);

WHEREAS, Class Counsel have now submitted a Motion (“Second Motion”) that seeks 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 reached out to

Epiq prior to 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) permitting these payments to be made electronically, via EpiqPay; and (d) deeming 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;

WHEREAS, Class Counsel have submitted a memorandum of law and a 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.”);

WHEREAS, the Chernila Declaration details, *inter alia*, (a) the steps taken to issue payments to Approved Class Members in connection with the First

Distribution Order, (b) the number of cashed, uncashed, re-issued, and returned checks, and (c) the effort to conduct, and results of, a supplemental review of denied claim submissions (Chernila Decl., ¶¶ 7-19);

WHEREAS, the Chernila Declaration attests that as of November 9, 2023, there was \$9,004,368.89 available to be distributed to the Second Distribution Claimants, which 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),¹ and less a proposed holdback of \$664,000.00 (“Second Holdback”) for future taxes, notice & administration expenses, and other unanticipated expenses (Chernila Decl., ¶ 25);

WHEREAS, the Chernila Declaration further attests that 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 earned a total of \$1,385,534.16 in interest (Chernila Decl., ¶ 21);

WHEREAS, Class Counsel has informed the Court that, if any funds remain to be distributed after this supplemental distribution, they intend to later seek an award of attorneys’ fees, to be paid from the interest earned on the settlement

¹ According to the Chernilla Declaration, 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. Chernila Decl., ¶ 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.*

funds since October 13, 2022, inclusive, for their work spent administering these settlements since this Court's earlier fee and expense order.

NOW, THEREFORE, IT IS HEREBY ORDERED that Class Counsel's Second Motion is **GRANTED** as follows:

1. Epiq's administrative determinations concerning the claims submitted to the Settlements are hereby approved.

2. Lapsed Claimants have forever forfeited and waived any right they may have had to claim any portion of the Net Settlement Funds, and the funds previously distributed to the Lapsed Claimants may be redistributed to the Second Distribution Claimants.

3. Any further claims to these Settlements are prohibited, and any further claims against the Net Settlement Funds for these Settlements are finally and forever barred.

4. Class Counsel is permitted to hold back the Second Holdback Amount of \$664,000.00 from distribution to pay notice and administration expenses, taxes, and any unanticipated expenses. Class Counsel shall attribute the Second Holdback Amount to each of the settlement funds currently held by Huntington Bank on a *pro rata* basis, as follows:

- 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

5. To the extent any of the Second Holdback Amount remain undisbursed, and/or any Re-Issue Claimant(s) or Second Distribution Claimant(s) do(es) not accept payment of their awards by timely processing an electronic payment or negotiating (*i.e.*, cashing) his/her check, Class Counsel may later move the Court for approval of a third distribution, including payment of attorneys' fees and expenses incurred since this Court's fee and expense order (ECF No. 1363), and/or a *cy pres* distribution (if a third distribution is not economically feasible).

6. Class Counsel shall cause the approved Escrow Agent, Huntington Bank, to move the below amounts, into the earlier-established distribution account ("Distribution Account"), 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

7. Epiq shall re-distribute payments, via EpiqPay, to the Re-Issue Claimants from the Distribution Account who provided a valid email address, and a check to those who did not, as previously proposed by Class Counsel, calculated by Epiq, and approved by this Court in its First Distribution Order.

8. Epiq shall distribute payments on a *pro rata* basis, via EpiqPay, to the Second Distribution Claimants who provided a valid email address, and a check to those who did not, as proposed by Class Counsel and as calculated by Epiq.

9. Plaintiffs, Class Counsel, Epiq, and all individuals who were involved in the processing and validation of claims, calculation of distributions to claimants, or any other aspect of the claims administration process, are hereby released and discharged from any and all claims arising out of such involvement.

10. The Court retains jurisdiction over any further application or matter which may arise in connection with the administration of these Settlements.

IT IS SO ORDERED on this 29th day of November, 2023.



Harvey E. Schlesinger
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record