

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

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

**CLASS COUNSEL'S RESPONSE TO
ANA MARIA TAYLOR'S MOTION TO COMPLY WITH UNCLAIMED
PROPERTY LAWS OR APPOINT COUNSEL FOR SUBCLASS**

Class Counsel respectfully submit this response (“Response”) to Ana Maria Taylor’s (“Taylor”) Motion to Comply with Unclaimed Property Laws or Appoint Counsel for Subclass (“Taylor Mot.,” ECF No. 1423).

For the reasons set forth below and in Class Counsel’s Response to Certain Claimants’ Objections to the Suppl. Distribution of Net Settlement Funds (the “Obj. Resp.,” ECF No. 1406) and Class Counsel’s Response to Certain Claimants’ Motions for Reconsideration (the “First Recons. Resp.,” ECF No. 1409), the Court should deny Taylor’s Motion and affirm its November 29, 2023 Order Authorizing Second Distribution of the Net Settlement Funds to Claimants (the “Second Distribution Order,” ECF No. 1403).¹

I. ARGUMENT

A. Taylor is a Re-Issue Claimant and Not Negatively Impacted by the Second Distribution Order.

As with every other Class Member who’s objected to the Second Distribution Order—Franklin, Pierce, Swanson, Erber, and Torres—Taylor is a Re-Issue Claimant and will receive her *pro rata* distribution under the Second Distribution Order. *See* Fourth Supp. Decl. of Jeanne Chernila Regarding Ana Maria Taylor Objection to Supp. Distribution of Net Settlement Funds, ¶ 2. The Second Distribution Order explicitly allows Epiq to make distributions to Taylor (and the

¹ As noted previously, Class Counsel has instructed the Court appointed Claims Administrator, Epiq Class Action & Claims Solutions (“Epiq”), to not make any payments authorized by the Second Distribution Order until the various motions for reconsideration are resolved by the Court. *See* First Recons. Resp., 1.

other Objectors) in the original *pro rata* amounts. *See* Obj. Resp., III-C; First Recons. Resp., I-A.² Therefore, Taylor and other Objectors have not been harmed by the Second Distribution Order and lack standing to object to its effectuation. *See In re First Cap. Holdings Corp. Fin. Prods. Sec. Litig.*, 33 F.3d 29, 30 (9th Cir. 1994) (“Simply being a member of a class is not enough to establish standing. One must be an aggrieved class member.”); *see also Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 486 (1982) (finding no standing where the complainants had failed to “allege[] an injury of any kind, economic or otherwise, sufficient to confer standing”).

B. State Unclaimed Property Laws Do Not Apply.

Taylor also alleges that rather than redistributing available funds to Re-Issue Claimants and Second Distribution Claimants, those Class Members’ funds must escheat to the various States by operation of state law. *See* Taylor Mot., 1. Putting aside the fact that this argument, if accepted, would mean that Taylor and other Re-Issue Claimants may never receive their payments (they would under the Second Distribution Order), it lacks even an iota of support in the law as set forth more fully in the Objection Response. *See* Obj. Resp., III-D.

Indeed, none of the cases cited by Taylor supports her argument. The only case that could conceivably apply is the Fifth Circuit’s interpretation of Texas’s Unclaimed Property Act in *All Plaintiffs v. All Defendants*, 645 F.3d 329 (5th Cir.

² Put differently, Taylor (and the other Objectors’) filings have delayed their own payments, as well as the payments to the many other, similarly-situated Re-Issue Claimants.

2011).³ However, that case involved a very different situation: the State of Texas had intervened in an attempt to claim class members' funds. Of course, no state has intervened here. Moreover, *All Plaintiffs* was later expressly disapproved by the Texas Supreme Court. *See Highland Homes Ltd. v. State*, 448 S.W.3d 403 (Tex. 2014). Because the Texas Supreme Court has the final say on the interpretation of Texas law, there is no colorable argument that the Texas statute applies here. *See Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482, 488 (1976) ("We are, of course, bound to accept the interpretation of Wisconsin law by the highest court of the State.").

C. There is No Conflict of Interest, and Separate Counsel is Not Required.

Taylor appears to argue that Lapsed Claimants—claimants who did not timely request re-issuance of their checks—need to be represented by separate counsel. This argument also lacks merit. These Lapsed Claimants were unambiguously notified that their checks would expire in ninety (90) days and then were given months after they lapsed to reach out to Epiq to request a re-issuance if they had not yet cashed their check. The notice and time provided to all Class

³ Taylor's other cases are distinguishable inasmuch as they do not involve class action settlement funds. *See New Jersey Retail Merchs. Ass'n v. Sidamon-Eristoff*, 669 F.3d 374, 382 (3d Cir. 2012) (assessing the constitutionality of New Jersey's unclaimed property statute); *Energy Rsrvs. Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400 (1983) (assessing whether the Kansas Natural Gas Price Protection Act was constitutional); *State of Tex. v. State of N.J.*, 379 U.S. 674 (1965) (determining which States had a right escheat debts owed by the Sun Oil Company); *Delaware v. New York*, 507 U.S. 490 (1993) (resolving a dispute between States over certain abandoned intangible personal property).

