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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

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

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This document relates to ALL CLASS
ACTIONS.

MOTION FOR RECONSIDERATION; AND, MOTION TO TAKE JUDICIAL NOTICE

Class Member Carlos Torres (“Torres”), pursuant to Federal Rules of Civil Procedure 60(b) and 59(e), moves this Court for Reconsideration of the Order entered on November 29, 2023, and to take judicial notice of the language on the website:

I. THIS COURT MUST TAKE JUDICIAL NOTICE OF THE WEBSITE FOR CLASS MEMBERS

The website www.contactlenssettlement.com clearly tells Class Members not to call or write the Court. It also falsely tells Class Members they cannot challenge this Court’s Order despite rules of procedure and appellate rules allowing for challenges.

Attached as Exhibit A is the language from the website. This Court needs to take judicial notice of the misleading language on that website. F.R.E. 201(d). After all, this Court is supposed to be approving and administering the website language through its supervisory powers.

II. TORRES IS A CLASS MEMBER AFFECTED NEGATIVELY BY THE ORDER AND THE FAILURE OF THE CLAIMS ADMINISTRATOR TO PROVIDE A REMEDY

Torres filed a claim in this class action. He did not receive his check. Torres contacted the claims administrator and it was claimed the check was reissued. Torres did not receive the check. Torres contacted the claims administrator and they stated that the check was returned. The claims administrator did not provide

a copy of the returned envelope so it is unclear as to what mistake occurred. No offer to reissue the check occurred. It appears that the position of Class Counsel is that the check was forfeited. However, according to the notice on the website www.contactlenssettlement.com, notice will not be given so Torres is stuck in the position of not knowing.

This Court issued an Order on November 29, 2023. This Order affects the rights of class members, but they were not given much, if any, notice of the motion. In fact, the website instructs class members not to contact the court.

Worse, the Order of Court seems to, without notice or due process, “release” both the claims administrator and Class Counsel from liability. However, none of the notices to the Class Members ever told them that they would be releasing the claims administrator and Class Counsel from liability from the gross negligence that occurred.

After this Court issued its Order on November 29, 2023, a notice was put on the website falsely telling class members that they could not challenge the Order.

As shown below, this situation warrants full notice to the Class Members and that the website’s false statements be corrected.

Therefore, Rule 60(b)(1) warrants reconsideration because the Order was issued without an opportunity to object or class members being told of any deadline. Rule 60(b)(3) is invoked because, as shown below, class members are being misled into believing they have no rights to challenge this Court’s orders. Rule 60(b)(4) is invoked because the judgment releasing Class Counsel and the claims administrator from liability is void. Rule 60(b)(6) is invoked because good cause exists to vacate the Order considering the lack of notice to the class and this Court’s ruling on the motion only a week after it was filed without giving time for people to object. Rule 59(e) is invoked because the failure to provide notice, and the improper inclusion of a release of liability along with retroactive deadlines, appears improper.

III. THIS COURT CANNOT RELEASE CLASS COUNSEL AND THE CLAIMS ADMINISTRATOR FROM LIABILITY

Paragraph 9 of the Order states, “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.”

This language appeared to have extinguished potential causes of action for gross negligence that could be filed by harmed Class Members. The claims administrator and Class Counsel have a fiduciary duty to the Class Members. This Court performed no audit. This Court did not fully review the procedures and did not even see a list of the class members who did not receive their checks. Nothing was submitted to show why these checks were not delivered. Yet, this Court signed off on blanket release without notifying the class members.

By what authority does this Court have to enter such an Order? Nothing is contained in the notices provided to class members about the terms of the settlement or the rights they would be giving up to make them think that Class Members would be releasing the claims administrator from possible fraud, negligence, and breach of fiduciary duty causes of action. This Court most likely did not realize the gravity of the language that Class Counsel tricked it into signing.

Class Members are entitled to due process. There exists no reason to release Class Counsel or the claims administrator from liability. If a Class Member has a reason to sue the claims administrator or Class Counsel later on, that is their right. This Court did not analyze the causes of action that were released through the inclusion of Paragraph 9 of the Order. Therefore, this Court must reconsider its action.

IV. CLASS COUNSEL AND THE CLAIMS ADMINISTRATOR MISLED CLASS MEMBERS BY TELLING THEM FALSELY THAT THEY COULD NOT CHALLENGE THE ORDER OF THIS COURT

The website for class members specifically tells them not to contact the Court. It states, “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.” Yet it appears that Class Counsel is arguing that Class Members had notice and an opportunity to object. “Please do not call or write the court” necessarily means that Class Members were deceived into thinking they had no ability to object.

Second, the website states, “There is no opportunity to dispute the Court's [November 29, 2023] Order or terms of inclusion in the supplemental distribution.” This is improper and false language. Class Members should have had a full opportunity to object to the motion, but since this Court entered the Order without giving the opportunity, Class Members had a right under Rules 59 and 60 to seek reconsideration. In addition, Class Members could have filed an appeal. However, they have all been misled by the website into believing there was no method to obtain release.

This Court must correct this situation. Truthful information must be given to the Class Members about their rights and deadlines to respond. People should not be held to have forfeited their money while at the same time being told they cannot contact the court or file anything.

V. CLASS COUNSEL’S PLAN TO NOT TELL AFFECTED CLASS MEMBERS VIOLATES STANDARDS OF FAIRNESS

Class Members have no way to tell where they stand. According to the website, “There will be no notification to individuals who are not eligible to participate in the supplemental distribution.” This necessarily concedes that those harmed by the plan (and Order) will not be told they are not receiving their money so, obviously, they will not have an opportunity to complain. This is simply wrong. Why could the claims administrator – who now wants released from liability – not simply let class members whose checks were returned know about it so they could have the situation fixed. All it would have taken was an email. An email was required on the claims form, so the claims administrator had a way to contact the claimants.

VI. CLASS COUNSEL NEEDS TO NOTIFY CLASS MEMBERS WHOSE CHECKS WERE RETURNED AND GIVE THEM AN OPPORTUNITY TO PROVIDE A NEW ADDRESS OR HAVE THE CHECK SENT AGAIN

The website states, “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.”

This is unfair and unjust. People did not receive their checks because of a multitude of issues such as

unclear information as to how to update addresses, errors by the postal service, the claims administrator misaddressing envelopes, or in Torres' case, for an unknown reason because the claims administrator never provided a copy of the envelope to him.

It seems that the position is that Torres forfeited his check because it was returned.

But the claims administrator knew Torres' email address and could have emailed him – and the other class members similarly affected – and simply said, “You're check was returned, do you have a better address or shall we ship it again?” This is especially so if electronic payment is now being offered which would alleviate the prior problems with mailings.

The November 15, 2023, deadline to contact the claims administrator is unfair where it was not published until after November 15, 2023. In other words, the date was pulled out of a dream that the claims administrator had and simply inserted and suggested, but nobody knew prior to November 15, 2023, that the deadline existed. This cannot be fair or correct in a class action.

VII. IF THERE IS A SECOND DISTRIBUTION, PEOPLE SHOULD ALL RECEIVE IT

Torres agrees with the other class members who stated that the information provided to the Court by Class Counsel uses strange verbiage and it is totally unclear what the second payment will consist of. If remaining funds will be distributed *pro rata* to claimants who cashed their first checks, then those funds should also be provided to persons like Torres that have been in constant contact with the claims administrator. It is not Torres' fault that the post office returned his check and the claims administrator could not take two minutes to send him an email advising him. Torres had no idea.

By:



Carlos Torres
Box 9007
Providence RI 02940-9007

CLASS MEMBER

EXHIBIT A www.contactlenssettlement.com

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.

Current Status

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

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