Members, including Lapsed Claimants, more than satisfied due process and comports with the process and procedure employed in countless other class actions. *See* Obj. Resp., III-B. Because there is no colorable argument that any class member has been treated unfairly or any differently than other Authorized Claimants, there is no intraclass conflict requiring the appointment of separate class counsel.

Unsurprisingly, the legal authority Taylor cites does not support her argument. In *Lewis v. National Football League*, 146 F.R.D. 5 (D.D.C. 1992), the court denied class certification because the proposed class counsel represented an entity that was suing putative class members in other cases. There is no such allegation here. And *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999), involved the release of class members' *future* claims. Again, something that is not at issue here. Because there is no conflict, and Taylor points to no caselaw that would even begin to suggest a conflict arising from the situation presented here (nor is Class Counsel aware of any), this argument should also be rejected.

II. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request the Court enter an order denying the Taylor Motion and reaffirming its Second Distribution Order.

Dated: February 16, 2024

/s/ Michael E. Lockamy

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**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	

**FOURTH SUPPLEMENTAL DECLARATION OF JEANNE CHERNILA
REGARDING MARIE TAYLOR OBJECTION TO THE
SUPPLEMENTAL DISTRIBUTION OF NET SETTLEMENT FUNDS**

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. I submit this Fourth Supplemental Declaration in response to the objection filed by Ana Maria

Taylor (also known as Marie Taylor). This Fourth 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. Ms. Taylor is included in the Re-Issue Claimant group identified in my previous Second Supplemental Declaration Regarding Certain Claimants' Objections to the Supplemental Distribution of Net Settlement Funds and will receive her initial *pro rata* distribution as part of this supplemental distribution.

3. On July 23, 2023, Ms. Taylor contacted Epiq to update her address and request that Epiq reissue her award check to her updated address. On September 20, 2023, Epiq reissued Ms. Taylor's award check and mailed it to the updated address on file. **Exhibit A** is a true and correct redacted copy of Ms. Taylor's re-issued award check and cover letter. The re-issued award check was returned as having an undeliverable mailing address on October 12, 2023.

4. Ms. Taylor did not contact Epiq regarding her payment after the Court approved the supplemental distribution. Ms. Taylor will have opportunity to receive her re-issued award payment electronically (via EpiqPay) or via paper check.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on February 16, 2024 at Rio Nido, California.

Jeanne Chernila
Jeanne Chernila

DISPOSABLE CONTACT LENS
SETTLEMENT ADMINISTRATOR
PO BOX 4199
PORTLAND OR 97208-4199

CHECK DATE: SEPTEMBER 20, 2023
CHECK NUMBER: [REDACTED]
CHECK AMOUNT: [REDACTED]
TRACKING NUMBER: [REDACTED]
CLAIM NUMBER: [REDACTED]



4674127246112
000 0000181 00000000 0001 0001 00181 INS: 0 0

MARIE TAYLOR
[REDACTED]

AI4631

This check is issued pursuant to the terms of the class action settlement *DISPOSABLE CONTACT LENS ANTITRUST LITIGATION* Case No. 3:15-md-02626. You submitted a claim for a settlement award, and it was determined to be timely and valid. The enclosed check constitutes full satisfaction of your claim.

The enclosed check is only valid for **90 days** from the issue date. Please deposit promptly.

If you have any questions about your award, please contact the Settlement Administrator at (877) 253-3649, visit the settlement website at ContactLensSettlement.com, or write to PO Box 2995, Portland, OR 97208-2995.

DISPOSABLE CONTACT LENS
SETTLEMENT ADMINISTRATOR
PO BOX 4199
PORTLAND OR 97208-4199

The Huntington National Bank

25-2
440

CHECK NUMBER
[REDACTED]

DATE
09/20/2023

Void if not negotiated within ninety (90) days of date of issue

PAY EXACTLY ***** [REDACTED]

AMOUNT
[REDACTED]

PAY TO THE ORDER OF:
MARIE TAYLOR

This check may not be cashed at a check cashing agency or money service business.

VOID

Nicole Han
Authorized Signature

[REDACTED]